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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2014

Issue#	Rules Due Date	Date of Issue
1	December 23, 2013	January 3, 2014
2	December 30, 2013	January 10, 2013
3	January 6, 2014	January 17, 2014
4	January 13, 2014	January 24, 2014
5	January 21, 2014	January 31, 2014
6	January 27, 2014	February 7, 2014
7	February 3, 2014	February 14, 2014
8	February 10, 2014	February 21, 2014
9	February 18, 2014	February 28, 2014
10	February 24, 2014	March 7, 2014
11	March 3, 2014	March 14, 2014
12	March 10, 2014	March 21, 2014
13	March 17, 2014	March 28, 2014
14	March 24, 2014	April 4, 2014
15	March 31, 2014	April 11, 2014
16	April 7, 2014	April 18, 2014
17	April 14, 2014	April 25, 2014
18	April 21, 2014	May 2, 2014

19	April 28, 2014	May 9, 2014
20	May 5, 2014	May 16, 2014
21	May 12, 2014	May 23, 2014
22	May 19, 2014	May 30, 2014
23	May 27, 2014	June 6, 2014
24	June 2, 2014	June 13, 2014
25	June 9, 2014	June 20, 2014
26	June 16, 2014	June 27, 2014
27	June 23, 2014	July 7, 2014
28	June 30, 2014	July 11, 2014
29	July 7, 2014	July 18, 2014
30	July 14, 2014	July 25, 2014
31	July 21, 2014	August 1, 2014
32	July 28, 2014	August 8, 2014
33	August 4, 2014	August 15, 2014
34	August 11, 2014	August 22, 2014
35	August 18, 2014	August 29, 2014
36	August 25, 2014	September 5, 2014
37	September 2, 2014	September 12, 2014
38	September 8, 2014	September 19, 2014
39	September 15, 2014	September 26, 2014
40	September 22, 2014	October 3, 2014
41	September 29, 2014	October 10, 2014
42	October 6, 2014	October 17, 2014
43	October 14, 2014	October 24, 2014
44	October 20, 2014	October 31, 2014
45	October 27, 2014	November 7, 2014
46	November 3, 2014	November 14, 2014
47	November 10, 2014	November 21, 2014
48	November 17, 2014	December 1, 2014
49	November 24, 2014	December 5, 2014
50	December 1, 2014	December 12, 2014
51	December 8, 2014	December 19, 2014
52	December 15, 2014	December 26, 2014

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 1, 2014 until July 1, 2014.

CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Chief Procurement Officer for General Services Standard Procurement
- 2) Code Citation: 44 Ill. Adm. Code 1
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
1.5	Amendment
1.10	Amendment
1.12	New Section
1.13	New Section
1.15	Amendment
1.525	Amendment
1.1005	Amendment
1.1040	Amendment
1.1060	Amendment
1.1501	Amendment
1.1510	Repeal
1.1525	Amendment
1.1535	New Section
1.1570	Amendment
1.2005	Amendment
1.2010	Amendment
1.2012	Amendment
1.2013	Amendment
1.2015	Amendment
1.2020	Amendment
1.2025	Amendment
1.2030	Amendment
1.2035	Amendment
1.2036	Amendment
1.2038	Amendment
1.2039	Amendment
1.2040	Amendment
1.2043	Amendment
1.2044	Amendment
1.2045	Amendment
1.2046	Amendment
1.2050	Amendment
1.2055	Amendment

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1.2060	Amendment
1.2067	New Section
1.2080	Amendment
1.2084	Amendment
1.2086	Amendment
1.3005	Amendment
1.4020	Amendment
1.4530	Amendment
1.4535	Amendment
1.4540	Amendment
1.4545	Amendment
1.4570	Amendment
1.5002	Amendment
1.5005	Amendment
1.5010	Amendment
1.5011	Amendment
1.5012	Amendment
1.5013	Amendment
1.5014	Amendment
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1.5021	Amendment
1.5035	Amendment
1.5037	Amendment
1.5039	Amendment
1.5060	Amendment
1.5550	Amendment
1.5560	Amendment
1.5620	Amendment
1.5730	Amendment
1.5740	Amendment
1.7015	Amendment
1.8010	Amendment
1.8020	Repeal
1.8025	Amendment

- 4) Statutory Authority: The Illinois Procurement Code [30 ILCS 500], the Governmental Joint Purchasing Act [30 ILCS 525], the Transportation Sustainability Procurement Program Act [30 ILCS 530] and the Illinois Lottery Law [20 ILCS 1605]

CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

NOTICE OF PROPOSED AMENDMENTS

- 5) A Complete Description of the Subjects and Issues Involved: In PA 97-895, the Illinois Procurement Code was amended, following up on and clarifying issues from PA 96-795/SB 51, which transferred oversight for procurement to independent Chief Procurement Officers appointed by the Executive Ethics Commission. Several other bills were enacted into law that amended the Procurement Code.

The rulemaking implements the changes of PA 97-895 for the Chief Procurement Office for General Services (CPO-GS), further defining terms, the structure and procurement authority oversight of the CPO-GS and SPO, and providing direction to State agencies on procurement matters. The proposed amendments allow for CPO-GS access to records to determine if a contract or expenditure is subject to the provisions of the Procurement Code, provides for exemption from the Illinois Procurement Code for certain artistic and musical services held at a venue operated or leased by a State agency, and provides exemption for certain contracts entered into by the Illinois Finance Authority. The amendments increase from \$25,000 to \$50,000 the disclosure requirements of subcontractors and clarify vendors' responsibilities when there is a change of a subcontractor. The amendments provide direction on publication requirements for renegotiated contracts and change orders, provide instruction on how to receive bids and offers in order to maintain confidentiality, specify the requirements for evaluation committees, specify what discussions may occur with apparent awardees prior to notice of award, provide guidance on the use of contracts with qualified not-for-profit agencies for persons with severe disabilities, and allow for the use of electronic signatures by vendors. The amendments clarify notice and hearing requirements for sole source contracts and for alleged conflicts of interest, clarify a SPOs obligation to approve (and not sign) contracts by State agencies, provide for the CPO-GS to be responsible for and publish the Illinois Procurement Bulletin, provide guidance on the establishment of a vendor portal, implement publication requirements for awards to other than low bidder, and clarify that procurement files shall not include trade secrets or other sensitive, confidential or proprietary information. The amendments define criteria for contracts with Illinois small businesses and provide for the CPO-GS to verify a business entity is in compliance with requirements to register with the State Board of Elections and allows opportunity for contractors to terminate subcontractors who provide false certifications. The amendments clarify when vendors may be prohibited bidders and contractors, specify when state employees are required to report conversations with potential vendors, and provides for due process when suspected prohibited political contributions are made by vendors.

The rulemaking provides for the authority of the CPO-GS under the Governmental Joint Purchasing Act and implement the requirements of the Transportation Sustainability

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Procurement Program Act. The amendments update rules for the selection process of a private manager for the Illinois Lottery.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The CPO-GS relied on PAs 97-895, 98-019, 98-090, 98-107, 98-307, 98-348, 98-431, 98-442, 98-463, 98-572 to compose the rulemaking. Copies are available for review with the CPO-GS at 401 S. Spring, 712 Stratton Office Building, Springfield IL 62706.
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect or create or expand a State mandate under the State Mandates Act.
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The CPO-GS will consider all written comments it receives during the First Notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40]. Written comments may be submitted within 45 days after the date of publication in the *Illinois Register* to:

Margaret L. van Dijk
Senior Policy Advisor
Chief Procurement Office for General Services
712 Stratton Office Building
Springfield IL 62706

217/558-2228
Margaret.vanDijk@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: The rulemaking may have an impact on small businesses, small

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municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80, and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the CPO-GS at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-20]. These entities shall indicate their status as a small business, small municipality, or not-for-profit corporation as part of any written comments they submit to the CPO-GS.

- B) Reporting, bookkeeping or other procedures required for compliance: Businesses interested in contracting with the State will be required to meet financial disclosure requirements and to annually recertify compliance documents. Businesses having contracts or proposing to do business with the State of Illinois are required to provide conflict of interest disclosures, financial interest disclosures and sign certifications. Businesses may be required to obtain a Department of Human Rights Number, be authorized to do business in the State of Illinois, and registered with the State Board of Elections. Requirements for contract execution prior to when deliverables may begin will also impact these organizations
- C) Types of professional skills necessary for compliance: None

- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT

SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS

CHAPTER I: CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

PART 1

CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES
STANDARD PROCUREMENT

SUBPART A: GENERAL

Section

- 1.1 Title
- 1.3 Authority
- 1.5 Policy
- 1.8 Implementation of This Part
- 1.10 Application
- 1.12 Additional Exemptions Applicable to Artistic and Musical Services
- 1.13 Additional Exemptions Applicable to Illinois Finance Authority
- 1.15 Definition of Terms Used in This Part
- 1.25 Property Rights
- 1.30 Constitutional Officers, and Legislative and Judicial Branches (Repealed)

SUBPART B: PROCUREMENT RULES, POLICIES AND PROCEDURES

Section

- 1.525 Rules
- 1.530 Policies and Procedures

SUBPART C: PROCUREMENT AUTHORITY

Section

- 1.1005 Procurement Authority
- 1.1010 Appointment of State Purchasing Officer (Repealed)
- 1.1040 Central Procurement Authority of the CPO-GS
- 1.1050 Procurement Authority of the SPO; Limitations (Repealed)
- 1.1060 Delegation
- 1.1070 Toll Highway Authority
- 1.1075 Department of Natural Resources (Repealed)

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1.1080 Illinois Mathematics and Science Academy (Repealed)

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section

1.1501 Illinois Procurement Bulletin
| 1.1510 Publication of Illinois Procurement Bulletin (Repealed)
1.1515 Registration
1.1525 Bulletin Content
| 1.1535 Vendor Portal
1.1550 Official State Newspaper (Repealed)
1.1560 Alternate and Supplemental Notice
1.1570 Error in Notice
1.1580 Direct Solicitation
1.1585 Notice Time
1.1590 Retention of Bulletin Information (Repealed)
1.1595 Availability of Solicitation Document

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

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1.2005 General Provisions
1.2010 Competitive Sealed Bidding
1.2012 Multi-Step Sealed Bidding
1.2013 Reverse Auctions
1.2015 Competitive Sealed Proposals
1.2020 Small Purchase Limits
| 1.2025 Sole Source or Sole Economically Feasible Source Procurement
1.2030 Emergency Procurements
1.2035 Competitive Selection Procedures for Professional and Artistic Services
1.2036 Other Methods of Source Selection
1.2037 Tie Bids and Proposals
1.2038 Modification or Withdrawal of Bids or Proposals
1.2039 Mistakes
1.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

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- 1.2043 Suppliers
- 1.2044 Vendor List
- 1.2045 Vendor Prequalification
- 1.2046 Responsibility

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

- Section 1.2047 Security Requirements

SUBPART H: SPECIFICATIONS AND SAMPLES

- Section 1.2050 Specifications and Samples

SUBPART I: CONTRACTS

- Section 1.2055 Types of Contracts
- 1.2060 Duration of Contracts – General
- 1.2065 Cancellation of Contracts
- | [1.2067 Contract Amendments and Change Orders](#)

SUBPART J: PROCUREMENT FILES

- Section 1.2080 Public Procurement File
- 1.2084 Record Retention
- 1.2086 Filing with the Comptroller

SUBPART K: WORKING CONDITIONS

- Section 1.2560 Prevailing Wage
- 1.2570 Equal Employment Opportunity; Affirmative Action
- 1.2575 Subcontractors (Repealed)

SUBPART L: CONTRACT PRICING

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SUBPART M: CONSTRUCTION AND
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SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

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1.4010 Authority
1.4015 Method of Source Selection
1.4020 Request for Information – Real Property and Capital Improvement Leases
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1.4520 Recycled Materials
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1.4530 Correctional Industries
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1.4550 Illinois Agricultural Products
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- 1.5420 Governmental Joint Purchasing Act Contracts
- 1.5440 Non-Governmental Joint Purchasing
- 1.5460 No Agency Relationship
- 1.5510 Complaints Against Vendors (Repealed)
- 1.5520 Suspension (Repealed)
- 1.5530 Resolution of Contract Controversies (Repealed)
- 1.5540 Violation of Law or Rule (Repealed)

SUBPART S: PROTESTS

- Section
- 1.5550 Protests

SUBPART T: SUSPENSION AND DEBARMENT

- Section
- 1.5560 Suspension and Debarment

SUBPART U: VIOLATION OF STATUTE OR RULE

- Section
- 1.5620 Violation of Statute or Rule

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- Section
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- 1.5710 Informal Process
- 1.5720 Hearing Officers
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- 1.5740 Written Comments and Oral Testimony
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- 1.6500 General (Repealed)
- 1.6510 No Agency Relationship (Repealed)
- 1.6520 Obligations of Participating Governmental Units (Repealed)
- 1.6530 Centralized Contracts – Estimated Quantities (Repealed)
- 1.6535 Centralized Contracts – Definite Quantities (Repealed)

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SUBPART X: SELECTION OF A SUCCESSOR ILLINOIS LOTTERY
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1.8005	General
1.8010	Selection Process
1.8015	Lottery Advisors
1.8020	Public Hearing (<u>Repealed</u>)
1.8025	Award
1.8030	Action to Contest Selection

AUTHORITY: The Illinois Procurement Code [30 ILCS 500] and the Illinois Lottery Law [20 ILCS 1605].

SOURCE: Adopted at 7 Ill. Reg. 100, effective December 17, 1982; amended at 7 Ill. Reg. 13481, effective October 4, 1983; amended at 7 Ill. Reg. 13844, effective October 12, 1983; codified at 8 Ill. Reg. 14941; Sections 1.2210, 1.2220, 1.2230, 1.2240 recodified to Section 1.2210 at 9 Ill. Reg. 6118; amended at 10 Ill. Reg. 923, effective January 2, 1986; amended at 10 Ill. Reg. 18707, effective October 22, 1986; amended at 11 Ill. Reg. 7225, effective April 6, 1987; amended at 11 Ill. Reg. 7595, effective April 14, 1987; amended at 13 Ill. Reg. 17804, effective November 7, 1989; emergency amendment at 16 Ill. Reg. 13118, effective August 7, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 600, effective January 5, 1993; amended at 17 Ill. Reg. 14576, effective August 27, 1993; amended at 20 Ill. Reg. 9015, effective July 1, 1996; old Part repealed by emergency rulemaking at 22 Ill. Reg. 12632, effective July 1, 1998, for a maximum of 150 days, and new Part adopted by emergency rulemaking at 22 Ill. Reg. 12726, effective July 1, 1998, for a maximum of 150 days; old Part repealed and new Part adopted at 22 Ill. Reg. 20875, effective November 25, 1998; emergency amendment at 23 Ill. Reg. 2812, effective February 16, 1999, for a maximum of 150 days;

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emergency expired on July 15, 1999; emergency amendment at 23 Ill. Reg. 5869, effective April 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 7075, effective June 7, 1999; amended at 24 Ill. Reg. 1900, effective January 21, 2000; amended at 26 Ill. Reg. 13189, effective August 23, 2002; emergency amendment at 29 Ill. Reg. 20540, effective December 2, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 30 Ill. Reg. 5673, effective March 7, 2006, for the balance of the 150 days; emergency expired August 3, 2006; amended at 30 Ill. Reg. 138, effective December 22, 2005; amended at 30 Ill. Reg. 13378, effective July 25, 2006; amended at 30 Ill. Reg. 17305, effective October 20, 2006; amended at 30 Ill. Reg. 18635, effective November 17, 2006; emergency amendment at 33 Ill. Reg. 3205, effective January 28, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 9607, effective June 25, 2009; recodified, pursuant to PA 96-795, from Department of Central Management Services to Chief Procurement Officer for General Services at 35 Ill. Reg. 10143; amended at 36 Ill. Reg. 10729, effective August 6, 2012; amended at 36 Ill. Reg. 16319, effective November 1, 2012; emergency amendment at 37 Ill. Reg. 1319, effective January 22, 2013, for a maximum of 150 days; amended at 37 Ill. Reg. 8123, effective June 5, 2013; amended at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1.5 Policy

The principles of competitive bidding and economical procurement practices shall apply to all purchases and contracts by and for the State Agencies, except as otherwise provided by law, this Part and other applicable rules. It is the policy of the CPO-GS that all activities of the [State Purchasing Officers \(SPOs\)](#) and other designees related to the procurement process maximize the value of the expenditure of public funds in procuring contracts, and that those appointed and designated act in a manner that maintains public trust in the integrity of the process.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.10 Application

- a) The Code and this Part do not apply to:
 - 1) *contracts between the State and its political subdivisions or other governments, or between State governmental bodies, except as specifically provided in the Code.* (For purposes of this subsection (a)(1), "governmental bodies" includes the State universities and their governing boards, community colleges and their governing boards and school

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districts. This provision applies to contracts between governmental entities; it does not apply to State agencies use of contracts established by other governmental entities.);

- 2) *grants (except for the filing requirements of Section 20-80 of the Code);*
- 3) *purchase of care;*
- 4) *hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;*
- 5) *collective bargaining contracts;*
- 6) *purchase of real estate, except that notice of this type of contract with a value of more than \$25,000 must be published in the Procurement Bulletin within 7 days after the deed is recorded in the county of jurisdiction. This applies to purchases whether outright or by means of an installment purchase. The exercise of an option to purchase in a real estate lease is exempt, but the underlying lease is not exempt from this Part. The notice shall identify the real estate purchased, the names of all parties to the contract, the value of the contract, and the effective date of the contract;*
- 7) *contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Governor shall give his or her prior approval when the procuring agency is one subject to the jurisdiction of the Governor, and provided that the chief legal counsel of any other procuring entity subject to the Code shall give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor. Anticipated litigation is that which a State agency may prosecute or defend before a court or administrative body and actions necessary to prepare for and conduct the effective legal prosecution or defense of litigation, including, but not limited to, the retention of counsel, investigators, expert witnesses and court reporters. This Section is applicable to equipment or services necessary in the furtherance of covert activities lawfully conducted by a State agency;*
- 8) *Contracts for services to Northern Illinois University by a person, acting as an independent contractor, who is qualified by education, experience,*

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and technical ability and is selected by negotiation for the purpose of providing non-credit educational service activities or products by means of specialized programs offered by the university;

- 9) *Procurement expenditures by the Illinois Conservation Foundation when only private funds are used;*
- 10) *Procurement expenditures by the Illinois Health Information Exchange Authority involving private funds from the Health Information Exchange Fund. "Private funds" means gifts, donations, and private grants;*
- 11) *Public-private agreements entered into according to the procurement requirements of Section 20 of the Public-Private Partnerships for Transportation Act [630 ILCS 5] and design-build agreements entered into according to the procurement requirements of Section 25 of the Public-Private Partnerships for Transportation Act. [30 ILCS 500/1-10(b)]*
- b) *This Part does not apply to the electric power procurement process provided for under Section 1-75 of the Illinois Power Agency Act [20 ILCS 3855] and Section 16-111.5 of the Public Utilities Act [220 ILCS 5]. [30 ILCS 500/1-10(c)]*
- c) *Except for Section 20-160 and Article 50 of the Code, and as expressly required by Section 9.1 of the Illinois Lottery Law [20 ILCS 1605], the provisions of the Code do not apply to the procurement process provided for under Section 9.1 of the Illinois Lottery Law. [30 ILCS 500/1-10(d)]*
- d) *This Part does not apply to the process used by the Capitol Development Board to retain a person or entity to assist the Capitol Development Board with its duties related to the determination of costs of clean coal SNG brownfield facility, as defined by Section 1-10 of the Illinois Power Agency Act, as required in Section 9-220(h-3) of the Public Utilities Act, including calculating the range of capital costs, the range of operating and maintenance costs, or the sequestration costs or monitoring the construction of clean coal SNG brownfield facility for the full duration of construction. [30 ILCS 500/1-10(e)]*
- e) *This Part does not apply to the process used by the Illinois Power Agency to retain a mediator to mediate sourcing agreement disputes between gas utilities and the clean coal SNG brownfield facility, as defined in Section 1-10 of the*

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Illinois Power Agency Act, as required under Section 9-220(h-1) of the Public Utilities Act. [30 ILCS 500/1-10(f)]

- f) *The Code does not apply to the processes used by the Illinois Power Agency to retain a mediator to mediate contract disputes between gas utilities and the clean coal SNG facility and to retain an expert to assist in the review of contracts under Section 9-220(h) of the Public Utilities Act. The Code does not apply to the process used by the Illinois Commerce Commission to retain an expert to assist in determining the actual incurred costs of the clean coal SNG facility and the reasonableness of those costs as required under Section 9-220(h) of the Public Utilities Act. [30 ILCS 500/1-10(g)]*
- g) *The Code does not apply to the process to procure or contracts entered into in accordance with Sections 11-5.2 and 11-5.3 of the Illinois Public Aid Code [305 ILCS 5]. [30 ILCS 500/1-10(h)]*
- h) *The Code does not apply to the process used by the Capital Development Board to retain an artist or work or works of art as required in Section 14 of the Capital Development Board Act [20 ILCS 105]. [30 ILCS 500/1-10(j)]*
- i) *Unless a record is subject to attorney-client privilege, the CPO-GS may access any records necessary to review whether a contract, purchase or other expenditure is exempt under Section 1-10 of the Code.*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.12 Additional Exemptions Applicable to Artistic and Musical Services

- a) *Except as provided in this Section, the Code shall not apply to procurements made by or on behalf of State agencies for procurement expenditures necessary to provide artistic or musical services or theatrical productions held at a venue operated or leased by a State agency. [30 ILCS 500/1-12(a)]*
- b) *In a manner prescribed by the CPO-GS, contracts entered into under this Section shall be published in the Procurement Bulletin within 14 days after contract execution. [30 ILCS 500/1-12(b)]*
- c) *In a manner prescribed by the CPO-GS, each State agency shall, on a monthly basis, provide the CPO-GS a report of all contracts that are related to the*

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procurement of supplies and services identified in this Section. At a minimum, this report shall include the name of the contractor, a description of the supply or service provided, the total amount of the contract, the term of the contract, and the exception to the Code utilized. A copy of any or all of these contracts shall be made available to the CPO-GS immediately upon request. [30 ILCS 500/1-12(b)]

- d) The CPO-GS shall submit a report to the Governor and General Assembly no later than November 1 of each year that shall include, at a minimum, an annual summary of the monthly information reported to the CPO-GS. [30 ILCS 500/1-12(b)]

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 1.13 Additional Exemptions Applicable to Illinois Finance Authority

- a) Except as provided in this Section, the Code shall not apply to contracts for legal, financial, and other professional and artistic services entered into on or before December 31, 2018 by the Illinois Finance Authority (IFA) in which the State is not obligated.
- b) In a manner prescribed by the CPO-GS, contracts entered into under this Section shall be published in the Procurement Bulletin within 14 days after contract execution.
- c) In a manner prescribed by the CPO-GS, IFA shall, on a monthly basis, provide the CPO-GS a report of all contracts that are related to the procurement of supplies and services identified in this Section. At a minimum, this report shall include the name of the contractor, a description of the supply or service provided, the total amount of the contract, the term of the contract, and the exception to the Code utilized. A copy of any or all of these contracts shall be made available to the CPO-GS immediately upon request.
- d) The CPO-GS shall submit a report to the Governor and General Assembly no later than November 1 of each year that shall include, at a minimum, an annual summary of the monthly information reported to the CPO-GS. [30 ILCS 500/1-10(b)(12)]

(Source: Added at 38 Ill. Reg. _____, effective _____)

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Section 1.15 Definition of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined in this Section, and each term listed in this Section shall have the meaning set forth unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Amendment" – A written modification to a contract. An amendment may memorialize an action authorized by specific language in the contract (e.g., exercise of an option or showing price decrease or increase based on CPI), or may memorialize non-material changes (e.g., change in names of notice contacts or number of periodic status meetings). A "change order" is an amendment, but an amendment is not always a "change order". ~~provision, as permitted by the original contract. These modifications shall alter the performance and completion of the contract, including, but not limited to, such matters as extra work and increases or decreases in quantities of goods not included within the scope of the original contract.~~

~~"Award" – The determination that a particular vendor has been selected from among other potential vendors to enter into negotiations for the purpose of finalizing a contract.~~

"Bid" – The response to an Invitation for Bids.

"Bidder" – Any person who submits a bid. A person or entity (other than an individual acting as a sole proprietor) may qualify as a bidder only if the person or entity is a legal entity authorized to do business in Illinois prior to submitting the bid.

"Brand Name or Equal Specification" – A specification that uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and that allows the submission of equivalent products.

"Brand Name Specification" – A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Building Services" – Repairs to or maintenance of the structure, but does not include janitorial or window washing services.

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"Bulletin" – The volume of the Illinois Procurement Bulletin under the authority of assigned to the CPO-GS, unless the context clearly means the volume of another CPO or the Illinois Procurement Bulletin generally.

"Change Order" – A change in a contract term, other than as specifically provided for in the contract, that authorizes or necessitates any increase or decrease in the cost of the contract or the time to completion. [720 ILCS 5/33E-2(c)] As used in this Part, "a change in a contract term" includes increases or decreases to estimated contracts, even if the change does not require modification to the contract.

"Chief Procurement Officer" or "CPO-GS" – The Chief Procurement Officer for General Services, as created by Section 10-20(4) of the Code or a designee.

"Code" – The Illinois Procurement Code [30 ILCS 500].

"Concession" – The right granted by a license, lease or other agreement to use State property, and sell directly or indirectly to the public, whether tangible or intangible. Also includes the right to engage in a certain activity on the lessor's property (e.g., a refreshment or parking concession).

"Construction Agency" – The Capital Development Board for construction or remodeling of State-owned facilities; the Illinois Department of Transportation for construction or maintenance of roads, highways, bridges, and airports; the Illinois Toll Highway Authority for construction or maintenance of toll highways; the Illinois Power Agency for construction, maintenance, and expansion of Agency-owned facilities, as defined in Section 1-10 of the Illinois Power Agency Act; and any other State agency entering into construction contracts as authorized by law or by delegation from the appropriate Chief Procurement Officer. [30 ILCS 500/1-15.25]

"Consulting Services" – Services provided by a business or person as an independent contractor to advise and assist ~~a State~~ an agency in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of a State agency. The services may or may not rise to the level of professional and artistic as defined in the Code and this Part.

"Contract" – *All types of State agreements, including change orders and renewals,*

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regardless of what they may be called, for the procurement, use, or disposal of supplies, services, professional or artistic services, or construction or for leases of real property, whether the State is lessor or lessee, or capital improvements, and including master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. [30 ILCS 500/1-15.30] The term "contract" includes, but is not limited to, purchase, installment purchase, lease and rental contracts. The term contract, as used in the Code and this Part, does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission and for which there is no authorized competition, bond or contracts related to bonds issued by or on behalf of a State agency when the contractor or vendor is neither selected nor paid by the State agency.

"Contract Award" – Except as otherwise defined in this Part for specific categories of procurements, the determination that a particular vendor has been selected from among other potential vendors to receive a contract, subject to the successful completion of final negotiations. Contract award is evidenced by the posting of a Notice to Award or a Notice of Intent to Award to the respective Illinois Procurement Bulletin after all State agency-required and SPO approvals have been obtained.

"Contractor" or "Vendor" – Any person having a contract with a State agency to furnish goods, services or construction for an agreed upon price. The terms contractor and vendor are used interchangeably for purposes of the Code and this Part. The term shall also include subcontractors.

"Day" – Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, as applicable, in which event the period shall run to the end of the next business day.

"Designee" – A person or category of persons identified by the CPO-GS or an SPO, in writing, to exercise procurement authority or to assist with the procurement process. A designee acts under procurement authority of the CPO-GS or SPO and has the responsibility for taking procurement actions in accordance with applicable laws, rules and policies, as limited by the terms of the delegation.

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"Domestic Product" – A product that meets the requirements of the Procurement of Domestic Products Act [30 ILCS 5/7].

"Emergency Affidavit" – The affidavit filed with the Procurement Policy Board and the Auditor General setting forth the actual or estimated amount expended, the name of the contractor involved, and the conditions and circumstances requiring the emergency procurement.

"Emergency Contract Award" – For purposes of an emergency contract, an emergency contract is awarded on the earlier of the date a State agency communicates to a vendor to start work, publication on the Illinois Procurement Bulletin identifying the vendor of the required supplies or services, or the date the contract is signed by both parties.

"Estimated Cost" – The amount expected to be paid by the State for a procurement transaction. It is representative of all known work, and may include potential and expected unscheduled work arising out of the requirements, i.e., the total estimated contract value, but is not considered the maximum cost.

"Evaluation Criteria" – The requirements for the selection process, which may include the specialized experience, technical qualifications and competence, capacity to perform, past performance, experience with similar projects, assignment of personnel to the project, and other appropriate factors.

"Germane" – Closely or significantly related to, arising out of, or directly incidental to the original contract. Additional work or materials that are a substantial departure from the nature, scope or scale of the original contract are not germane.

"Grant" – The furnishing by the State of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award the primary purpose of which is to procure an end product for the direct benefit or use of the State agency making the grant, whether in the form of goods, services, or construction. A contract that results from such an award is not a grant and is subject to the Code. [30 ILCS 500/1-15.42] When a grantor provides a grant to a State agency with a stipulation that the State agency issue subgrants to named persons, the subgrant or subcontract award is also a grant and the subgrantee or subcontractor is made an agent of the grantor.

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"Grounds Services" – Lawn care, landscaping and snow and ice removal services.

"Invitation for Bids" or "IFB" – *The process by which a purchasing agency requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids.* [30 ILCS 500/1-15.45] Also referred to as Competitive Sealed Bidding.

"Items" – Anything that may be procured under the Code and this Part.

"Letting" – A construction agency's act of advertising an Invitation for Bids for one or more construction projects.

"Natural Resources Services" – These are services provided to the Department of Natural Resources or the Historic Preservation Agency. Services consist of non-supervisory activities of a routine, repetitive, non-discretionary nature not needing special expertise, training or education. These services include, but are not limited to, assisting in the operation of tree nurseries, fish hatcheries, game farms and sanctuaries; cleaning and maintenance of specialized facilities; repairing fences and building cages; mowing; and trail and ancillary facility repair.

"Offer" or "Proposal" – The response to a Request for Proposal or Request for Information for real estate or capital improvement leases.

"Offeror" or "Respondent" – A person who responds to a Request for Proposals or Request for Information for real estate or capital improvement leases. A person or entity (other than an individual acting as a sole proprietor) may qualify as an offeror only if the person or entity is a legal entity authorized to do business in Illinois prior to submitting the offer.

"Person" – *Any business, public or private corporation, partnership, individual, union, committee, club, unincorporated association or other organization or group of individuals, or other legal entity.* [30 ILCS 500/1-15.55]

"Procurement Compliance Monitor" or "PCM" – Person appointed by the Executive Ethics Commission (EEC) under Section ~~10-151-50~~ of the Code to oversee and review procurement processes.

"Procurement Officer" – The Chief Procurement Officer (CPO) or appropriate

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State Purchasing Officer (SPO) who is responsible for the particular procurement.

"Procurement Policy Board" or "PPB" – The body created by Section 5-5 of the Code.

"Proposal" or "Offer" – The response to a Request for Proposal or Request for Information for real estate or capital improvement leases.

"Protest Review Office" – The office of the person designated in the solicitation document to whom protests must be directed. This person will respond to or coordinate the response to the protest.

"Purchase of Care" – *A contract with a person for the furnishing of medical, educational, psychiatric, vocational, rehabilitation, social, or human services directly to a recipient of a State aid program.* [30 ILCS 500/1-15.68] Purchase of care includes the furnishing of services directly to recipients of State aid programs or applicants for a State aid program. Purchase of care contracts may include some services that are administrative in nature, as long as the contract primarily provides direct care to recipients of State aid programs. ~~services provided or arranged to be provided by the vendor in conjunction with the purchase of care. Such services may include administrative services of patient recordkeeping and management services, enrollment, health education, grievance procedures, case management, utilization review, quality assurance, peer review, or marketing. Recipient of a State aid program includes applicants for a State aid program. Examples of purchase of care contracts include, but are not limited to, contracts related to care coordination programs under Title XIX of the Social Security Act, including contracts with managed care organizations; primary care case management services; prepaid ambulatory health plans; prepaid inpatient health plans and direct care services provided under the Children and Family Services Act [20 ILCS 505]. Contracts that do not pertain to direct services to State aid recipients or that are primarily administrative in nature exceed the scope of the definition of a purchase of care contract and are not exempt from the requirements of the Code.~~

"Purchasing Agency" – *A State agency that enters into a contract at the direction of a State purchasing officer authorized by a Chief Procurement Officer or the direction of a Chief Procurement Officer.* [30 ILCS 500/1-15.70]

"Qualified Products List" – An approved list of supplies described by model or

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catalog numbers that, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Renewal" – Except for real property and capital improvement leases, an agreement between the parties to a contract to authorize an additional contract period under the terms and conditions of the renewal provision in the original contract.

"Request for Information" or "RFI" – The process of requesting information from interested parties to aid the State in decision making. This type of RFI is not a procurement method and will not result in a participant receiving a contract.

"Request for Information for Real Property or Capital Improvement Leases" or "RFI-Real Property Leases" – The process of seeking proposals for leases of real property or capital improvements as outlined under Article 40 of the Code.

"Request for Proposals" or "RFP" – *The process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals.* [30 ILCS 500/1-15.75]

"Requesting Agency" – The agency that requests that the CPO or SPO conduct a procurement for its use. All procurements reserved to the CPO that have not been delegated must be initiated by a purchase request.

"Responsible Bidder" or "Offeror" – *A person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability that will assure good faith performance. A responsible bidder or offeror shall not include a business or other entity that does not exist as a legal entity at the time a bid or proposal is submitted for a State contract.* [30 ILCS 500/1-15.80]

"Responsive Bidder" – *A person who has submitted a bid that conforms in all material respects to the Invitation for Bids.* [30 ILCS 500/1-15.85]

"Responsive Offeror" – A person who has submitted an offer that conforms in all material respects to the Request for Proposals.

"Scoring Tool" – The document used to record the method used by the individuals evaluating the responses to a solicitation to judge qualifications or otherwise show

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whether or how well the responses met requirements set forth in the solicitation.

"Services" – *The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance and financing.* [30 ILCS 500/1-15.90]

"Site Technician Services" – These are services provided to the Department of Natural Resources or the Historic Preservation Agency. These services consist of non-supervisory activities of a routine, repetitive, non-discretionary nature not needing special expertise, training or education. These services include, but are not limited to, the maintenance of the site, including operating small farm-type equipment and trucks that do not require a Class C or D driver's license.

"Solicitation" – The document (e.g., IFB, RFP or RFI-real property lease) posted to the Bulletin requesting interested parties to submit a response for evaluation by the State. A request for information to determine if there is any interest on the part of a State agency in the supplies or services of a vendor or vendors, or on the part of a vendor or vendors in providing the supplies or services, is not considered a solicitation.

"Specification for a Common or General Use Item" – A specification that has been developed and approved for repeated use in procurements.

"Specifications" – *Any description, provision, or requirement pertaining to the physical or functional characteristics or of the nature of a supply, service, or other item to be procured under a contract. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, professional or artistic service, construction, or other item for delivery.* [30 ILCS 500/1-15.95]

"State" – The State of Illinois, a State agency as defined in this Section, and all officers and employees of the foregoing, as appropriate, collectively or individually.

"State Agency" – Generally the term "State agency" *includes all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the constitution or statute, of the executive branch of State government. However, this term does not apply to public employee retirement systems or investment boards that are subject to*

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fiduciary duties imposed by the Illinois Pension Code [40 ILCS 5] or to the University of Illinois Foundation. "State agency" does not include units of local government, school districts, community colleges under the Public Community College Act [110 ILCS 805], and the Illinois Comprehensive Health Insurance Board. [30 ILCS 500/1-15.100] For purposes of this Part, however, only those State agencies that are under the jurisdiction of the CPO-GS are encompassed by the term State agency.

"State Purchasing Officer" or "SPO" – A person appointed by the CPO-GS pursuant to Section 10-10 of the Code and assigned to exercise procurement authority at the direction of the CPO-GS. ~~A person as defined in Section 1-15.105 of the Code.~~

"State Witness" – An employee of the State, designated by the CPO or SPO of the procuring agency, to observe the opening of bids or sealed proposals.

"Subcontract" – *A contract between a person and another person who has ~~or is seeking~~ a contract subject to the Code, pursuant to which the subcontractor provides to the contractor, or another subcontractor, some or all of the goods, services, real property, remuneration, or other monetary forms of consideration that are the subject of the primary contract and includes, among other things, subleases from a lessee of a State agency. [30 ILCS 500/1-15.107]*

"Subcontractor" – *A person or entity who enters into a contractual agreement with a total value of ~~\$50,000~~\$25,000 or more with a person or entity who has ~~or is seeking~~ a contract subject to the Code pursuant to which the person or entity provides some or all of the goods, services, real property, remuneration, or other monetary forms of consideration that are the subject of the primary State contract, including subleases from a lessee of a State contract. [30 ILCS 500/1-15.108]*

"Subfactor" – A subset of a main evaluation factor. Main evaluation factors are identified in the solicitation. Subfactors that are separately evaluated within a factor are also identified in the solicitation.

"Supplies" – *All personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies. [30 ILCS 500/1-15.110]*

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"Unsolicited Bid" or "Unsolicited Offer" or "Unsolicited Proposal" – Any bid, offer or proposal other than one submitted in response to a solicitation.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART B: PROCUREMENT RULES, POLICIES AND PROCEDURES

Section 1.525 Rules

- a) Procurement under the jurisdiction of the CPO-GS or an appointed SPO shall be conducted in accordance with the Code and this Part, except as provided in this Section.
- b) If legislation or court decision invalidates any Section of this Part or requires a different interpretation, the rules will be implemented in accordance with the legislation or court decision.
- c) ~~A State~~ agency that has procurement needs not adequately addressed by this Part may provide a written request to the CPO-GS to address those procurement needs. The request shall include a statement explaining that the particular program needs of the State agency require a rule different from or in addition to this Part. The CPO-GS may elect to meet the State agency's need by issuing a CPO-GS Notice or amending this Part. All proposed rules will be submitted to the Procurement Policy Board (PPB) before or during the public comment period established under the Illinois Administrative Procedure Act [5 ILCS 100]. Rulemaking, except for emergency rulemaking, shall be scheduled to allow the PPB at least 30 days to provide comments.
- d) Emergency rules will be submitted to the PPB for review and comment with as much notice as is reasonably possible. A copy of the adopted emergency rules shall be provided to the PPB. The PPB shall be given opportunity to comment on rules proposed to replace the emergency rules.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART C: PROCUREMENT AUTHORITY

Section 1.1005 Procurement Authority

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- a) The Chief Procurement Officers appointed by the Executive Ethics Commission will exercise the procurement authority created by the Code for the benefit of the State of Illinois and the State agencies under the jurisdiction of each CPO. The Executive Ethics Commission may appoint a temporary acting CPO to act in the absence of any CPO, such as during illness, vacation or other extended leave.
- b) The CPO-GS's procurement authority extends to supplies, services, construction not under the jurisdiction of the Capitol Development Board or the Department of Transportation, real estate leases and all other categories of need subject to the Code. The authority extends to all aspects of the procurement process, including, but not limited to, pre-solicitation activities, solicitation preparation, source selection, evaluation, award, contracts, dispute resolution and records subsequent to identification of need, except as otherwise provided for in the Code.
- c) Any reference in the Code or this Part directing or authorizing a State agency to take procurement action is subject to the ~~overall~~general procurement authority of the CPO-GS and SPO as set forth in the Code and this Part.
- d) The CPO-GS exercises procurement authority through one or more SPOs or temporary acting SPOs and other State agency staff assigned to the procurement function. Those assigned to assist shall recognize the role and authority of the CPO-GS. The CPO-GS may assign a SPO to one or more State agencies or may make assignments on a functional basis. The CPO-GS may appoint a temporary acting SPO with limited authority to act with an appointed SPO. In the absence of an appointed SPO, the CPO-GS may exercise the procurement authority of an SPO or may appoint a temporary acting SPO. Unless the Code or this Part prohibits a designee from performing a procurement action, the CPO-GS may delegate procurement action to an SPO or a State agency, subject to the approval of the appropriate State Agency Head. The CPO-GS may reserve certain procurement activities to the CPO-GS and reserves the right to review and modify or overturn any action of an SPO, or any other designee.
- e) An SPO will exercise procurement authority in accordance with direction and limitations established by the CPO-GS. The SPO will act primarily to review, authorize and approve State agency procurement activities and, to that end, exercises procurement authority with the assistance of the State agency procurement staff. The CPO-GS and SPO will determine and identify, in writing, procurement activities that must be conducted by the CPO-GS or SPO and those that may be delegated to State agencies. Activities not reserved to the CPO-GS or

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~~SPO may so identified will~~ be conducted by the State agency staff with CPO-GS/SPO oversight, subject to the approval of the appropriate State Agency Head.

- f) Each State agency shall determine and provide an appropriate number of qualified staff and related resources to assist the SPO in meeting the procurement needs of the State agency. State agency staffs, while acting to assist the SPO, remain State agency employees.
- g) The State agency is responsible for determining need, and upon direction or request to provide a rationale to the SPO for the proposed transaction or activity before the procurement may commence. Additional justification may be required by the SPO at later stages of the procurement process. The SPO may require that the justification include a statement that the proposed activity or transaction meets legal requirements and State agency policies and is in the best interests of the State of Illinois and the State agency.
- h) State agency procurement staff are responsible:
 - 1) for ensuring that all procurement activities, including those submitted to the SPO or CPO-GS for review, authorization or approval are in accordance with the Code, this Part, other applicable laws and rules, the internal policies of the State, the internal policies of the State agency; and
 - 2) for obtaining all State and State agency approvals applicable to the particular stage of the procurement process.
- i) The CPO-GS has the authority to ~~approve or reject~~enter into contracts for a State agency. In addition to this authority, the CPO-GS may direct an SPO to approve or reject~~enter into~~ contracts for a State agency, authorize an SPO to further authorize a State agency to enter into contracts, or authorize a State agency to enter into contracts. The State agency has the authority to sign and enter into a contract once an SPO provides written approval of the contract.
 - ~~1) The CPO-GS shall determine in writing which contracts, if any, must be signed by the CPO-GS. The CPO-GS shall determine in writing which contracts may be signed by an SPO or State agency. These signature authorities may be modified or revoked at any time by the CPO-GS or the SPO, when appropriate. In the absence of written direction, the State agency shall enter into contracts for its needs.~~

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- 12) Any written determination regarding signature authorization shall be maintained by the CPO-GS and distributed to the SPO, State Agency Head~~agency head~~, agency purchasing director and the State Comptroller.
- 23) If the CPO-GS or SPO approves~~signs~~ a contract, the State agency must also sign the contract in order for the contract to be legally binding on the State agency. The State agency may decline to sign a contract even if signed and approved by the CPO-GS or SPO.
- 34) If the CPO-GS and SPO approved~~does sign~~ a contract for a State agency, in no event shall the CPO-GS or SPO assume any responsibility or obligation under the contract, financial or otherwise, to any party or person.

j) Procurement Compliance Monitors (PCMs)

- 1) PCMs have roles and responsibilities established in Section 10-15 of the Code. This includes overseeing and reviewing the procurement processes, having access to records and systems, and attending any procurement meeting.
- 2) Each State agency shall recognize these statutory roles and shall cooperate with PCMs in the conduct of their actions. Cooperation includes notice of, and access to, procurement meetings, and access to all procurement related records in whatever format they may exist, including documents, databases and systems. Failure to cooperate and resolve issues may be reported to the chief executive officer of the State agency and in certain cases may require reporting to the Office of the Executive Inspector General for the agencies of the Illinois Governor.
- 3) Should a PCM request review of a contract before final execution, the State agency shall not execute the contract until approval by the SPO.

k) Expedited Response
Any offeror, respondent, SPO, State agency, subcontractor or person may contact the CPO-GS at cpo@illinois.gov concerning any procurement matter and obtain information concerning the procurement process or a pending procurement, particularly in an effort to meet the objectives of Section 1-5 of the Code and Section 1.5 of this Part. The CPO-GS shall take all measures within its means and

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resources, in conformity with the Code and this Part, to address any inquiries in order to effectuate the aims of the Code and this Part. All contacts shall be placed in the procurement file in compliance with Section 50-39 of the Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.1040 Central Procurement Authority of the CPO-GS

- a) The CPO-GS may establish, or may delegate to a State agency the right to establish, master, scheduled or open-ended contracts for any item, and those contracts shall be utilized by State agencies in accordance with the terms of those contracts.
- b) Any delegation for the establishment of master, scheduled or open-ended contracts by the CPO-GS to a State agency shall be in writing and agreed to in writing by the State Agency Head. The CPO-GS shall authorize an appropriate SPO to procure the following items. These items may be procured by an SPO only as provided in this Subpart or in a letter of delegation from the CPO-GS authorizing the procurement activity.
- 1) Supplies. The CPO-GS or authorized SPO shall procure all supplies exceeding the small purchase threshold. In addition, the CPO-GS or authorized SPO shall procure:
- A) printing exceeding \$10,000; and
- B) regardless of price:
- i) Employee benefits authorized under the State Employees Group Insurance Act or the Personnel Code;
- ii) Financing of any procurement;
- iii) Paper, stationery, envelopes;
- iv) Postage stamps;
- v) Property, casualty, liability and other insurance, and bonds;

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- vi) ~~All telecommunications material, equipment, software and related goods. (Equipment used to provide data communications internal to a building is considered to be Local Area Network equipment and is therefore excluded from this provision.);~~
 - vii) ~~Utilities for buildings owned and operated by the State;~~
 - viii) ~~Vehicles.~~
- 2) ~~Services. The CPO-GS or authorized SPO shall procure the following services:~~
- A) ~~Electronic data processing services including, but not limited to, consulting and professional and artistic services, exceeding the small purchase threshold;~~
 - B) ~~Regardless of price, all telecommunications related services including, but not limited to:~~
 - i) ~~voice, data, video, and internet working services delivered from private and or public network services, dedicated and/or virtual networking. Wide Area Networking and/or Metropolitan Area Networking, local exchange services, long distance services, radio frequency derived communications services (e.g., cellular, PCS, land mobile, microwave, etc., service);~~
 - ii) ~~repairs, additions, relocations, or related changes to telecommunication services;~~
 - iii) ~~consulting, professional and artistic services relating to telecommunications issues;~~
 - C) ~~Vehicles related services, including but not limited to, fleet management and repairs, regardless of price.~~
- 3) ~~Real Estate. The CPO-GS shall procure all leases of real estate and any capital improvements to the leased real estate for the use of State agencies;~~

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~~regardless of price.~~

- c) Central Procurement Procedures
- 1) Purchase Requests
~~Each State~~~~For purchases that are reserved to the CPO-GS, each~~ agency must initiate the procurement process through submission of a purchase request to the CPO-GS. The CPO-GS shall designate the format and requirements for submission through a CPO Notice to the agencies.
 - 2) Chief Procurement Officer's Authority to Reject
When the CPO-GS, after consultation with the requesting agency, decides that processing the requested procurement is clearly not in the best interest of the State, or that further review is needed, the CPO-GS shall return ~~the such purchase~~ request to the requesting agency. A written statement of the reasons for its return shall accompany the returned request.
 - 3) Determination of Contractual Terms and Conditions
The CPO-GS has authority to determine the terms and conditions of solicitations and contracts. The CPO-GS will consult with the requesting agency if the agency requests special terms and conditions.
- d) The CPO-GS may, after consultation with and notice to any affected SPO, use central procurement procedures ~~for items in addition to those listed in this Section~~ upon ~~the CPO-GS's~~ determination that ~~thosesuch~~ procedures are likely to result in significant efficiencies or economies.
- e) The CPO-GS and the CPOs of the construction agencies will determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.
- f) The CPO-GS has additional duties and responsibilities established in statute apart from the Code, and nothing in this Part shall be interpreted to limit those other statutory duties and responsibilities.
- g) ~~Expedited Response~~
~~Any offeror, respondent, SPO, State agency, subcontractor or person may contact the CPO-GS at epo@illinois.gov concerning any procurement matter and obtain information concerning the procurement process or a pending procurement,~~

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~~particularly in an effort to meet the objectives of Section 1-5 of the Code and Section 1.5 of this Part. The CPO-GS shall take all measures within its means and resources, in conformity with the Code and this Part, to address any inquiries in order to effectuate the aims of the Code and this Part. All contacts shall be placed in the procurement file in compliance with Section 50-39 of the Code.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.1060 Delegation

- a) The CPO-GS may delegate to any SPO or, in consultation with a State [Agency Head](#), to a State agency authority to conduct certain named activities or functions. The CPO-GS may also delegate to any SPO the CPO-GS's authority to conduct on behalf of the CPO-GS specific procurements or classes of procurements for multiple agency use. An SPO may request that the CPO-GS delegate authority to that SPO. The State agency delegated authority shall remain subject to CPO-GS and SPO authority. All such delegations shall be acknowledged and agreed to in writing by the State Agency Head.
- b) Any exercise of delegated authority shall be in accordance with the Code and this Part.
- c) Delegations shall be in writing and shall specify:
- 1) the activity or function authorized;
 - 2) any limits or restrictions on the exercise of the delegated authority;
 - 3) whether the authority may be further delegated;
 - 4) the duration of the delegation; and
 - 5) any reporting requirements.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section 1.1501 Illinois Procurement Bulletin

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- a) The Illinois Procurement Bulletin consists of four Bulletins, one for each of the Chief Procurement Officers designated in the Code. Each Bulletin will contain information relating to procurements under the authority of the appropriate CPO. References in this Part to Bulletin means the General Services volume, unless the context indicates a different meaning.
- b) The CPO-GS shall have all rights in and to his or her volume of the Bulletin and shall determine the content, form, function, organization and structure and shall make revisions as necessary or desirable.
- c) The Bulletin shall be published in electronic, web accessible form. The Bulletin can be found at <http://www.purchase.state.il.us>. In addition, the Bulletin may be available in print.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.1510 Publication of Illinois Procurement Bulletin (Repealed)

~~At the direction of the CPO-GS, Central Management Services, at least one time per month, will publish the Illinois Procurement Bulletin in electronic form and will update the Bulletin as needed. Central Management Services may publish the Bulletin in print. The Bulletin can be found at <http://www.purchase.state.il.us>.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 1.1525 Bulletin Content

- a) The Bulletin will contain all content required by the Code. The Bulletin may include reference information of general interest (e.g., how to access the other volumes of the Illinois Procurement Bulletin, notice of new legislation, announcements and determinations) and may serve as the CPO-GS's official website. SPOs shall publish all notices to the Bulletin.
- b) Notice of each procurement shall contain at least the following information:
- 1) the name of the purchasing agency (and using agency, if different);
 - 2) a brief ~~purchase~~ description of the supplies or services sought in the

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particular solicitation;

- 3) a procurement reference number, if used;
 - 4) the date the procurement is first offered (procurements that require notice shall not be distributed to vendors prior to the date the notice is first published in the Bulletin);
 - 5) the date, time, and location for making submissions;
 - 6) the method of source selection;
 - 7) the name of the State Purchasing Officer in charge and the name of the State agency person assigned to the procurement;
 - 8) instructions on how to obtain a comprehensive purchase description and any disclosure and contract forms;
 - 9) encouragement to prospective vendors to hire qualified veterans; and
 - 10) encouragement to prospective vendors to hire qualified Illinois minorities, women, persons with disabilities and residents discharged from any Illinois adult correctional center.
- c) Notice of ~~the awarded contract let~~ that was the subject of a notice in subsection (b) shall ~~be issued electronically on the day of the award be placed in the Bulletin and shall be immediately issued electronically to the successful responsible bidder or offeror.~~ the successful responsible bidder or offeror. ~~bidders or offerors submitting responses to the solicitation. Once notice of award is posted, the State agency shall also email the notice to all bidders. Bidders and offerors must register (see Section 1.515) and sign up for email notices. Should the Bulletin or State agency fail to send notice to bidders or offerors submitting responses to the solicitation, the time for filing a bid protest will be extended up to 5 business days.~~
- d) The SPO shall publish the notice of award to the Bulletin for 14 days, unless a shorter time is authorized by the Code or this Part. This notice shall contain at least the following information:
- 1) the information published in ~~subsection~~ subsection (b) ~~(1) through (7);~~

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- 2) the contract price and the name of the vendor selected for award;
 - ~~3) the contract price;~~
 - ~~34) the number of unsuccessful responsive vendors;~~
 - ~~45) for each responsive vendor:~~
 - ~~A) The vendor's name;~~
 - ~~B) For IFBs, the amount bid by each vendor;~~
 - ~~C) If applicable, the percentage of business to be performed by a certified Business Enterprise Program vendor as reflected in the utilization plan;~~
 - ~~D) If applicable, the percentage of business to be performed by a certified Service Disabled Veteran Owned Small Business or certified Veteran Owned Small Business as reflected in the utilization plan; and the bid's percentage of disadvantaged business utilization plan;~~
 - ~~6) the bid's percentage of business enterprise program utilization plan;~~
 - ~~7) the total number of veteran-owned small businesses and the number of service disabled veteran-owned small businesses who submitted bids for contracts; and~~
 - ~~58) other disclosures required to be published in the Bulletin.~~
- d) ~~Notice of each contract awarded that was subject of a notice in subsection (b) shall be placed in the Bulletin and shall be issued electronically to those offerors submitting responses to the solicitation. Once notice of award is posted, the State agency shall also email the notice to all offerors. Offerors must register (see Section 1.515) and sign up for email notices. Should the Bulletin or State agency fail to send notice to offerors submitting responses to the solicitation, the time for filing a protest will be extended up to 5 business days. This notice shall contain at least the following information:~~

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- 1) ~~the information published in subsection (b);~~
 - 2) ~~the name of the vendor selected for award;~~
 - 3) ~~the contract price;~~
 - 4) ~~the number of unsuccessful responsive vendors;~~
 - 5) ~~the proposal's percentage of disadvantaged business utilization plan;~~
 - 6) ~~the proposal's percentage of business enterprise program utilization plan;~~
 - 7) ~~the total number of veteran-owned small businesses and the number of service disabled veteran-owned small businesses who submitted offers for contracts; and~~
 - 8) ~~other disclosures required to be published in the Bulletin.~~
- e) In addition to the notice requirements of [subsection \(d\)](#):
- 1) ~~For an IFB, the State agency shall post notice of the apparent low bidder's award and all other bids (bid tabulation showing name of each bidder and the prices bid) from bidders responding to the solicitation to its website no later than the next business day after the award is posted to the Bulletin or may include a link to the Bulletin for the detailed information of the award. subsections (e) and (d), the name and price submitted by the apparent low bidder and all other bids from bidders responding to solicitations shall be posted on the agency's website the next day and may include a link to the Bulletin for the detailed information. In addition to the notice requirements of subsection (d), the notice of award shall be posted on the agency's website the next business day.~~
 - 2) [For an RFP, the State agency shall post notice of each contract that is awarded on the State agency's website no later than the next business day after the award is posted to the Bulletin or may include a link to the Bulletin for the detailed information of the award.](#)
- f) [If an award to other than the lowest responsive and responsible bidder results](#)

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pursuant to Section 20-10(g), an SPO must post in the Bulletin a written explanation with the notice of award. The written explanation must also be filed by the SPO with the Legislative Audit Commission and must include:

- 1) a description of the State agency's needs;
- 2) a determination that the anticipated cost will be fair and reasonable;
- 3) a listing of all responsible and responsive bidders; and
- 4) the name of the bidder selected, the total contract price, and the reasons for selecting that bidder.

gf) Notice of each contract renewal shall be posted in the Bulletin within 10 days after the determination by the purchasing agency to renew the contract. The date of determination to renew shall be the date of the last approval required by the State agency to move forward with the renewal. Each State agency shall identify the renewal approval process and shall ensure the renewal notice contains the required information and is posted to the Bulletin within the prescribed time. The notice shall require all of the information required under subsection (b) or shall reference this information electronically, which may include attachment of or reference to the original Bulletin notice.

h) Notice of renegotiated contracts and change orders that increase or decrease the cost of a contract by more than \$10,000 or the time of completion by a total of 30 days or more shall be posted on the Bulletin for 14 days. The State agency shall post notice of the renegotiated contract and change order to its website the next business day after notice is posted to the Bulletin, which may be a link to the Bulletin for the detailed information of the renegotiated contract or change order.

ig) The following information regarding emergency procurements shall be published in the Bulletin within 3 business days after emergency contract award commencement of performance under the emergency contract:

- 1) name of the procuring agency (and using agency, if different);
- 2) name of the vendor selected for award;
- 3) brief description of what services or supplies the vendor intends to

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provide;

- 4) total price (if only an estimate is known, it shall be published, but a subsequent notice repeating all required information shall be published when the final amount is known);
- 5) reasons for using the emergency method of source selection;
- 6) name of the SPO and the name of the State agency person in charge of the procurement;
- 7) name of the State agency person who authorized the emergency contract action; and
- 8) affidavit of emergency procurement, if available, and, if not available, to be filed as an amendment to the notice within 10 days after the emergency procurement.

jh) In addition to the requirements of subsection (ig), the notice of hearing to extend an emergency contract must be ~~published~~posted electronically in the Bulletin at least 14 days prior to hearing. A completed emergency extension justification form as prescribed by the CPO-GS shall be published as part of the notice of hearing.

ki) The following information in regard to sole source procurements shall be published in the Bulletin at least 14 days prior to entering into the contract with the designated sole source vendor:

- 1) name of the purchasing agency (or using agency, if different);
- 2) name of the intended sole source vendor;
- 3) a description of what services or supplies the vendor intends to provide;
- 4) name of the SPO and the name of the State agency person in charge of the procurement;
- 5) the date, time and location of the scheduled public hearing with an explanation that the hearing will be cancelled if no hearing request is

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received; and

6) a completed sole source justification form as prescribed by the PPB.

lj) Each purchasing agency shall post in the Bulletin a copy of its annual report of utilization of businesses owned by minorities, females and persons with disabilities. Posting is due within 10 days after the purchasing agency submits its report to the Business Enterprise Council pursuant to Section 6(c) of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575].

mk) Other notices shall be published on the Bulletin as provided by the Code, including notices related to suspensions and debarment, Business Enterprise Program and Small Business Set-Aside waivers, and other matters of public interest.

nl) The CPO-GS may allow another CPO or another governmental entity to publish procurement related notices and other matters of public interest to the Bulletin.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.1535 Vendor Portal

a) In consultation with the PPB and State agencies, the CPO-GS may operate a vendor portal, use another CPO's vendor portal, or jointly operate a vendor portal with other Chief Procurement Officers if a single portal better serves the needs of State agencies and the vendor community. A vendor portal shall allow prospective vendors to:

1) Provide certifications, disclosures, registrations and other documentation needed to do business with the State in advance of a particular procurement;

2) Submit the vendor's registration number, with a confirmation the portal information is current, as part of the vendor's response to a competitive solicitation or a contracting process.

b) The CPO-GS may accept the registration of a vendor from another CPO's vendor portal provided the portal information is current, in lieu of certifications,

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disclosures, registrations and other documentation needed to do business with the State in advance of a particular procurement.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 1.1570 Error in Notice

When a required publication contains an error, the error may be corrected by a single notice published in the Bulletin within a reasonable time after the original publication. A correction that results in a change of procurement method or a material change in the requirements set forth in a solicitation may require extension of the time to respond to the original solicitation as set forth in the correction at the discretion of the SPO, taking into consideration impact on the State as well as on vendors.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section 1.2005 General Provisions

a) Solicitation Response

A solicitation may contain forms that must be returned or may require compliance in a prescribed format. If a form or format is prescribed, prospective vendors shall submit those forms as instructed.

- 1) All bids/offers received shall be date- and time-stamped, recorded in a log and stored in a secure manner (e.g., locked file cabinet, safe, locked room or other secure location) by the person responsible for receiving the bids/offers.
- 2) The SPO shall maintain the confidentiality of the bid/offer submittals. No information within bids/offers received shall be disclosed to anyone prior to opening. State personnel may confirm receipt of the bid or offer to the bidder or offeror.
- 3) If a bid/offer is opened for identification purposes or in error, the procurement file shall include a signed statement explaining the reason for the mistake or error, including the name of every person involved. The

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bid/offer shall be resealed until the time set for the opening of the solicitation.

- b) Late Bids or Proposals, Late Withdrawals and Late Modifications
- 1) Any bid or proposal (including any modification, withdrawal or other procurement-related submission) received after the time and date for receipt, or at other than the specified location, is late. A submission that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered. State employees shall not be responsible for ensuring subsequent delivery of misdelivered items. Delivery at the specified location and time shall be the sole responsibility of the bidder or offeror.
 - 2) No late submission will be considered unless the SPO, and not a designee, determines it would have been timely but for the action or inaction of State personnel directly serving the procurement activity (e.g., providing the wrong address). It is the responsibility of the bidder or offeror to ensure delivery at the time and to the place specified. Vendors submitting a late response will be notified and given the opportunity to retrieve the submission at their cost. Late submissions not returned to the vendor will be destroyed after all related procurement activity is complete and the resulting contract has been executed.
 - 3) Records shall be made and kept for each late bid or proposal, late modification, or late withdrawal.
 - 4) ~~Other Submissions~~—Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.
- c) Extension of Solicitation Due Date
- 1) The SPO may, prior to the date or time for submitting or modifying a bid or proposal, extend the date or time for the convenience of the State.
 - 2) The SPO may, 72 hours prior to the time for submitting a bid or proposal, allow modification to the solicitation for the convenience of the State. If notice of a modification to a solicitation cannot be made at least 72 hours in advance of the time the response is due, the solicitation shall be

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cancelled and reissued or the SPO shall extend the time to respond for a reasonable period of time.

3) All notices under this subsection (c) will be provided electronically and posted on the Illinois Procurement Bulletin.

d) Bid/Proposal Firm Time

- 1) Unless otherwise provided in the solicitation, the vendor's bid/proposal must be kept firm for at least 30 days after the opening date.
- 2) After opening bids or proposals, the SPO may request bidders or offerors to extend the time during which the State agency may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension shall not exceed 180 days after the bid opening and does not provide an opportunity for others to submit bids or proposals.

e) Electronic and Fax Submissions

- 1) The solicitation may state that electronic and fax submissions will be considered if they are received at the designated location by the time and date set for receipt. Any required attachments will be submitted as stated in the solicitation.
- 2) Electronic submissions authorized by specific language in the solicitation will be opened in accordance with electronic security measures in effect at the purchasing agency at the time of opening. Electronic signatures will be accepted for electronically submitted bids in accordance with the security standards established by the Department of Central Management Services (see 5 ILCS 175/25-101(c)) and its accompanying regulations (14 Ill. Adm. Code 105.300).
- 3) Fax submissions authorized by specific language in the solicitation will be placed in a sealed container upon receipt and opened with other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.

f) Intent to Submit

The solicitation may require that vendors submit, by a certain time and date, a

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notice of their intent to submit a bid or proposal in response to the solicitation. Bids and proposals submitted without complying with the notice of intent requirement may be rejected.

- g) **Only One Bid or Proposal Received**
If only one bid or proposal is received, and if it meets all requirements, the SPO may award to the single bidder or offeror if the SPO finds that the price submitted is fair and reasonable, and that other prospective bidders or offerors had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the SPO may cancel the procurement.
- h) **Alternate or Multiple Bids or Proposals**
 - 1) **Alternate bids or proposals may be accepted if:**
 - A) permitted by the solicitation and in accordance with instructions in the solicitation; or
 - B) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with Section 1.2025 (Sole Economically Feasible Source Procurement); or
 - C) the low bidder who has met all requirements of the solicitation has provided a lower cost alternative that meets all of the material requirements of the solicitation.
 - 2) Multiple bids or proposals may be accepted if permitted by the solicitation and submitted in accordance with instructions in the solicitation.
- i) **Multiple Items**
A solicitation may call for pricing of multiple items of similar or related type. Award shall be as specified in the solicitation based on an individual line item, a group total of certain items, a core list, a "market basket" of related items representative of the total requirement, a grand total of all items, or other grouping method.
- j) **"All or None" Bids or Proposals**
All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.

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- k) **Conditioning Bids or Proposals Upon Other Awards**
Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall be rejected.
- l) **Unsolicited Bids or Offers**
An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part.
- m) **Clarification of Bids and Proposals**
The SPO may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to change its bid or proposal in response to a request for clarification. A clarification is not an opportunity to make changes or for submission of best and final offers as authorized elsewhere in this Part.
- ~~n) **Extension of Time on Indefinite Quantity Contracts**
The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the SPO determines in writing that it is not practical to award another contract at the time of the extension.~~
- ~~o) **Increase in Quantity on Definite Quantity Contracts**~~
- ~~1) This subsection (o) applies to procurements other than those for construction or construction-related professional services. Within 90 days after awarding a definite quantity contract using the sealed bid or sealed proposal procedure, additional purchase orders, contracts or amendments may be issued to the same vendor at the same unit price and on the same terms and conditions if:~~
- ~~A) The vendor indicates that the additional purchase orders or contracts will be accepted if issued;~~
- ~~B) The market price of the commodities, services or equipment in question has not gone down since the original purchase; and~~
- ~~C) The additional quantity does not exceed 20% of the original definite quantity.~~

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- 2) ~~Notices of supplemental purchases in excess of the small purchase limits of Sections 20-20 and 35-35 of the Code shall be published in the Illinois Procurement Bulletin.~~
- 3) ~~The quantity may be increased by any percentage, provided the dollar value of the increase does not exceed the applicable small purchase (Section 1.2020) threshold.~~

np) Assignment, Novation or Change of Name

- 1) Assignment. No State contract is transferable, or otherwise assignable, without the prior written consent of the CPO-GS or SPO, provided, however, that a vendor may assign money receivable under a contract after due notice to the State. The assignee, except in the case of assignment for payment only, must meet all requirements for contracting with the State. Any purported assignment without prior written consent shall be null and void.
- 2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:
 - A) the transferee assumes all of the transferor's obligations;
 - B) the transferee meets all requirements for contracting with the State;
 - C) the transferor waives all rights under the contract as against the State; and
 - D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the State, furnish a satisfactory performance bond.
- 3) Change of Name. A vendor may submit to the SPO a written request to change the name in which it holds a contract with the State. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.

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- oq)** Contracting for Installment Purchase Payments, Including Interest
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].
- pf)** Incorporation by Reference
A solicitation may incorporate documents by reference provided that the solicitation specifies where the documents can be obtained.
- qs)** Use of Source Selection Method that is Not Required
If a purchasing agency uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase), the purchasing agency is bound to compliance with the Code and rules governing the method of source selection used.
- rf)** Vendor Signature
A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the SPO within the time specified by that officer.
- sh)** Stringing
Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited. Periodic purchases of similar supplies from several different vendors to maintain inventory is not stringing unless the purchases are planned to avoid the use of competitive procedures.
- tv)** Confidential Data
A vendor~~Vendors~~ must clearly identify, by page and paragraph, any information submitted to the State claimed to be exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] (FOIA), including information the vendor claims is a trade secret or other competitively sensitive, confidential or propriety information belonging to the vendor.
- 1) The vendor~~and~~ must identify the basis of the claim of confidentiality or~~reclaimed~~ exemption from FOIA and show how that basis applies to the request for confidentiality or exemption. Information submitted without a claim of confidentiality or exemption from FOIA may be disclosed to the public without notice or permission.
- 2) A State agency in receipt of a FOIA request shall attempt to provide

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reasonable notice and opportunity to a vendor claiming an exemption under FOIA or claiming the information should not be provided due to trade secret or competitively sensitive, confidential or proprietary information to object prior to disclosure of any material.

- 3) Information submitted with a claim of confidentiality or claimed exemption from FOIA may still be disclosed to the public if determined by a court or the Public Access Counselor for the Illinois Attorney General that the claim of confidentiality or claimed exemption from FOIA does not meet the requirements for withholding the information under FOIA. ~~The agency in receipt of the claim of FOIA exemption will determine whether the offered exemption is appropriate. The agency in receipt of the claim of FOIA exemption shall attempt to provide reasonable notice and opportunity to object to the vendor prior to disclosure of any material claimed by the vendor to be exempt from FOIA.~~

uw) Notice of Subcontractor

- 1) Any contract entered into under this Part shall state whether the services of a subcontractor will be used. The contract shall include the names and addresses of all known subcontractors with subcontracts with an annual value of more than \$50,000, the general type of work to be performed by each subcontractor, and the expected amount of money each will receive under the contract.
- 2) If, at any time during the term of the contract, a contractor desires to add or change any subcontractors with subcontracts with an annual value of more than \$50,000, the contractor shall promptly notify the State agency SPO, in writing, of the names and addresses of the proposed subcontractors, the general type of work to be performed by the proposed subcontractor, and the expected amount of money each new or replaced subcontractor will receive under the contract.
- 3) No contractor shall change a subcontractor listed in the original bid or proposal, except for documented good cause and with the consent of the SPO.
- A) Good cause may include, but is not limited to:

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- i) failure of the subcontractor to execute a written contract after a reasonable period of time after the written contract is presented to the subcontractor by the contractor;
 - ii) bankruptcy of the subcontractor;
 - iii) death or disability of the subcontractor, if the subcontractor is an individual;
 - iv) dissolution of the subcontractor, if the subcontractor is a corporation or partnership;
 - v) failure of the subcontractor to meet bond requirements as specified in the solicitation;
 - vi) subcontractor becomes ineligible to perform on the subcontract because the subcontractor is suspended, debarred or otherwise ineligible to perform;
 - vii) a series of failures by the subcontractor to perform in accordance with the specifications, terms and conditions of its subcontract;
 - viii) failure of the subcontractor to comply with a requirement of law applicable to the subcontractor; or
 - ix) failure or refusal of the subcontractor to perform the subcontract.
- B) A request of a contractor for a substitution of a listed subcontractor shall be submitted in writing to the State agency and SPO and shall include the reasons for the request. Consent of the SPO to a contractor for a substitution shall be made in writing and be included in the procurement file.
- C) Failure of a contractor to comply with this Section may result in cancellation of its contract or be considered grounds for suspension or debarment.

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~~The contractor shall provide the SPO with a copy of any subcontract with an annual value of more than \$25,000 within 20 days after the execution of the State contract and after the execution of the subcontract, whichever is later.~~

- 1) ~~For professional and artistic contracts, the contract shall state the names and addresses of all subcontractors and the expected amounts each will receive under the contract.~~
- 2) ~~For contracts other than professional and artistic contracts, the contract shall include:~~
 - A) ~~the names and addresses of all subcontractors known at the time of execution who are party to a subcontract with an annual value of more than \$25,000; and~~
 - B) ~~the expected amount of money each will receive under the contract.~~

vx) Pre-Solicitation Assistance

- 1) *For purposes of this subsection (vx), "business" includes all individuals with whom a business is affiliated, including, but not limited to, any officer, agent, employee, consultant, independent contractor, director, partner, manager or shareholder of a business. [30 ILCS 500/50-10.5(e)]*
- 2) Prohibited Bidders. Except as provided in subsection (vx)(5), Section 50-10.5(e) of the Code prohibits any person or business from bidding or entering into a contract ~~if the person or business assisted the State of Illinois or a State agency in determining whether there was a need for a contract or assisted~~ an employee of the State of Illinois, who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract or a State agency by reviewing, drafting, directing, or preparing any invitation for bids, request for proposal or request for information or provided similar assistance except as part of a publicly issued opportunity to review drafts of all or part of these documents. [30 ILCS 500/50-10.5(e)]

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- 3) Non-Prohibited Acts. This Section does not prohibit a person or business from submitting a bid or proposal or entering into a contract if the person or business:
- A) Initiated a communication with an employee of the State to provide general information about industry trends and innovations, products, services or industry best practices, ~~and, if applicable, that communication is documented in accordance with Section 50-39 of the Code.~~
 - B) Responded to a communication initiated by an employee of the State for the purposes of providing information to evaluate new products, services or technologies.
 - C) Received or possessed written material obtained from a State employee from public sources, such as through an internet search, or literature packets obtained in conjunction with an event such as a trade show.
 - D) Provided, at the request of the State, general marketing material or makes a general sales presentation to show the person's qualifications or product capabilities. Material may be personalized for the procuring agency provided any personalization is obtained from publically available sources.
 - E) Provided technology supplies or services demonstrated to the State that represent industry trends and innovation and is not specifically tailored to meet the State's needs.
- 4) Prohibited Acts
- A) Specifications. A person or business may not submit specifications to a State agency unless requested to by a State employee. With the exception of standard specifications that a vendor makes available to any potential purchaser, a State purchasing officer or person designated by the SPO must approve a State employee's request for specifications for a particular transaction. Determination of Need. Any person or business who, at the request of the State or with the consent of the State, reviews or analyzes the State's assets,

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~~activities, documents, functions, organization, programs or anything of similar nature to aid in the determination of whether the State has a need for some good or service is prohibited from bidding on or receiving a contract to meet that need.~~

- B) ~~Assistance to State Employees. Preparation of Procurement Documents.~~ A person or business is prohibited from bidding on a solicitation and from having a contract ~~or subcontract arising from any of the following activities~~ if the person or business ~~assisted an employee of the State agency who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract. Assistance to a State employee may include any of the following; at the request of the State or with the consent of the State, assisted in the preparation of procurement documents in any of the following ways:~~
- i) Draft (writes or assists the State with writing all or part of the procurement document);
 - ii) Review (reads the document or comments on the procurement document ~~or signified approval or disapproval~~);
 - iii) ~~Direct (any activity relating to giving instructions or commands or in supervising or overseeing the preparation of the procurement document);~~
 - iv) Prepare (any activity relating to organizing or distributing the documents, including through the Procurement Bulletin); or
 - v) Provides similar assistance, e.g., conducting research or providing any advice used in drafting, reviewing, ~~directing~~ or preparing procurement documents.
- C) ~~A person (and its affiliated or related entities) that contracts with a State agency to write specifications for a particular procurement may not submit a bid or proposal or receive a contract or subcontract for that procurement.~~

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- 5) Exceptions. Any person or business who responds to an advertised request for information or other publically available opportunity to provide information related to the procurement need or to review drafts of all or part of proposed procurement documents shall not be disqualified by virtue of responding to the State's publically advertised request.

~~wy~~) Pre-Submission Conference

A pre-submission conference may be conducted to enhance potential vendors' understanding of the procurement requirements. The pre-submission conference shall be announced as part of the solicitation notice. The conference may be designated as "attendance mandatory" or "attendance optional". The conference ~~shall~~~~should~~ be held long enough after the solicitation has been issued to allow potential vendors to become familiar with it, ~~and~~~~but~~ sufficiently before solicitation opening to allow consideration by vendors of conference results in preparing their responses. Supporting documentation of the conference shall be supplied to all prospective vendors known to have received a solicitation by posting the information on the Bulletin. Nothing stated at the pre-submission conference shall change the solicitation unless a change is made by written modification to the solicitation. Information conveyed in pre-submission conferences is not reportable under Section 50-39 of the Code, but any amendments resulting from the conference shall be supplied to all those prospective vendors through posting on the Bulletin.

~~xz~~) Federally Funded Purchases

For purchases funded in whole or in part by United States Government funds, the solicitation will identify the federal statutes and regulations with which the vendor must comply.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2010 Competitive Sealed Bidding

a) Application

Competitive sealed bidding, also referred to as Invitation for Bids, is the required method of source selection, except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

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- b) Invitation for Bids
- 1) Use. An IFB is used to initiate a competitive sealed bid procurement.
 - 2) Content. An IFB shall include, at a minimum, the following:
 - A) instructions and information to potential bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the location to which bids are to be delivered, and the maximum time for bid acceptance by the State;
 - B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; ~~and~~
 - C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable and State mandated certifications; ~~and-~~
 - D) A form or format that will specify or organize the manner of price submission and that the bidder shall submit along with all other necessary submissions, including disclosure forms.
 - 3) Delivery-Related Costs
Unless otherwise provided in the solicitation, the bid price includes transportation, transit insurance, delivery, installation and any other costs.
- c) Amendments to Invitations for Bids
- 1) Form. Amendments to IFBs shall be clearly identified and shall reference the portion of the IFB being amended.
 - 2) Distribution. Amendments shall be made available to all prospective bidders known to have received an IFB through posting on the Bulletin.
 - 3) Timeliness. Amendments shall be made available at least 72 hours prior to the date or time for submitting a bid ~~within a reasonable time~~ to allow prospective bidders to consider them in preparing their bids. If notice cannot be made at least 72 hours in advance of the time responses are due,

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~~the solicitation may be cancelled and reissued or the SPO may extend the time to respond for a reasonable period of time. If the time and date set for receipt of bids will not permit that preparation, the amendment shall extend the response time. If necessary, the response time may be extended by written announcement posted at the opening location or as announced at the scheduled opening time and confirmed in the amendment.~~

- d) Pre-Opening Modification or Withdrawal of Bids
- 1) Procedure. Bids may be modified or withdrawn by written notice received in the location designated in the IFB prior to the time and date set for bid opening.
 - 2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.
 - 3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.
- e) ~~Receipt,~~ Opening and Recording of Bids
- ~~1) Receipt. Upon its receipt, each bid and modification shall be date and time stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened for identification purposes or in error, the file shall state the reason for the breach. 2) Opening and Recording. Bids and modifications shall be opened publicly at the time, date and place designated in the IFB in the presence of a State witness. The person opening bids shall not serve as witness. The CPO-GS shall determine information that shall be recorded, read and made available at the opening, including items such as the name of each bidder, the bid price and such other information the CPO-GS determines is appropriate.~~
- f) Bid Evaluation and Award
- 1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB, except as permitted in the Code and this Part. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria for price or responsiveness that are not disclosed in the IFB.

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- 2) Responsibility. Responsibility of prospective vendors is covered by Section 1.2046 (Responsibility).
- 3) Responsiveness. A bid must conform in all material respects to the IFB.
 - A) Product or Service Acceptability. The IFB shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:
 - i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;
 - ii) examination of such elements as appearance, finish, taste or feel;
 - iii) other examinations to determine whether the product or service conforms to any other purchase description requirements.
 - B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected.
 - C) When the IFB provides a form or format for submitting price and the bidder deviates from the form or format, the bidder shall be declared nonresponsive by the SPO if the price submitted by the bidder cannot be discerned from the response.
- 4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (f), bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the IFB. Only

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objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, administrative cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates based upon information the State has available concerning future use and shall treat all bids equitably. Pricing for optional supplies or services, or for renewal terms, may be considered, particularly when the pricing for those items or terms is unbalanced when compared to other pricing in the bid.

- 5) Price Negotiation. Negotiations are permitted with the low bidder to obtain a lower price for the item bid.

6) ~~No Disclosure of Information. Other than information that was recorded, read and made publicly available at the opening of the bids, the State agency conducting the procurement shall not disclose any information contained in any bid with any other bidder or person or entity other than the CPO-GS, SPO, PCM or State agency personnel authorized by the CPO-GS or SPO, until after award of the proposed contract has been posted to the Illinois Procurement Bulletin.~~

~~g) Award to Other Than Low Responsible and Responsive Bidder
The SPO, but not a designee, may authorize the State to award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. A description of the agency's needs, a determination that the anticipated cost will be fair and reasonable, a listing of all responsible and responsive bidders, and the name of the bidder selected, pricing and the reasons for selecting this bidder instead of the low bidder must be published in the Bulletin. The SPO shall file notice with the Legislative Audit Commission and PPB. This information shall be made available for inspection by the public within 30 days after the agency's decision to award the contract.~~

~~h) Publicizing Award~~

~~1) Bidders shall be notified of contract award. The Notification shall be issued electronically and, additionally, may be in the form of a letter, purchase order or other clear communication. Notices of awards through~~

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~~the Invitation for Bids process shall be published in the Bulletin prior to the execution of a contract. Failure to provide this notice to all bidders shall result in extending the time for filing a bid protest up to 5 business days. If the contract is awarded to other than the lowest bidder, the notice shall include an explanation of the award. Notice of the award shall be posted on the State agency's website the next business day. The winning bid shall be available for public inspection after award, along with a record of each unsuccessful bid.~~

- 2) ~~Notice of award must include at least the following information:~~
- ~~A) date solicitation was first offered;~~
 - ~~B) due date for submission of offers;~~
 - ~~C) location for submission of offers;~~
 - ~~D) name of purchasing agency;~~
 - ~~E) name of responsible SPO;~~
 - ~~F) brief description of supplies/services being purchased;~~
 - ~~G) method of source selection;~~
 - ~~H) name of the successful responsible bidder;~~
 - ~~I) contract price;~~
 - ~~J) number of unsuccessful responsive bidders;~~
 - ~~K) percentage of disadvantaged business utilization plan;~~
 - ~~L) percentage of business enterprise program utilization plan;~~
 - ~~M) total number of veteran-owned small businesses and the number of service disabled veteran-owned small businesses that submitted bids for contracts;~~

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~~N) any other disclosure required by the Code.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2012 Multi-Step Sealed Bidding

- a) **Definition**
Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
- b) **Conditions for Use**
The multi-step sealed bidding method may be used when it is determined in writing by the SPO that it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award based on price. Multi-step sealed bidding may be used when it is considered desirable:
- 1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and
 - 2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, when appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.
- c) **Pre-Submission Conference in Multi-Step Sealed Bidding**
Prior to the submission or evaluation of unpriced technical offers, a pre-submission conference as contemplated by Section 1.2005(~~wy~~) may be conducted by the SPO or designee.
- d) **Procedure for Phase One of Multi-Step Sealed Bidding**
- 1) **Form.** Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 1.2010 (Competitive Sealed Bidding), except as otherwise provided in this subsection (d). In addition to the requirements set forth in Section 1.2010, the multi-step IFB shall state:

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- A) that it is a multi-step sealed bid procurement, that only unpriced technical offers are requested and that priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
 - B) the criteria to be used in the evaluation of the unpriced technical offers;
 - C) that the SPO or designee may conduct oral or written discussions of the unpriced technical offers; and
 - D) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the IFB.
- 2) Amendments to the IFB. After receipt of unpriced technical offers, amendments to the IFB shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the SPO, a contemplated amendment will significantly change the nature of the procurement, the IFB may be canceled in accordance with Section 1.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) of this Part and a new IFB issued.
 - 3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one State witness. Technical offers shall not be disclosed to unauthorized persons.
 - 4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the IFB.
 - 5) Discussions. The State agency, in consultation with the SPO, may conduct discussions with a bidder or offeror to determine in greater detail the bidder's or offeror's qualifications, to explore with the bidder or offeror its ability to supply the specific supply or service, and the bidder's or

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offeror's proposed method of performance.

6) Unacceptable Unpriced Technical Offer
When the SPO determines a bidder's unpriced technical offer does not meet criteria, the offer shall be rejected.

e) Procedure for Phase Two

- 1) Initiation. Upon the completion of phase one, the SPO or designee shall either:
 - A) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
 - B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.
- 2) Conduct. Phase two shall be conducted as any other competitive sealed bid procurement.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2013 Reverse Auctions

- a) CPO-GS Authorization
A State agency may procure supplies or services (other than for professional and artistic services, telecommunications services, communication services, ~~Internet services, and~~ information services, and construction projects, including design professional services) through means of a reverse auction if the CPO-GS has made a determination that use of a reverse auction is in the best interests of the State. The CPO-GS shall publish in the Bulletin that bids will be received in an electronic auction manner as part of the notice of Invitation for BidsBid.
- b) Reverse Auction Process
The CPO-GSSPO or designee shall conduct a reverse auction through a two step Invitation for Bids process consisting of bid prequalification and price submission.

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- 1) Prequalification
 - A) An invitation to prequalify shall be issued requesting the submission of information addressing vendor qualifications and responsibility; vendor specifications and/or samples; confirming acceptance of auction procedures; and requiring agreement to accept a contract using State contract terms and conditions if selected for award in the price only part of the process. No pricing information shall be submitted or considered in the prequalification step of the process.
 - B) The prequalification bids shall not be opened publicly, but the opening shall be recorded and witnessed by a State witness. Prequalification information will be evaluated on a pass/fail basis and vendors will be notified directly as to whether they met or did not meet the prequalification criteria.
- 2) Price
 - A) An Invitation for Bids shall be sent to those vendors who passed prequalification. The response shall be limited to the submission of prices in the form specified in the Invitation for Bids. The Invitation for Bids shall establish any minimum bid increments.
 - B) Prices shall be submitted electronically. The ~~CPO-GSSPO~~ shall cause the prices to be displayed as submitted, but the prices as displayed will not identify the name of the vendor. Vendors may reduce their price at any time during the active period of the auction.
 - C) When the low price is substantially lower than other prices submitted, the ~~CPO-GSSPO~~ or designee may request that the bidder confirm the price and, if an error has occurred, may allow withdrawal in accordance with the Code and this Part.
- c) Technical Difficulties
 - 1) The auction time may be extended or rescheduled by the ~~CPO-GSSPO~~ or designee if technical difficulties at the State site do not allow the auction

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to be conducted as intended. Participants will be notified of an extension or a rescheduling.

- 2) If technical difficulties occur at a vendor site such that the vendor cannot electronically submit a price, the CPO-GS or designeeSPO may accept a fax and will then enter the price for the vendor. Faxed prices will not be accepted later than 5 minutes before the originally scheduled end of the auction or if the faxed prices are higher than the then-existing low price.
- d) Reverse Auction Training
The CPO-GS or designeeSPO may provide instructions or training to prequalified vendors regarding auction procedures and technology.
- e) Disclosure of Reverse Auction Information
After the end of the reverse auction, the names of those who participated in either step of the process shall be disclosed and the final price submitted by each participant.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2015 Competitive Sealed Proposals

- a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.
- b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories (note that the following services, if they are professional and artistic, must be procured pursuant to Section 1.2035):
 - 1) electronic data processing equipment, software and services;
 - 2) telecommunications equipment, software and services;
 - 3) consulting services; and
 - 4) employee benefits and management of those benefits.
- c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the SPO that competitive sealed bidding is either not practicable or

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advantageous. The Competitive Sealed Proposal method differs from competitive sealed bidding in two ways: it permits discussions with competing offerors and changes in their proposals, including price and it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract. Factors to be considered in determining whether competitive sealed bidding is either not practical or advantageous include:

- 1) when evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, when the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or when the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration;
 - 2) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
 - 3) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
 - 4) whether award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal;
 - 5) whether the primary consideration in determining award may not be price; and
 - 6) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State.
- d) Content of the Request for Proposals
The RFP shall be prepared in accordance with Section 1.2010 (Competitive Sealed Bidding), provided that it shall also include:
- 1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, ~~but that proposals may be accepted without those discussions; and~~

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- 2) ~~a statement that revisions may be requested after discussions and best and final offers may be requested; and~~
 - 3) a statement of when and how price should be submitted.
- e) Receipt and Registration of Proposals
- 1) ~~Upon its receipt, each proposal or modification shall be date- and time-stamped but not opened and shall be stored in a secure place until the time and date set for opening. If a proposal is opened for identification purposes or opened in error, the file shall state the reason for the error.~~
 - 12) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFP. Opening shall be witnessed by a State employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, a description sufficient to identify the supply or service item offered, and a notation that the package contains a price proposal. The record of proposals shall be open to public inspection after award of the contract.
 - 23) Proposals and modifications shall be opened in a manner to avoid disclosing contents to competitors. Only ~~authorized~~ State personnel and contractual agents authorized by the SPO may review the proposals prior to award. Other than information that was recorded, read and made publicly available at the opening of the proposals, the State agency conducting the procurement shall not disclose any information contained in the offer with any other offeror or person or entity other than the CPO-GS, SPO, PCM or other personnel authorized by the CPO-GS or SPO, until after award of the proposed contract has been posted to the Illinois Procurement Bulletin.
- f) Evaluation of Proposals
- 1) Evaluation Factors in the RFP. The RFP shall state all of the evaluation factors, including price, and their relative importance. Evaluation subfactors, if any, and their relative importance must be finalized prior to the opening and made available for inspection and copying upon opening.

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However, all price subfactors and their relative ranking must be shown in the RFP.

2) Evaluation Committee. Evaluation Committee members shall be determined by the State agency, tailored to the particular solicitation, and include as appropriate technical or other personnel with expertise to ensure a comprehensive evaluation of offers. Evaluation Committee members must not have any conflicts of interest or apparent conflicts of interest and must commit to the time to complete all evaluations and attend any necessary evaluation meetings. The Evaluation Committee members shall be subject to the approval of the SPO and committee members may be removed by the SPO for good cause, such as failure to comply with instructions or directions of the SPO or to ensure the integrity of the procurement.

32) Evaluation. The evaluation shall be based solely on the evaluation factors set forth in the RFP, except as communicated in advance to each proposer with opportunity to make necessary adjustments to the proposal. Numerical rating systems shall be used unless another scoring tool is authorized by the SPO. Any scoring tool shall reflect the evaluation criteria and ranking set forth in the RFP and any subfactors available at the opening. Proposals shall be submitted in two parts: the first, covering issues other than price, and the second, covering price. The first part shall be evaluated and ranked independent of the second part of all proposals. Each member of the evaluation committee must evaluate the first part individually. After completion of the individual evaluations, the SPO shall determine whether the evaluation committee should meet to confirm the individual scores. Factors the SPO should consider in determining whether the evaluation committee should meet include whether there is a significant or substantial variance of scores, divergent scoring comments, or other information that suggests the need for further discussion. The price proposal shall be opened in the presence of a State witness and distributed to the appropriate evaluators.

g) Proposal Discussions with Individual Offerors

1) Purposes of Discussions. Discussions are held to:

A) promote understanding of the State's requirements and the offerors'

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proposals (e.g., determine in greater detail milestones, deliverables and timelines for completion of work); and

- B) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and the other evaluation factors set forth in the RFP.
- 2) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and clarifications of proposals. Discussions may be conducted by the State agency, in consultation with the SPO, with vendors reasonably susceptible of being awarded a contract based on qualifications and price. If during discussions it is determined there is a need for substantial revision of, or change to, the RFP, the RFP shall be cancelled and may be resolicited to incorporate the clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.
- 3) Best and Final Offers. The SPO or designee may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The SPO or designee may conduct additional discussions or require another submission of best and final offers. The scope of the best and final offer and the number of vendors allowed to participate shall be defined by the SPO. The primary objective of best and final offers is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. If an offeror does not submit either a notice of withdrawal or another best and final offer, the offeror's immediately previous offer will be construed as its best and final offer.
- h) Award
An award shall be made by the SPO pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, taking into consideration price and evaluation factors set forth in the RFP. The contract file shall contain the basis on which the award is made.
- i) ~~Publicizing Awards~~

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~~Immediately upon contract award, offerors shall be notified. The notification shall be issued electronically and additionally may be in the form of a letter, purchase order or other clear communication. Notices of awards through the Sealed Bid Proposal process shall be published in the Bulletin prior to the execution of a contract. Notice of the award shall be posted on the State agency's website the next business day. Notice of award must include at least the following information:~~

- ~~1) date solicitation first offered;~~
- ~~2) due date for submission of offers;~~
- ~~3) location for submission of offers;~~
- ~~4) name of purchasing agency;~~
- ~~5) name of responsible SPO;~~
- ~~6) brief description of supplies/services being purchased;~~
- ~~7) method of source selection;~~
- ~~8) name of the successful responsible offeror;~~
- ~~9) contract price;~~
- ~~10) number of unsuccessful responsive offerors;~~
- ~~11) percentage of disadvantaged business utilization plan;~~
- ~~12) percentage of business enterprise program utilization plan;~~
- ~~13) total number of veteran-owned small businesses and the number of service disabled veteran-owned small businesses that submitted bids for contracts; and~~
- ~~14) any other disclosure required by the Code.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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Section 1.2020 Small Purchase Limits

- a) Application
- 1) Individual procurements of \$50,000 or less for supplies or services, other than professional and artistic, may be made without notice or competition. These small purchase maximums shall be subject to the annual cost of living increases set forth in subsection (a)(3).
 - 2) Procurements for construction and construction related services of \$70,000 or less, or as increased to reflect increases in the consumer price index as determined by the CPO-GS.
 - 3) The CPO-GS shall announce any change identified by the United States Department of Labor in the Consumer Price Index for All Urban Consumers for the period ending each December 31. That percentage change shall be used to recalculate the small purchase maximums applicable for the fiscal year beginning the following July 1.
 - 4) Procurements of less than \$20,000 for professional and artistic services and that have a non-renewable term of one year or less may be made without notice of competition. Notice of award of professional and artistic service contracts must be published in the Bulletin and shall include the name of the SPO and a brief explanation of the procurement.
- b) Determination of Small Purchase Status
- 1) In determining whether a contract is under the small purchase limit, the stated value of the supplies or services plus any optional supplies and services, determined in good faith, shall be utilized. When the value is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12 month period.
 - 2) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not to exceed limit applicable to the type of procurement (see subsection (a)).
 - 3) If, after signing the contract, the actual cost of completing the contract is

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determined to exceed the small purchase amount, and the SPO determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the [State](#) agency's needs or other circumstances, the SPO must follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract.

- c) The CPO-GS may establish policies and procedures to manage the use of the small purchase method of source selection. The SPO may establish additional policies and procedures applicable to State agencies under the SPO's jurisdiction.
- d) If there is a repetitive need for small procurements of the same type, the State agency shall notify the SPO who shall consider whether issuing a competitive sealed bid or proposal for procurement of those needs is in the best interests of the State.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2025 Sole [Source or Sole](#) Economically Feasible Source Procurement

- a) Application
The provisions of this Part apply to procurement from a sole [source or sole](#) economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the limit authorized in Section 1.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 1.2030 (Emergency Procurements), in which case those other procedures may be used.
- b) Conditions for Use of Sole Source [or Sole Economically Feasible](#) Procurement
Sole source procurement is permissible when a requirement is available from only a single supplier. ~~Sole economically feasible procurement is permissible~~ when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one vendor authorized to provide that item. The following are examples of circumstances that could necessitate sole [or sole economically feasible](#) source procurement ([this list is not exhaustive](#)):
 - 1) compatibility of equipment, accessories, replacement parts or service is a paramount consideration;

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- 2) items are needed for trial use or testing of that specific product or service;
- 3) item is for commercial resale;
- 4) non-competitive public utility services;
- 5) item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;
- 6) media for advertising;
- 7) art, entertainment services or athletic events;
- 8) radio and television broadcast rights;
- 9) procurements related to participation in mandated educational, professional, research, public service or athletic activities of organizations of which the State agency is a member. These procurements may include, but are not limited to, dues and membership fees, travel and lodging and facility usage fees;
- 10) federal or State grant requires contract with named vendor;
- 11) ~~items required by franchise agreements; and changes to existing contracts (see subsection (e)).~~
- 12) ~~items that are required for research and no other source is able to meet the researcher's documented need.~~

e) Changes

- 1) ~~Changes to an existing contract that are germane and reasonable in scope and cost in relation to the original contract or program, that are necessary or desirable to ensure success of the program, and that can be best accomplished by the contract holder may be procured under this Section. The SPO must determine that the cost of delay or disruption to the contract or program, and the cost of a new solicitation, clearly indicate that the existing vendor is the sole economically feasible source.~~

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- 2) ~~As provided in Section 20-25(b) of the Code, changes to a contract for professional or artistic services that would result in an increase in the amount paid under the contract of more than 5% of the initial award, or would extend the contract term beyond the time reasonably needed for a competitive procurement, not to exceed two months, may not be made on a sole source basis.~~
- 3) ~~A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 1.2020, or that is an emergency as defined in Section 1.2030, may be made in accordance with procedures governing those Sections and need not comply with these sole source procedures. A change in the length of the contract that does not exceed 30 days and other minor, immaterial changes to the scope or administrative provisions of a contract shall not be considered changes subject to these sole source procedures.~~

cd) Sole Source Determination
 The determination as to whether a procurement shall be made as a sole source or sole economically feasible source procurement shall be made by the SPO, based on a request made by a State agency. The request shall be in writing on a form prescribed by the PPB and shall include the basis for the sole source or sole economically feasible source determination. Prior to authorizing the State agency to enter into a contract based on the sole source or sole economically feasible source request, the CPO-GS shall ~~offer~~require a public hearing to be held and make a final determination as required by Section 20-25(a) of the Code. Any request for hearing must be made at least 5 calendar days prior to the date of the scheduled hearing. If no request for a hearing is made, the hearing will be cancelled. The procurement may proceed on a sole source or sole economically feasible source basis only after the procurement method is approved by the CPO-GS.

de) Hearing
 Any hearing required shall be conducted in accordance with Subpart V.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2030 Emergency Procurements

a) Authority to Make Emergency Procurements

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The provisions of this Part apply to every procurement over the small purchase limit set in Section 1.2020 (Small Purchases) made under emergency conditions. The SPO, or a State agency through written designation, shall have the authority to make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods.

b) Emergency Conditions

1) A statutory emergency condition exists:

- A) if there exists a threat to public health or public safety;
- B) when immediate expenditure is needed for repairs to State property in order to protect against further loss or damage to State property;
- C) to prevent or minimize serious disruption in critical State services that affect health, safety, or collection of substantial State revenues; or
- D) to ensure the integrity of State records.

c) Quick Purchase

The emergency method of source selection is allowed in additional situations. These include, but are not limited to:

- 1) protect the health and safety of any person;
- 2) items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a "quick purchase" immediately to take advantage of the availability and price;
- 3) rare items, such as articles of historical value or art collections, that are available for a limited time;
- 4) the opportunity to obtain entertainment, speakers and athletic and other events or performances is available for a limited time;
- 5) immediate action is necessary to avoid lapsing or loss of federal or donated funds.

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- d) **Scope of Emergency Conditions**
Emergency procurement shall be limited to the supplies, services, construction or other items necessary to meet the emergency need. In certain situations the purchase to meet the immediate need (i.e., the temporary solution) may, by necessity, also be the permanent solution. In this event, the notice shall describe that circumstance.
- e) **Source Selection Methods**
Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations provided that, whenever practical, existing State contracts shall be utilized and competitive sources shall be considered if practical. The procedure used shall be selected to assure that the required items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.
- f) **Determination and Record of Emergency Procurement**
- 1) **Determination.** The SPO shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor. Documentation of efforts to obtain competition shall be made part of the procurement file. These determinations shall be kept in the contract file.
- 2) Emergency Contract Award
- A) For purposes of an emergency, an emergency contract is awarded on the earliest of the date:
- i) a State agency communicates to a vendor to start work;
- ii) publication on the Illinois Procurement Bulletin identifying the selected vendor; or
- iii) the contract is signed by both parties.
- B) Documentation of the contract award date shall be part of the procurement file.

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~~32~~) Record. In a manner acceptable to the receiving parties, the CPO-GS shall designate the method of filing affidavits of each emergency procurement with the PPB and Auditor General. An affidavit of each emergency procurement (including extensions of emergency contracts beyond 90 days) shall be filed by the SPO with the CPO-GS, PPB and the Auditor General within 10 days after the contract is awarded~~procurement~~ and shall include the following information:

- A) the vendor's name;
- B) the amount and type of the contract (if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known);
- C) a description of what the vendor will do or provide;
- D) the reasons for using the emergency method of source selection.

~~43~~) Notice of the Emergency Procurement
Notice of the emergency procurement shall be published in the Bulletin by the SPO as specified in Sections 15-25(c) and 20-30 of the Code no later than 3 business days after the contract is awarded and shall include a description of the procurement, the reasons for the emergency procurement and the total cost. When only an estimate of the total cost is known at the time of publication, the estimate shall be identified as an estimate and published. When the total cost is determined, it shall also be published in like manner before the 10th day of the next succeeding month.

~~54~~) The State agency shall be responsible for preparing the filings required in Section 20-30 of the Code.

g) Duration of Emergency Contract

1) The term of the temporary solution emergency contract shall be limited to the time reasonably needed for a competitive procurement for the permanent solution, not to exceed 90 days.

~~2~~) A temporary solution emergency contract may be extended beyond 90 days if the CPO-GS determines additional time is necessary and the

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contract scope and duration are limited to the emergency. Prior to execution of the extension, a public hearing shall be held at which any person~~PPB and members of the public~~ may present testimony.

- 32) Notice of Extension
Notice of intent to extend an emergency contract shall be published in the Bulletin no later than 14 days prior to a public hearing. Notice shall include at least a description of the need for the emergency extension, the contractor, and, if applicable, the date, time and location of the public hearing.
- 43) The initial determination as to whether an emergency shall be extended for a term longer than 90 days shall be made by an SPO in the form of an extension request submitted to the CPO-GS. The request shall be in writing and shall include the justification for the extension. Prior to execution of the extension, a public hearing shall be held at which any person~~PPB and members of the public~~ may present testimony and the CPO-GS shall make a final determination as required by Section 20-30(a), (b) and (c) of the Code. The term noticed in the Bulletin of the proposed extension may be shortened or lengthened to a term determined to be in the best interest of the State, as determined by the CPO-GS. The final determination shall be published in the Bulletin.

- h) Contract Extension Hearing
The hearing shall be conducted in accordance with Subpart V.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2035 Competitive Selection Procedures for Professional and Artistic Services

- a) Application
- 1) The provisions of this Section apply to every procurement of professional and artistic services, except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and except as provided in subsection (e).
 - 2) *"Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an*

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independent contractor, qualified by education, experience, and technical ability [30 ILCS ~~500525~~/1-15.60].

- b) Professional and artistic services are further defined as follows:
- 1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the Request for Proposals.
 - 2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request for Proposals.
 - 3) "Qualified by technical ability" means the individual who would perform the services must demonstrate a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the Request for Proposals.
 - 4) An essential element distinguishing professional and artistic services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service.
 - 5) Professional and artistic services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts.
 - 6) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.
 - 7) When a State agency requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with other methods of source selection authorized by the Code and this Part.
- c) The categories of services enumerated in this subsection (c) shall be considered and procured as professional and artistic services. With regard to other services,

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the SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require these services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:

- 1) law;
 - 2) accounting;
 - 3) medicine;
 - 4) dentistry; and
 - 5) clinical psychology.
- d) Architect, engineering and land surveying services shall be procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. These procurements are not subject to the procedures for other professional services established in the Code or this Part.
- e) **Conditions for Use of Competitive Selection Procedures**
Except as authorized under Section 20-25 (Sole Source Procurement) or Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of \$20,000 or more. Services less than \$20,000 and for a nonrenewable term of one year or less may be procured in accordance with Section 1.2020 (Small Purchase Limits).
- f) **Request for Proposals**
Professional and artistic services shall be procured using an RFP.
- 1) **Contents.** The RFP shall be in the form specified by the CPO-GS and shall contain at least the following information:
 - A) the type of services required;

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- B) a description of the work involved;
- C) an estimate of when and for how long the services will be required;
- D) the type of contract to be used;
- E) a date by which proposals for the performance of the services shall be submitted;
- F) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:
 - i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 - ii) if deemed relevant, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;
 - iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
 - iv) a listing of other contracts under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP;
 - v) a plan, giving as much detail as is practical, explaining how the services will be performed;
- G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package);
- H) the factors to be used in the evaluation and selection process and their relative importance; and
- I) a plan for post-performance review to be conducted by the State agency after completion of services and before final payment and

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made part of the procurement file.

- 2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:
 - A) the plan for performing the required services;
 - B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
 - C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
 - D) a record of past performance of similar work.

g) ~~Delivery, Receipt and~~ Handling of Proposals

~~1) Receipt. Upon its receipt, each proposal and modification shall be date and time stamped but not opened and shall be stored in a secure place until the time and date set for opening. If a proposal is opened for identification purposes or opened in error, the file should state the reason for the error. 2) Proposals shall be submitted to and opened by the CPO-GS, SPO or a designee on behalf of the SPO CPO-GS.~~

1A) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFP.

2B) Opening shall be witnessed by a State witness or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

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- ~~3C)~~ Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only ~~authorized~~ State personnel and contractual agents authorized by the SPO may review the proposals prior to award.
- ~~3)~~ ~~Transmission to SPO. The CPO-GS or designee will forward timely proposals to the responsible SPO of the purchasing agency along with any pertinent information contained in the files of the CPO-GS regarding the vendors who submitted proposals.~~
- ~~4)~~ ~~The CPO-GS may require that the SPO be present at and assist in the opening and registration of proposals and the transportation of proposals to the SPO.~~
- h) Discussions
- 1) Discussions Permissible. The CPO-GS, SPO or designee on behalf of the CPO-GS may conduct discussions with any offeror to:
- A) determine in greater detail the offeror's qualifications; and
- B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The SPO or designee may allow changes to the proposal based on those discussions.
- 2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the State agency conducting the procurement shall not disclose any information contained in any proposals with any other offeror or person or entity other than the CPO-GS, SPO, PCM or other personnel authorized by the CPO-GS or SPO, until after award of the proposed contract has been posted to the Illinois Procurement Bulletin.
- i) Selection of the Best Qualified Offerors
After conclusion of validation of qualifications, evaluation and discussion, the SPO shall rank the acceptable offerors in the order of their respective qualifications.

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- j) Evaluation of Pricing Data
Pricing submitted for all acceptable proposals timely submitted shall be opened and ranked.
- 1) If the low price is submitted by the most qualified vendor, the SPO may award to that vendor.
 - 2) If the price of the most qualified vendor is not low and if it does not exceed \$25,000, the SPO, but not a designee, may award to that vendor.
 - 3) If the price of the best qualified vendor exceeds \$25,000, the SPO, but not a designee, must state why a vendor other than the low priced vendor was selected and that determination shall be published in the Bulletin.
- k) Negotiation and Award of Contract
- 1) General. The purchasing agency, in consultation with the SPO, shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The purchasing agency, in consultation with the SPO, may, in the interest of efficiency, negotiate with the next highest ranked vendor, while negotiating with the best qualified vendor.
 - 2) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:
 - A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
 - B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 - C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity, and nature of those services.

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- 3) Successful Negotiation of Contract with Best Qualified Offeror
 - A) If compensation, contract requirements and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.
 - B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by the purchasing agency, in consultation with SPO, based on the circumstances of the particular procurement, including but not limited to the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, other available pricing information and the [State](#) agency's identified budget.
 - C) Contracts entered into under this Section shall provide:
 - i) The duration of the contract, with a schedule for delivery when applicable;
 - ii) The method for charging and measuring cost (hourly, per day, etc.);
 - iii) The rate of remuneration; and
 - iv) The maximum price.
- 4) Failure to Successfully Negotiate Contract with Best Qualified Offeror
 - A) If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons shall be placed in the file. The purchasing agency, in consultation with the SPO, shall advise such offeror of the termination of negotiations.
 - B) Upon failure to successfully negotiate a contract with the best qualified offeror, the purchasing agency, in consultation with the SPO, may enter into negotiations with the next most qualified

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offeror.

- l) Multiple Awards
The purchasing agency, in consultation with the SPO, may enter into negotiations with the next most qualified vendor or vendors when the purchasing agency has a need that requires multiple vendors under contract.
- m) Notice of Award
~~Notice of award shall be in accordance with Section 1.1525(b) and (c). Notice of award of professional and artistic service contracts under \$20,000 must be published in the Bulletin and shall include the name of the SPO and a brief explanation of the procurement. Written notice of award shall be public information and made a part of the contract file. The CPO-GS shall publish the names of the responsible decision makers of the purchasing agency, the name of the agency, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be in the next available issue of the Bulletin.~~
- n) Prequalification
Prequalification of professional and artistic vendors shall not be used to bar or prevent an otherwise qualified person from responding to a request for proposal for professional and artistic services.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2036 Other Methods of Source Selection

- a) Split Award
An award of a definite quantity requirement may be split between bidders or offerors if necessary to obtain the total quantity needed. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required.
- b) Multiple Award
- 1) A multiple award may be made for an indefinite quantity solicitation when award to two or more bidders or offerors for similar products or services is necessary for adequate delivery or service.

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- 2) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.
- 3) In a multiple award situation, one vendor shall be designated as the primary recipient of orders. The other awardees may receive orders in the event the primary vendor is unable to deliver or for other reasons as determined by the SPO.
- 4) The State agency shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.
- 5) Multiple Award with Set Rate
 - A) Notwithstanding anything to the contrary in this Part, the CPO-GS but not a designee, may, on a case-by-case basis, authorize an appropriate purchasing agency to issue a competitive solicitation and to enter into contracts with multiple vendors under a process that provides for prequalification, agreement to perform at a set rate, and final selection based on random and equitable distribution of work among qualified vendors.
 - B) The CPO-GS may authorize use of this source selection procedure upon a determination in writing that use of the methods of source selection set forth in Article 20 of the Code is either not practicable or advantageous because, for example, the program needs of State agencies cannot reasonably be met within the normal procurement timeframes, or that the type and variety of State agency needs are such that a single award will not assure the needed availability or diversity of vendors.
 - C) This authorization shall be limited to contracts for information technology services. No other categories of supplies or services may be acquired using this method of source selection unless this subsection (b)(5) is amended.
 - D) Vendors shall be prequalified once per fiscal year, or as often as necessary, through use of a competitive sealed proposal. The minimum qualifications (including performance standards and

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agreement to provide services at a set rate determined by the State), any desirable additional qualifications, and the method of obtaining and setting rates shall be stated in the solicitation advertised in the Bulletin. Those vendors meeting minimum qualifications shall be offered non-exclusive indefinite quantity master contracts against which a procuring agency may later place one or more orders on an as needed basis in accordance with the vendor selection procedure set forth in subsection (b)(5)(G). Implementing ~~Section 45-45~~ Article 45 of the Code and subsection (b)(5)(G) of this Section, the solicitation shall contain a provision alerting vendors that the random selection process used to meet a specific using agency's needs may be limited to those master contract holders who qualify as small businesses.

- E) The purchasing agency shall establish the set rate by one of the following methods. The lowest rate identified will not necessarily be the set rate, but will be a consideration in determining the set rate.
- i) Set in the solicitation the rate that vendors must agree to bill. In general, this rate shall be the lowest rate at which a sufficient number of vendors are ready, willing and able to meet the State's needs. The solicitation shall show the selected purchasing agency has conducted sufficient research (such as reviewing past State contract rates, reference to GSA or other governmental contract rates, or private sector rates determined by internal or industry expert surveys) that the public can have confidence the rate provides overall advantage to the State.
 - ii) Require as part of the solicitation that vendors submit rates (prices), including disclosable rates, and inform them the selected purchasing agency will use this rate information and additional rate information received through use of the best and final process, from other contracts and from research to establish the set rate that vendors must bill.

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- F) Vendors not willing to agree to bill at the set rate may be rejected or may have their contracts restricted to use in special circumstances approved by the CPO-GS.
- G) Using agency needs will be met by the selected purchasing agency selecting a master contract holder on a random basis. If the using agency determines that it has specific programmatic needs that require additional qualifications (e.g., specialized programming knowledge or specific educational requirements) or conditions (e.g., geographic limitations) or State policy considerations (e.g., promotion of small business), such that random vendor selection from among all master contract holders would not meet its needs, the using agency may submit an alternate selection request to the CPO-GS. This request shall set forth all reasons, including the additional qualifications or conditions, why a random vendor selection would not reasonably meet the needs of the agency, or the policy of the State. If at least 3 of the master contract holders meet those additional qualifications or conditions, the selected purchasing agency shall conduct a random selection limited to that subset of the master contract holders. If the using agency's request does not show a need for additional qualifications or if there are not 3 master contract holders with the needed qualifications, the using agency may not utilize the method of source selection set forth in this Section.
- H) In order to ensure the continued availability of the set of master contract holders, all potential orders shall be monitored by the selected purchasing agency to ensure the equitable distribution of work and that no single vendor has an unwarranted disproportionate share of the available work. The selected purchasing agency shall, to avoid a disproportionate distribution of work, remove a vendor from consideration for a period of time sufficient to minimize dollar value discrepancies among vendors. In addition, any vendor so removed may be reinstated for consideration to meet a particular using agency's need if only 3 or fewer otherwise eligible vendors are available to meet the using agency's need.

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- I) The selected purchasing agency shall conduct the random selection using a drawing, mechanical device or software driven selection. The specific process used shall ensure that final selection is influenced only by chance, after taking into consideration, as applicable and as allowed in this Part, the policy of equitable distribution, use of small businesses, and specific requests from agencies to meet special needs.
- J) It shall be the affirmative obligation of each vendor with a master contract to update information provided to the State regarding its continued ability to provide the contracted service. Master contracts may provide that vendors who cannot perform the required services when contacted and who have not provided the updated information may be taken out of consideration for orders for a period of time, including until the next prequalification.
- K) The procurement file shall contain justification for the selection of the master contract vendors and each selection to meet the particular need of a using agency including the determination in subsection (b)(5)(B) ~~of this Section~~; the research papers, reports, contract rates and internal or industry expert surveys, "additional rate information" and identification of "other contracts and research" in subsections (b)(5)(E)(i) and (ii); the alternate selection documents required by subsection (b)(5)(G), the 3 or more master contract holders for the alternate random selection in subsection (b)(5)(G) and updated information required of contractors pursuant to subsection (b)(5)(J). The selected purchasing agency shall publish the names of the vendors selected to receive master contracts and the name of each vendor selected to receive an order to meet the using agency's particular need.
- c) Term and Condition Contracts
- 1) A term and condition contract contains agreed contractual terms and conditions established for the convenience of the parties to be used in conjunction with a subsequent procurement and processed in accordance with the requirements of the Code and this Part. A term and condition contract is not a procurement. It creates no obligation on the part of the State to procure from the vendor, nor does it create an authorization for a

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State agency to order based on that term and condition contract, except as provided in subsection (c)(2).

- 2) Orders may be placed against term and condition contracts without use of any method of source selection specified in the Code for convenience of processing sole source, emergency or small procurements.
- d) Auction
Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium. Individual purchases at auction exceeding the small purchase maximum shall be posted in the Bulletin.
- e) Non-governmental Joint Purchase
If the CPO-GS determines in writing that joint procurement with an organization not eligible under the Governmental Joint Purchasing Act is in the best interests of the State agency, the CPO-GS may authorize a State agency to enter into an agreement with such an organization for the joint procurement of any item covered by the Code. Any method of source selection may be used and may be modified or adapted to meet the needs of the non-State entity.
- f) Federal Requirements
The State agency, in consultation with the SPO, for any State agency receiving federal aid funds, grants or loans or otherwise subject to federal entity requirements may conduct procurements in accordance with federal requirements that are necessary to receive or maintain those federal aid funds, grants or loans or to remain in compliance with federal requirements.
- g) Foreign Country Procurement
Procurements to meet the needs of State agency offices located in foreign countries shall comply with the Code and this Part whenever practicable. The SPO shall maintain a record of the action taken.
- h) Donations
 - 1) When a procurement will have the majority of funding from a donation, the terms of which require use of particular procurement or contracting procedures, the SPO may follow those procedures, but shall follow the

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Code and this Part whenever practicable.

- 2) Donations may be acknowledged by the donee agency in a manner appropriate to the type of donation and the program activity associated with the donation. Acknowledgment may include, but need not be limited to, public announcement at the event or in donee agency publications, and inviting the donor to attend the program activity associated with the donation.
- i) Broker Method for Obtaining Certain Insurance Coverages
 - 1) Notwithstanding anything to the contrary in this Part, the CPO-GS, but not a designee, may, on a case-by-case basis, authorize the use of this broker method to obtain insurance coverages when use of the methods of source selection set forth in Article 20 of the Code is not practicable or advantageous because, for example:
 - A) Due to the structure of the insurance industry, the types of insurance coverages needed cannot reasonably be obtained from "direct writers" who would provide quotes directly to State agencies in a bid or RFP process; or
 - B) The process of obtaining quotes for needed insurance coverages cannot be accomplished within the normal procurement timeframes.
 - 2) If the CPO-GS determines that this broker method is preferable for designated coverages, a two-part procurement process will be used to obtain the coverages.
 - A) A broker will be selected in accordance with the RFP process ~~for procuring professional services~~ authorized by Section 20-~~1535~~ and ~~Article 35 of the Code~~, and the resulting contract will be subject to all requirements of the Code. The broker contract will be issued for a term of years, and during the term of the contract the broker will assist the State agency in obtaining coverages as set forth in subsection ~~(i)(2)(B)(j)(2)(B)~~ as well as providing customary services such as issuing certificates of insurance and servicing policies.

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- B) The broker will assist the State agency by serving as broker of record in obtaining insurance coverages through the industry process of going to market to obtain quotes. The State agency will use an evaluation team to test the market for competitiveness, review the quotes, and select the insurers and products best fitting its needs. The solicitation, evaluation and selection process will be documented in writing and become a part of the public procurement file. The insurance coverages obtained, the term of coverage, and the premiums charged will be posted on the Bulletin as attachments to the broker award notice.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2038 Modification or Withdrawal of Bids or Proposals

- a) **Modification or Withdrawal**
A bidder or offeror may withdraw or modify a bid or proposal if notice of the withdrawal or modification is received by the SPO before the latest time specified for receipt of bids or proposals. Any modification or withdrawal, however, must be made in writing and received by the SPO prior to the scheduled bid or proposal opening. When time is of the essence, the SPO may agree to receive modifications or withdrawals by printed form conveyed by electronic mail, fax or telephone. An originally signed written confirmation of a telephone modification or withdrawal shall be mailed or delivered by the bidder or offeror on the same day. Withdrawals of bids or proposals after bid or proposal opening will not ordinarily be permitted; however, in those cases in which the judgment of the SPO, based on clear and demonstrable evidence, the bidder or offeror has made a bona fide error in the preparation of the bid or proposal and that error will result in a substantial loss to the bidder or offeror, an exception may be made.
- b) **Minor informalities**
A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to the State or to other bidders or offerors (i.e., the effect on price, quality, quantity, delivery or contractual conditions is negligible). The SPO shall waive these informalities or allow the bidder to correct them depending on which is in the best interest of the State. Minor informalities include insignificant mistakes that have

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an effect on price, quantity, quality, delivery or contractual conditions is negligible.

- c) **Documentation Required**
When a bid or proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared by the SPO showing that relief was granted or denied in accordance with this Part.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2039 Mistakes

- a) **General**
Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other offerors.
- b) **Mistakes Discovered Before Opening**
A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting the error in writing, or in person at the opening location, before the time and date set for opening.
- c) **Confirmation of Mistake After Opening**
When the SPO knows or has reason to conclude that a mistake has been made, the SPO shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.
- d) **Mistakes Discovered After Opening but Before Award**
- 1) **Minor Informalities**
A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery or contractual conditions is negligible). The SPO shall waive these informalities or allow correction depending on which is in the

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best interest of the State. Examples of minor informalities as to form include the failure to:

- A) return the ~~required~~ number of signed copies required by the solicitation document~~IFB~~;
- B) acknowledge receipt of an amendment to the solicitation, but only if:
 - i) it is clear from the bid that the offeror received the amendment and intended to be bound by its terms; or
 - ii) the amendment involved had a negligible effect on price, quantity, quality or delivery.
- 2) Mistakes in Which the Intended Correct Information Is Evident
If the mistake and the intended correct information are clearly evident on the face of the bid document, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the solicitation document are typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.
- 3) Mistakes in Which the Intended Correct Information Is Not Evident
The bid or proposal may be withdrawn if:
 - A) a mistake is clearly evident on the face of the bid or proposal document but the intended correct bid or proposal is not similarly evident; or
 - B) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
- e) During Discussions; Prior to Best and Final Offers
Once discussions are commenced with any offeror or after best and final offers are requested, an offeror may propose to correct any mistake, prior to the date set for conclusion of discussions or for receipt of best and final offers, provided the correction would not be contrary to the fair and equal treatment of other offerors.
- f) Mistakes Discovered After Award

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Mistakes shall not be corrected after award of the contract except when the SPO finds it would be unconscionable (e.g., if the mistake resulted in a windfall to the State) not to allow the mistake to be corrected.

- g) Documentation Required
The reason for allowing correction or withdrawal of bids or proposals shall be made part of the procurement file and shall be available for public inspection.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

- a) Policy
Any solicitation may be ~~cancelled~~ before or after opening when the SPO ~~determines~~ believes cancellation to be in the State's best interest. An SPO may request that a State agency provide any information to assist the SPO in reaching a determination of whether cancellation is in the State's best interest. Nothing shall compel the award of a contract.
- b) Cancellation of Solicitation; Rejection of All Bids or Proposals
- 1) A solicitation may be ~~cancelled~~ in whole or in part when the SPO determines in writing that the action is in the State's best interest for reasons including, but not limited to:
- A) the State no longer requires the supplies or services;
 - B) the State no longer can reasonably expect to fund the procurement;
 - C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
 - D) ambiguous or otherwise inadequate specifications;
 - E) the solicitation did not provide for consideration of all factors of significance to the State;
 - F) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

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- G) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 - H) there is reason to question whether the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- 2) When a solicitation is ~~cancelled~~~~annulled~~, notice of cancellation shall be posted to the Bulletin.
- 3) The notice of cancellation shall:
- A) identify the solicitation;
 - B) briefly explain the reason for cancellation or rejection; and
 - C) when appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies or services.
- c) Rejection of Individual Bids or Proposals
- 1) Individual bids or proposals may be rejected for reasons including, but not limited to:
 - A) the bid or proposal is not responsive (i.e., it does not conform in all material respects to the submission requirements for the solicitation);
 - B) the vendor that submitted the bid or proposal is nonresponsible as determined under Section 1.2046 (Responsibility);
 - C) the supply or service item offered in the bid or proposal is unacceptable by reason of its failure to meet the announced requirements of the solicitation, including, but not limited to, specifications or permissible alternates or other acceptability criteria set forth in the solicitation, statement of work or quotation; or

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- D) the proposed price, including options, is clearly unreasonable.
- 2) Notice of Rejection. Upon request, bidders or offerors whose bids or proposals have been rejected shall be advised of the reasons for rejection.
- d) Documentation
The reason for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 1.2043 Suppliers

A State agency may contract with any qualified source of supply, but shall use or consider, as applicable, the following special sources, from which procurements may be made without ~~notice~~ and competition:

- a) Correctional Industries in accordance with Subpart O. The CPO-GS, after consulting with Illinois Correctional Industries, a division of the Department of Corrections, shall determine the type and extent of the preference purchasing agencies shall give to supplies produced or services performed by Correctional Industries. Factors to be considered in determining the preference include, but are not limited to, the ability of Correctional Industries to meet the State's requirements, the price charged and the reason for the Correctional Industries program. This information shall be provided to each SPO and purchasing and using agencies.
- b) State and Federal Surplus Warehouses under the jurisdiction of the Department of Central Management Services. (The State Property Control Act [30 ILCS 605/7a] requires that surplus furniture be considered before any purchase of new furniture valued at \$500 or more per piece.)
- c) Qualified workshops for ~~persons with severe disabilities~~ the disabled in accordance with Subpart O.
- d) State agencies and other governmental units described in Section 1-10(b)(1) of the

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Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2044 Vendor List

Each State agency may maintain a list of vendors who have expressed interest in contracting with the State. This list may be used to solicit for small purchases and emergency procurements, as well as and to supplement Bulletin notices. Inclusion in any State agency-maintained vendor list shall not be a requirement to be considered for future contracting opportunities.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2045 Vendor Prequalification

- a) The SPO may prequalify prospective vendors when ~~determination of a vendor's~~ prequalifications or preliminary evaluation of supplies or services prior to procurement would promote the effective conduct a procurement.
- b) The SPO shall identify by publication in the Bulletin the qualifications or categories of supplies and services (including professional and artistic services) for which vendors of those supplies and services may prequalify.
- c) ~~An opportunity to prequalify shall be allowed at least one time each fiscal year.~~ AnyThe opportunity to prequalify shall be announced in the Bulletin. The notice shall alert vendors that fail to participate in the prequalification process of the consequences.
- d) When prequalifying a vendor, the SPO may limit prequalification to particular matters (e.g., determining whether a vendor has been and is likely to be "responsible" or whether the vendor manufactures domestically).
- e) The fact that a prospective vendor has been prequalified generally does not necessarily represent a definitive finding of responsibility for a particular procurement.
- f) When prequalifying a vendor, the SPO may consider factors tailored to a specific procurement or type of procurement, which shall be announced in the prequalification notice in the Bulletin.

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- g) Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified. If eligibility for the procurement will be limited to prequalified vendors, the solicitation shall state that fact.
- h) The prequalification may provide that any vendor who completes prequalification may refer to that prequalification when submitting responses to solicitation or in other procurement situations instead of submitting the same information with a response. This does not alleviate a vendor from providing updated certifications and other information as part of the prequalification process.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2046 Responsibility

- a) **Application**
Before making an award or signing a contract, the SPO must be satisfied the prospective vendor is responsible. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may receive an award or contract upon receipt of the bond or other security.
- b) **Standards of Responsibility**
Factors to be considered in determining whether the standard of responsibility has been met include but are not limited to, financial responsibility, insurability, effective equal opportunity compliance, payment of prevailing wages if required by law, capacity to produce or sources of supply, performance record in the business or industry, ability to provide required maintenance service or other matters relating to the bidder's probable ability to deliver in the quality and quantity and within the time and price required under the contract, if it is awarded to the bidder. The vendor must be a legal entity authorized to do business in Illinois prior to submitting the bid, offer or proposal and qualified legally to contract with the State.
- c) **Information Pertaining to Responsibility**
The State agency, in consultation with the SPO, may conduct discussions with a bidder or offeror to determine in greater detail the bidder's or offeror's

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qualifications, to explore with the bidder or offeror its ability to supply the specific supply or service, and the bidder's or offeror's proposed method of performance. This discussion is not for the purpose of determining whether one bidder's or offeror's product or service capability is superior to another, but only to determine that a bidder or offeror has the capability to perform. The prospective vendor shall supply information requested concerning the vendor's responsibility. The State may supplement this information from other sources and may require additional documentation at any time. If the vendor fails to supply the requested information, the SPO may disqualify the vendor or may base the determination of responsibility upon any available information.

- d) **Written Determination of Nonresponsibility Required**
If a vendor that otherwise would have been awarded a contract is found non-responsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the State agency purchasing director or his or her designee and approved by the SPO. The final determination shall be made part of the procurement file.
- e) **Affiliated Companies**
Vendors that are newly formed business concerns having substantially the same owners, officers, directors or beneficiaries as a previously existing vendor that has been determined not responsible or has been suspended or debarred will also be determined not to be responsible.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART H: SPECIFICATIONS AND SAMPLES

Section 1.2050 Specifications and Samples

- a) **Responsibilities Regarding Specifications**
Subject to the SPO's direction, the State agency shall draft the necessary specifications.
- b) **Procedures for the Development of Specifications**
- 1) All procurements shall be based on specifications that accurately reflect the State's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements and shall be written in such

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a manner as to describe the requirements to be met, without being unduly restrictive or having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.

- 2) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
 - 3) A specification may provide alternate descriptions when two or more design, functional or performance criteria will satisfactorily meet the State's requirements.
 - 4) Article 45 of the Code shall be considered and applied when required or appropriate.
 - 5) *A solicitation or specification for a contract, or a contract, may not require, stipulate, suggest or encourage a monetary or other financial contribution or donation, cash bonus or incentive, or economic investment as an explicit or implied term or condition of awarding or completing the contract. [30 ILCS 500/20-50]*
- c) Brand Name or Equal Specification
- 1) Brand name or equal specifications may be used in a competitive solicitation when:
 - A) no specification for a common or general use specification or qualified products list is available;
 - B) time does not permit the preparation of another form of specification;
 - C) the nature of the product or the nature of the State's requirement makes use of a brand name or equal specification suitable for the procurement; or
 - D) use of a brand name or equal specification is in the State's best interest.

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- 2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.
 - 3) Unless the State agency determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional or performance characteristics that are required.
 - 4) When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.
- d) Brand Name Only Specification
- 1) A "brand name only" specification may be used in a competitive solicitation provided the State agency SPO makes a written request justifying determination that only the identified brand name item will satisfy the State's needs and the SPO approves in writing the use of the brand name only specification.
 - 2) Brand name alone may be specified in order to fill medical prescription needs, to stock State retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the SPOCPO-GS. A State Agency may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.
 - 3) The SPO shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit those sources to achieve whatever degree of competition is practicable. If only one source

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can supply the requirement, the procurement shall be made under Section 1.2025 (Sole Economically Feasible Source Procurement).

- e) Qualified Products List
 - 1) A qualified products list may be developed by the SPO when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy State requirements.
 - 2) When developing a qualified products list, a notice shall be posted to the Bulletin soliciting potential suppliers to submit products for testing and examination to determine acceptability for inclusion in a qualified products list.
 - 3) Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements.
- f) Proven Products

The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year prior to the notice date of a solicitation. Specifications may require that the supply or services must have been used in governmental or commercial venues for a specified period of time to be considered.
- g) State Required Samples
 - 1) Samples or descriptive literature may be requested when it is necessary to evaluate required characteristics of the items bid. Any required samples must be submitted as instructed in the solicitation, with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.
 - 2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the State's right to require adherence to specifications.

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- 3) No payment will be made for samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. The request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.
 - 4) Unsolicited bid samples or descriptive literature are submitted at the vendor's risk, may or may not be examined or tested, will not be deemed to vary any of the provisions of the solicitation, and may not be utilized by the vendor to contest a decision or understanding with the State agency.
- h) **Product Demonstration**
Subject to the requirements of Section 50-39 of the Code, a vendor may request to demonstrate a product or service. Agreement to allow a demonstration will be solely at the State's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration. No payment will be made for the product demonstration period. The product demonstration will be returned upon request and at the vendor's expense. The request must be made prior to the time of product demonstration with return collect or prepayment provisions and instructions for return accompanying the product demonstration.
- i) **Specifications Prepared by Other Than State Personnel**
1) Specifications may be prepared by other than State agency personnel, including, but not limited to, consultants, architects, engineers, designers or other drafters of specifications for public contracts when the SPO determines that there will be no conflict of interest involved and is otherwise in the best interest of the State agency. The SPO retains the authority for final approval of the specifications. Contracts for the preparations of specifications by other than State agency personnel shall require the specification writer to adhere to State agency requirements and the terms of the Code and this Part.
- 2) ~~The person who prepared the specifications shall not submit a bid or proposal or receive a contract to meet the procurement need.~~
 - 3) ~~Prohibited Bidder and Contractors~~
 - A) ~~No person or business shall bid or enter into a contract if the person or business:~~

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- ~~i) Assisted the State agency in determining whether there is a need for a contract, except as part of a response to a publicly issued RFI; or~~
 - ~~ii) Assisted the State agency by reviewing, drafting or preparing any IFB, a RFP or RFI provided similar assistance, except as part of a publicly issued opportunity to review drafts of all or part of these documents.~~
 - ~~B) This subsection (i)(3) does not prohibit a person or business from submitting a bid or proposal or entering into a contract if the person or business:
 - ~~i) Initiates a communication to provide general information about products, services or industry best practice and, if applicable, that communications is documented; or~~
 - ~~ii) Responds to a communication initiated by an employee of the State agency for the purposes of providing information to evaluate new products, trends, services or technologies. [30 ILCS 500/50-10.5(e)]~~
 - ~~iii) Has an existing contract with the State for the same products that are the subject of the solicitation.~~~~
- j) Pre-Solicitation Request for Information
When the SPO does not have sufficient information about available supplies or services to issue a solicitation, he or she may issue a pre-solicitation request for information inviting vendors to submit non-price information about the availability of specified types of supplies and services. Vendors may be provided an opportunity to comment on the RFI itself and make non-proprietary suggestions as to the scope and information being requested that would facilitate the best possible responses from the vendor community. Public notice of the pre-solicitation request for information shall be published in the Bulletin at least 14 days before the date set for the receipt of information. The submission of information by a vendor in response to a pre-solicitation request for information is not a prerequisite for that vendor to respond to a subsequent solicitation for the types of supplies and services for which information was solicited, and the

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issuance of a pre-solicitation request for information does not commit the State agency to make any procurement of supplies or services of any kind. Confidential information will not be accepted from a vendor in response to a pre-solicitation request for information. All information received through a pre-solicitation request for information will be available for public review.

- k) *State contracts for the procurement of freight, small package delivery, and other cargo shipping and transportation services shall require providers to report, using generally accepted reporting protocols adopted by the Illinois Environmental Protection Agency for that purpose:*
- 1) *the amount of energy the service provider consumed to provide those services to the State and the amount of associated greenhouse gas emissions, including energy use and greenhouse gases emitted as a result of the provider's use of electricity in its facilities;*
 - 2) *the energy use and greenhouse gas emissions by the service provider's subcontractors in the performance of those services. [30 ILCS 530/10]*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART I: CONTRACTS

Section 1.2055 Types of Contracts

- a) **Scope**

This Section contains descriptions of types of contracts and limitations as to when they may be utilized by the State in its procurements. Types of contracts not mentioned in this Section may also be utilized with the approval of the SPO.
- b) **Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting**

The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.

 - 1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.

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- 2) A percentage mark-up from the cost of a supply or service selected by the State or another vendor under contract to the State is not a cost-plus-a-percentage-of-cost contract.
 - 3) A percentage mark-up from the cost of parts needed in relation to a contract for services does not convert the services contract to a prohibited cost-plus-a-percentage-of-cost contract, provided the parts supplied under the cost-plus-a-percentage-of-cost method do not exceed 20% of the value of the contract.
- c) Types of Fixed-Price Contracts
- 1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.
 - 2) Fixed-Price Contract with Price Adjustment
 - A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:
 - i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);
 - ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils and dental gold alloy); and
 - iii) in requirement contracts in which a vendor is selected to provide all of the State's needs for the items specified in the

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contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

- B) If the contract permits unilateral action by the vendor to bring about the condition under which a price increase may occur, the State shall have the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts

1) Determination Prior to Use

- A) The State agency must submit to the SPO a justification for using any type of cost-reimbursement contract. This justification must be sufficient to show that such a contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the items through any other type of contract. The SPO will consider the justification and any other relevant factors before making a written determination to authorized use of the cost-reimbursement contract.

- B) ~~Any reimbursement~~ Reimbursement of travel expenses authorized in the solicitation and the terms of the contract may not exceed the in accordance with applicable travel control board regulations ~~is authorized without further determinations.~~

- 2) Cost-Reimbursement Contract. A cost-reimbursement contract provides that the vendor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee. These contracts establish an estimate of total cost and must establish a ceiling that a vendor may not exceed without the approval of the SPO.

- 3) Cost-Plus-Fixed-Fee Contract. This cost-reimbursement type contract provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the

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time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract.

- 4) Cost Incentive Contracts
 - A) General. A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the vendor controls cost in the performance of the contract).
 - B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The vendor is obligated to complete performance of the contract and, if actual costs exceed the ceiling price, the vendor suffers a loss.
 - C) Cost-Reimbursement Contract with Cost-Incentive Fee. In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the

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maximum amount that the State is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

- e) Performance Incentive Contracts
In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the State to a price decrease.
- f) Time and Materials Contracts; Labor Hour Contracts
Time and materials contracts provide for an agreed basis for labor performed and payment for materials supplied ~~and labor performed~~. Labor hour contracts provide only for the payment of labor performed. A time and materials contract is typically used when it is not possible at the time of posting the solicitation to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Appropriate contract administration by the State agency is required to give reasonable assurance that efficient methods and effective cost controls are being used. The contracts shall, ~~to the extent possible,~~ contain a stated ceiling or an estimate that shall not be exceeded without prior ~~SPO~~State approval. If the stated ceiling or estimate is exceeded, a change order shall be executed to memorialize the transaction if required by law.
- g) ~~Definite Quantity and~~ Indefinite Delivery~~Quantity~~ Contracts
- 1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services ~~either~~ at specified times or when ordered, with deliveries or performance scheduled at designated locations upon order. A definite quantity contract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the contract period.
 - 2) Indefinite Quantity. An indefinite quantity contract is a contract for an

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indefinite amount of supplies or services ~~to be~~ furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an ~~indefinite estimated~~ quantity ~~contract is~~ based on historical usage or the best information available as to quantity ~~asis~~ stated in the solicitation and is not a guarantee of a quantity to be ordered. The contract may provide a minimum quantity the State is obligated to order and may also provide for a maximum quantity provision that limits the State's ability to order. If an estimated quantity is identified in the contract or the notice of award published in the Illinois Procurement Bulletin, the contract identifies an estimated quantity, the State agency may order up to 20% more than the estimate without SPO approval~~additional procurement authorization or activity~~.

- 3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the State to order all the actual requirements of designated State agencies during a specified period of time, with deliveries or performance scheduled at designated locations upon order. If identified in the solicitation as a requirements contract, all needed quantity, regardless of any stated estimate, must be ordered from that contract. A requirements contract shall state a realistic estimated total quantity in the solicitation and resulting contract, but this is not a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal.

- h) Leases
A lease is a contract for the use of supplies or real property under which title will not pass to the State at any time, except pursuant to an option to purchase.
- i) Recovery Contracts
Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.
- j) Option Provisions
A solicitation or contract may contain options for renewal, extension or purchase and shall also include the requirements for exercising this option, and shall determine the term and the price or shall include the formula for establishing the

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price. Contracts based on a solicitation may include only those options included in the solicitation, and the options shall be included as required terms in the contract. Exercise of options shall be performed in accordance with the contractsolicitation, the Code and other provisions of this Part. Failure to include the options in the contract shall render the option provisions void.

- k) State Produced Supplies and Services
Notwithstanding any provision in any contract, supplies or services available in-house or from State programs, such as the Illinois Correctional Industries Programs, may be ordered without violating any contract.
- l) Extraordinary Quantities
Notwithstanding any provision in any contract, the State reserves the right to take bids separately if a particular quantity requirement arises that exceeds the State's normal needs or ordering requirements.
- m) Energy Conservation
State agency procurements of energy conservation measures, including guaranteed energy savings contracts, shall be made in accordance with the Code and this Part, except as otherwise authorized by the Code.
- n) Sale of Advertising in State Publications
 - 1) Pursuant to Section 20-110 of the Code, an SPO may sell ads or advertising space in certain State publications.
 - 2) These arrangements shall be made pursuant to specifications included in an IFB or, if appropriate, an RFP.
 - 3) The advertising in, or authorized use of, State publications shall be appropriate to the type of publication and the program operations of the State agency.
 - 4) This procedure is authorized in conjunction with, for example, publications that promote tourism, conservation, recycling and the State Fairs. The executive head of the State agency must concur in writing for the State agency to accept advertising from a person the State agency regulates.

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- 5) Proceeds from the sale of the advertisements shall be paid as stated in the IFB or RFP, including, but not limited to, the following:
- A) to the General Revenue Fund;
 - B) to a special fund authorized to receive the proceeds;
 - C) as free or additional copies; or
 - D) directly to the printer by the advertiser.
- o) Contracting for Installment Purchase Payments, Including Interest
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2060 Duration of Contracts – General

- a) General
The term of a contract, including potential renewals, may not exceed 10 years except:
- 1) A software license designated as a perpetual license is not considered a multi-term contract; it is instead a one-time purchase.
 - 2) The length of a lease for real property or capital improvement shall be in accordance with Section 40-25 of the Code.
- b) Subject to Appropriation
Each contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend a contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay that obligation or if funds needed are insufficient for any reason. Each contract payable in whole or in part by any funds appropriated by the Illinois General Assembly shall recite that the contract is subject to termination and cancellation for lack of, or insufficiency in, funding. A vendor will be notified in

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writing by the State agency of a failure to receive or a reduction or decrease in any appropriation affecting the contract. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.

c) Conditions for Use of Multi-Year Contracts

A multi-year contract may be used when:

- 1) special production of definite quantities or the furnishing of long-term services is required to meet State needs; or
- 2) a multi-year contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in State procurement. The following factors are among those relevant to such a determination:
 - A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping costs during the period of contract performance;
 - B) lower production costs because of a larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
 - C) stabilization of the vendor's work force over a longer period of time may promote economy and consistent quality; or
 - D) the cost and burden of contract solicitation, award and administration of the procurement may be reduced.

d) Multi-Year Contract Procedure

The solicitation shall state:

- 1) the proposed term;
- 2) the amount of supplies or services required for the proposed contract period;

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- 3) the type of pricing requested (e.g., firm for term); and
 - 4) how award will be determined.
- e) Renewals
- 1) The initial term of a contract plus available renewals may not exceed 10 years. When the original ~~contract procurement~~ specifically ~~call sealed~~ for an initial term plus renewals, the renewals may be exercised without further procurement activity, except for the publication of the renewal in the Bulletin as required by Section 15-25 of the Code and Section 1.1525 of this Part and subject to review by the PPB under Section 5-30 of the Code. The renewal terms and conditions shall not change except as provided in the contract (such as price escalations tied to an index). Renewal options may be exercised by the State or by mutual agreement, but shall not be exercised solely at the option of the vendor. Any renewal that requires modification to a material term or condition of the contract shall be treated as a new contract and shall be subject to competitive procurement procedures established by the Code and this Part.
 - 2) ~~A renewal may only be entered into if authorized by the the original contract. When the original procurement was silent as to renewals, the renewal must be procured using one of the methods of source selection authorized by the Code and this Part. The renewal shall start a new term not to exceed 10 years, except the term of a sole source contract renewal shall include previous sole source contracts and shall in total not exceed 10 years.~~
 - 3) When a renewal will result in the total term, counting the initial term and any previous renewals, exceeding 10 years, the State agency's need must be procured using one of the methods of source selection authorized by the Code and this Part.
 - 4) Renewals must be fully executed on or before expiration of the current contract term. If the renewal is not exercised prior to expiration of the current contract term, the supplies and services must be procured using one of the methods of source selection authorized by the Code and this Part.

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- 5f) Filing of Proposed Renewals and Extensions Exceeding \$249,999
Prior to executing a renewal or extension with a cost estimated to exceed \$249,999, the proposed renewal or extension must be submitted to PPB. The PPB shall have up to 30 days to review and comment on the proposal. The SPO assigned to the State agency may request a waiver of the review for reasons set forth in Section 20-60(c) of the Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2067 Contract Amendments and Change Orders

- a) Contract amendments memorialize actions authorized by specific language in the contract (e.g., exercise of an option or showing price decrease or increase based on CPI) or memorialize non-material changes (e.g., change in names of notice contacts or number of periodic status meetings).
- b) Change Orders
- 1) A change order is defined in Section 1.15. Renewals, change of a vendor's name, and orders against master contracts are not change orders.
 - 2) Change orders that increase or decrease the cost of a contract or an estimated contract by a total of \$10,000 or more, or the time of completion by a total of 30 days or more, must be accompanied by a written determination that includes a statement that: *the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed; the change is germane to the original contract as signed; or the change order is in the best interest of the State.* [720 ILCS 5/33E-9] Agencies may not divide change orders into smaller parts to avoid requirements for written determinations or publication.
 - 3) A change order shall be executed by the State agency and vendor evidencing the change. All changes that require a written determination as provided in subsection (b)(2) shall be approved by the SPO and published on the Illinois Procurement Bulletin in advance of execution of the change order.
 - 4) A change order to a contract for professional or artistic services may not:

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- A) result in an increase in the amount paid under the contract by more than 5% of the initial award; or
- B) extend the contract term beyond the time reasonably needed for a competitive procurement by more than two months.
- 5) The total contract term, including the initial term, renewals, extensions and change orders shall not exceed 10 years. Any change order that would extend the total term beyond 10 years is void. Any continuing need for supplies and services must be procured using one of the methods of source selection authorized by the Code and this Part.
- 6) Prior to executing a change order with a cost estimated to exceed \$249,999, the proposed change order must be submitted to PPB. The PPB shall have up to 30 days to review and comment on the change order. The SPO assigned to the State agency may request a waiver of the review for reasons set forth in Section 20-60(c) of the Code.

(Source: Added at 38 Ill. Reg. _____, effective _____)

SUBPART J: PROCUREMENT FILES

Section 1.2080 Public Procurement File

- a) *A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids and proposals, all evaluation materials, score sheets and all other documentation related to or prepared in conjunction with evaluation, negotiation and the award process. The procurement file shall contain a written determination, signed by the SPO, setting forth the reasoning for the contract award decision. The public procurement file shall not include trade secrets or other competitively sensitive, confidential or proprietary information. The procurement file shall be open to public inspection within 7 days following award of contract. [30 ILCS 500/20-155(b)]*
- b) The procurement files shall be maintained by or under the jurisdiction of the CPO-GS.

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- c) Documentation of Procurement Actions
- Each purchasing agency, under the direction of the SPO, shall maintain in the procurement or associated contract file all substantive documents and records of communications that pertain to the procurement and any resulting contract. This shall include, as applicable, but is not limited to:
- 1) The form of decision memo showing approvals to proceed at all stages;
 - 2) Procurement Bulletin Postings;
 - 3) Solicitation document (e.g., IFB or RFP) and all amendments, clarifications and best and final~~Best & Final~~ requests;
 - 4) Vendors' responses, including clarifications and responses to best and final~~Best & Final~~ requests (losing responses may be stored elsewhere);
 - 5) Evaluation material (e.g., scoring guidelines and forms; completed score sheets for individual evaluators, including notes; evaluation committee's combined score sheets; evaluation committee's recommendation; and management's decision);
 - 6) Protest and resolution;
 - 7) Contract and any order, change order, amendments, renewal or extension;
 - 8) If conducted, contractor performance~~Contractor Performance~~ reviews;
 - 9) All information from subsections (c)(1) through (c)(8), less information exempt from disclosure under the Freedom of Information Act [5 ILCS 140] or other law (for example the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535], which exempts contractor performance reviews), shall be prepared and available for inspection and copying, with information from subsections (c)(1) through (c)(5) available within 7 business days following the award being posted to the Procurement Bulletin.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2084 Record Retention

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- a) Retention of Bulletin Information. Information published in the Bulletin shall be retained in electronic format for the current fiscal year plus one additional year, ~~and may be then~~ transferred to media storage and maintained for 13 years after which it may be disposed of in accordance with the State Records Act [5 ILCS 160], providing all audits have been completed and no litigation is pending or anticipated.
- b) Books and records that relate to performance of a State agency contract, including subcontracts, and that support amounts charged shall be maintained:
- 1) by a vendor, for 3 years from the date of final payment under the prime contract; and for such longer period of time as is necessary to complete ongoing or announced audits or to comply with federal requirements.
 - 2) by the State agency for 3 years from the date of final payment under the prime contract; and for such longer period of time as is necessary to complete ongoing or announced audits.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.2086 Filing with the Comptroller

- a) Filing with Comptroller
- 1) *Whenever a grant, defined pursuant to accounting standards established by the State Comptroller, or a contract liability, except for contracts paid for from personal services or contracts between the State and its employees to defer compensation in accordance with Article 24 of the Illinois Pension Code, exceeding ~~\$20,000~~~~\$10,000~~ is incurred by any State agency, a copy of the contract, purchase order, grant or lease shall be filed with the Comptroller within ~~30~~~~15~~ days *thereafter*. [30 ILCS 500/20-80(b)]*
 - 2) *For each State contract for goods, supplies, or services awarded on or after July 1, 2010, the contracting agency shall provide the applicable rate and unit of measurement of the goods, supplies, or services on the contract obligation document as required by the Comptroller. [30 ILCS 500/20-80(b)]*

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3) *Any cancellation or modification to any such contract liability shall be filed with the Comptroller within ~~30~~ days after its execution. [30 ILCS 500/20-80(b)]*

b) *Late Filing Affidavits*

When a contract, purchase order, grant or lease required to be filed by this Section has not been filed within 30 days after execution, the State agency must file with the Comptroller an affidavit, signed by the chief executive offer of the State agency or a designee, setting forth an explanation of why the contract liability was not filed within 30 days after the execution. A copy of this affidavit shall be filed with the Auditor General and the CPO-GS. [30 ILCS 500/20-80(c)]

c) *Timely Execution of Contracts*

1) *No voucher shall be submitted to the Comptroller for a warrant to be drawn for the payment of money from the State Treasury or from other funds held by the State Treasurer on account of any contract unless the contract is reduced to writing before the services are performed and filed with the Comptroller. Vendors shall not be paid for any goods that were received or services that were rendered before the contract was reduced to writing and signed by all the necessary parties. [30 ILCS 500/20-80(d)]*

2) *Upon request of the State agency and with justification required by the CPO-GS, the CPO-GS may request an exception to this subsection (c) by submitting a written statement to the Comptroller and Treasurer setting forth the circumstances and reasons why the contract could not be reduced to writing before the supplies were received or services were performed. A waiver of this subsection (c) must be approved by the Comptroller and Treasurer. ~~This~~ Section 20-80(d) of the Code does not apply to emergency purchases if notice of the emergency purchase is filed with the PPB and published in the Bulletin as required by the Code. [30 ILCS 500/20-80(d)]*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART M: CONSTRUCTION AND
CONSTRUCTION RELATED PROFESSIONAL SERVICES

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Section 1.3005 Construction and Construction Related Professional Services

- a) General Procedures
 - 1) In the case of contracts for construction of buildings or for other construction work in or about buildings or grounds where the entire estimated cost of the work exceeds the amount stipulated by Section 20-20 of the Code, prospective contractors employed in connection with those projects may be prequalified to determine their responsibility (for architects, engineers and land surveyors, see the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535]). If the total estimated cost of the work exceeds the amount stipulated by Section 30-30 of the Code, separate specifications shall be prepared for all equipment, labor and materials in connection with the following five subdivisions of work to be performed:
 - A) Plumbing.
 - B) Heating, piping, refrigeration and automatic temperature control systems, including the testing and balancing of such systems.
 - C) Ventilating and distribution systems for conditioned air, including the testing and balancing of those systems.
 - D) Electrical wiring.
 - E) General contract work.
 - 2) The specifications shall be drawn so as to permit separate and independent competitive bidding upon each of the above five subdivisions of work. All contracts awarded for any part of the work shall award the subdivisions separately to responsible and reliable contractors engaged in these classes of work. These contracts, at the discretion of the State agency, may be assigned to the successful bidder on the general contract work or to the successful bidder on the subdivision of work designated by the State agency prior to the bidding as the prime subdivision of work, with the provision that all payments will be made directly to the contractors for the five subdivisions upon compliance with the conditions of the contract. Any contract may be let for one or more buildings in any

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project to the same contractor. Specifications shall require, however, that, unless the buildings are identical, a separate price shall be submitted for each building. The contract may be awarded to the lowest responsible bidder for all of the buildings included in the specifications.

- b) Request for Payment Form Specified by the State Agency
To bill a State agency for remodeling, renovation or construction work done, the vendor must submit a payment request in the form specified by the State agency.
- c) Periodic Payments
When provided in the contract, periodic payments can be made during the course of the work, upon a certificate of a licensed architect or engineer indicating the proportionate amount of total work completed satisfactorily.
- d) Retained Percentage
When periodic payments are made and if specified in the contract, the State agency shall retain a fixed percentage of the contract price to insure faithful completion of the contract.
- e) Additional Work
No amount of funds, in addition to those provided for in a contract for repairs, maintenance, remodeling, renovation or construction, may be obligated or expended unless the additional work to be performed or materials to be furnished are germane to the original contract. Even if germane to the original contract, no additional expenditure or obligations may, in their total combined amount, be in excess of the percentages of the original contract amount as provided in Section 30-35(b) of the Code unless they have received the prior written approval of the construction agency. In the event the total of the combined additional expenditures or obligations exceeds the percentages of the original contract amount set forth in Section 30-35(b) of the Code, the construction agency shall investigate the additional expenditures or obligations in excess of the original contract amount and shall, in writing, approve or disapprove subsequent expenditures or obligations and state in detail the reasons for the approval or disapproval. Notices of additional expenditures or obligations in excess of the small purchase limit of Section 202-20 of the Code shall be published in the Bulletin.
- f) Improvements to Leased Real Estate

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The procedures set forth in this Part shall apply, as appropriate, to contracts for improvements to real estate leased to State agencies.

- g) Construction Manager Services
- 1) Procurement of Construction Manager Services, under the jurisdiction of the Capital Development Board (CDB) will be performed by CDB or through delegation from CDB.
 - 2) Construction Manager Services for projects not under the jurisdiction of CDB shall be procured by State agencies in accordance with [Article 20 of the Code Section 1.2035 of this Part](#).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section 1.4020 Request for Information-Real Property and Capital Improvement Leases

- a) RFI-Real Property Leases Form
- When required, an RFI-Real Property Lease shall be issued and include, but not be limited to, the following:
- 1) *The type of property to be leased;*
 - 2) *The proposed uses of the property;*
 - 3) *The duration of the lease;*
 - 4) *The preferred location of the property, including acceptable geographic boundaries;*
 - 5) *A general description of the configuration desired [30 ILCS 500/40-20(b)];*
 - 6) Special and standard lease terms and conditions, qualifications and responsibility requirements, disclosures and certifications;
 - 7) The address to which responses are to be sent; and

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- 8) The criteria for evaluating responses based on the minimum standards and conditions for occupancy.
- b) All required documents of the RFI-Real Property Leases will be available in electronic format from the Bulletin. Notice shall begin when first published electronically. RFI-Real Property Leases document packages may also be mailed to owners of property that may meet the State's needs after the RFI-Real Property Leases have been published in the Bulletin.
- c) Unless the RFI-Real Property Leases are exclusively designated to accept only electronically prepared documents, RFI-Real Property Leases document packages shall, at a minimum, include:
 - 1) Response forms and instructions for completing forms;
 - 2) A copy of spatial and performance guidelines required to meet the needs of the State agency to occupy the real property being procured; and
 - 3) The date and time responses must be submitted.
- d) **Public Notice**
Public notice of the RFI-Real Property Leases shall be published in the Bulletin at least 14 days before the date set forth in the request for receipt of responses and shall also be published in a similar manner in a newspaper of general circulation in the community or communities where the State agency is seeking space [30 ILCS 500/40-20(c)].
- e) **Response**
The RFI-Real Property Leases response shall consist of written information sufficient to show that the respondent can meet minimum criteria set forth in the RFI-RPL. [30 ILCS 500/40-20(d)] All responses to the RFI-Real Property Leases will be publicly opened on the announced date. Names of all parties submitting proposals will be made available to the public immediately following the opening of the proposals.
- f) **Negotiation and Determination**

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- 1) *The CPO-GS, SPO or designee may enter into discussions with respondents to the RFI-Real Property Leases for the purpose of clarifying State agency needs and the information supplied by the respondents, On the basis of the information supplied and discussions, if any, the CPO-GS, SPO or designee shall make a written determination identifying the responses that meet the minimum criteria set forth in the RFI-Real Property Leases. Negotiations shall be entered into with all qualified respondents for the purpose of securing a lease that is in the best interest of the State. [30 ILCS 500/40-20(d)] Site visits may be made as part of the discussion and/or negotiation process.*
 - 2) The CPO-GS reserves the right to reject any proposals and to request and evaluate "best and final" proposals. Best and final offers shall be sought after a written determination is made by the SPO or designee that it is in the best interest of the State to request best and final proposals. A best and final proposal shall not be requested from any vendor deemed non-responsive or who does not meet the minimum criteria set forth in the RFI.
- g) Contract Award, Reporting and Filing
- 1) The SPO or designee shall review all relevant information and shall recommend to the CPO-GS which proposal shall be accepted based on the evaluation of all responsive proposals. The CPO-GS shall make the final award, which will be published in the Bulletin. Notification of award will be sent to all respondents.
 - 2) When the lowest response by price is selected, a written report of the negotiation shall be retained in the lease files and shall include the reasons for the final selection.
 - 3) *When the lowest response by price is not recommended, the SPO or designee shall forward to the CPO-GS, along with the lease, notice of the identity of the lowest respondent by price and written reasons for the recommendation of a different award. The CPO-GS shall publish the written reasons for selection in the next volume of the Bulletin. [30 ILCS 500/40-20(d)] The written reasons for the selection of the vendor shall be retained in the lease files.*
- h) PPB Review

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PPB shall review any proposed lease of real property of more than 10,000 square feet or any proposed lease of real property with annual rent payments of \$100,000 or more. The PPB shall have 30 days to review the proposed lease. No contract may be entered into until the 30-day period has expired, unless the State agency requests in writing that the PPB waive the period and the PPB grants the waiver in writing. If the PPB does not object within 30 days, the proposed lease shall become effective. [30 ILCS 500/40-20(e)]

- i) State Agency Cooperation
A State agency shall provide any materials or provide any assistance the PPB determines is required for its review. PPB may request in writing from the State agency and the State agency shall promptly, but in no event later than 5 business days after receipt of the request, provide to PPB documentation of information in the possession of the State agency.
- j) Actions and determination made in this subsection shall be made in consultation with the Department of Central Management Services, the State agency responsible for the purchasing and leasing of real property as defined in 20 ILCS 405/405-300.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART O: PREFERENCES

Section 1.4530 Correctional Industries

The CPO-GS shall distribute to each SPO and State agency the list of items that must be purchased from Illinois Correctional Industries (ICI), as determined by the CPO-GS.

Procurement from ICI may be made without prior notice or competition.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.4535 Qualified Not-for-Profit Agencies for Persons with Severe Disabilities

- a) Purpose
Contracts with qualified not-for-profit agencies (sheltered workshops) under this Section should promote employment opportunities for persons with severe disabilities. In making a determination to purchase from a sheltered workshop, State agencies should review the number of jobs performed by persons with

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severe disabilities and the total amount of the contract. A reasonable amount of subcontracting is allowed under this Part to the extent it does not deter from promoting employment for persons with severe disabilities.

- ba) Use
The CPO-GS shall distribute to each SPO and State agency a list of supplies and services available from ~~qualified not for profit agencies for persons with severe disabilities (sheltered workshops)~~. Purchases may be made from sheltered workshops without prior notice or competition.
- c) Preference
The CPO-GS shall identify to each SPO and State agency the supplies or services for which preference must be given to sheltered workshops. Prior to conducting a competitive procurement or otherwise contracting for supplies or services on the preference list, the State agency shall contact one or more of the sheltered workshops that provide the needed supply or service and attempt to negotiate a fair and reasonable contract at a price not substantially more than had it been competitively bid. If negotiations fail or if circumstances suggest using a sheltered workshop is not reasonable, the SPO may authorize use of an alternative procurement method.
- db) Pricing Approval
Prior to contracting with a sheltered workshop, the State Use Committee (see Section 45-35(c) of the Code) must determine that the price is not substantially more than a competitively solicited price. The State Use Committee shall inform the State agency, in writing, of its determination.
- e) Procurement Code Requirements
Sheltered workshops that contract with the State must comply with all applicable provisions of the Illinois Procurement Code.
- f) Publication to Procurement Bulletin
Upon receipt of the State Use Committee written determination, the SPO shall publish notice of purchases in excess of the small purchase threshold to the Illinois Procurement Bulletin. An agency's decision to purchase from a sheltered workshop rather than issuing a competitive solicitation is not protestable.
- g) Contract Execution

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Once a State agency receives the written determination from the State Use Committee that the price of the proposed contract is not substantially more in price than a competitively solicited contract and the State agency has posted the notice of purchase from a sheltered workshop to the Procurement Bulletin, the SPO may authorize a State agency to enter into a contract with the sheltered workshop.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.4540 Gas Mileage and Flex-Fuel Requirements

- a) Specifications for new passenger automobile specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code. As used in this Section, passenger automobile does not include station wagons, vans, 4-wheel drive vehicles, emergency vehicles and police or fire vehicles. Passenger automobiles must achieve at least the minimum average fuel economy in miles per gallon imposed upon manufacturers of vehicles under Title V of the Motor Vehicle Information and Cost Savings Act (15 USC 2001).
- b) *All gasoline-powered vehicles purchased from State funds must be flexible fuel vehicles or fuel efficient hybrid vehicles. Any vehicle purchased from State funds that is fueled by diesel fuel shall be certified by the manufacturer to run on 5% biodiesel (B5) fuel. [30 ILCS 500/25-75].*
- c) Beginning January 1, 2016, 25% of all vehicles purchased with State funds shall be vehicles fueled by electricity, compressed natural gas, liquid petroleum gas, or liquid natural gas. This provision shall not apply to vehicles purchased by the Illinois Department of Corrections or the Illinois State Police.
- de) The CPO-GS or SPO may exempt a procurement from the requirements of subsections (a), ~~and~~ (b) and (c) when a Statean agency demonstrates a need for a non-compliant vehicle in writing.
- ed) *In awarding contracts requiring the procurement of vehicles, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or biodiesel fuels produced from Illinois soybeans. [30 ILCS 500/45-60]*
- fe) The CPO-GS may require use of a uniform form or format for the SPO's

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determination that an exemption is warranted.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.4545 Small Business

- a) **Set-Aside**

The CPO-GS may determine categories of construction, supplies or service procurements that will be set aside for small businesses in Illinois. A set-aside designation shall be for a stated period of time. An SPO may determine to set aside for small business individual contracts not in a set-aside category.
- b) **Small Business List**

The CPO-GS may develop his or her own list, or may use a list maintained by another State agency, of vendors that meet the criteria of small business. Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information as specified verifying that the vendor qualifies as a small business under this Part. A business that fits the definition of small on the day of award or proposal opening will be considered small for the duration of the contract. When utilizing vendor lists for soliciting small business vendors, all vendors shall be solicited under the commodity codes representing the supplies or services being solicited.
- c) **Required Use**

Any procurement proposed for set aside for small businesses shall be so identified in the Bulletin notice and the solicitation documents. Bids or proposals received from large businesses will be rejected as nonresponsive.
- d) **Withdrawal of Set-Aside**

If the SPO determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the SPO may reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with this Part but without the small business designation.
- e) **Criteria for Small Business**

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- 1) Unless the CPO-GS provides a definition for a particular procurement that reflects industrial characteristics, a small business is a business that is independently owned and operated and is not dominant in its field of operation~~one that meets the requirements of Section 45-45 of the Code.~~
 - A) A wholesale business is a small business if its annual sales for its most recently completed fiscal year do not exceed \$10,000,000.
 - B) A retail business or business selling services is a small business if its annual sales and receipts for its most recently completed fiscal year do not exceed \$6,000,000.
 - C) A manufacturing business is a small business if it employs no more than 250 persons. A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year. If a manufacturing business has been in existence for less than a full fiscal year, its average employment shall be calculated for the period through one month prior to the bid or proposal due date.
 - D) A construction business is a small business if its annual sales and receipts for its most recently completed fiscal year do not exceed \$10,000,000.
 - E) If a business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the higher of \$10,000,000 for a wholesaler, \$6,000,000 for a retailer, \$10,000,000 for a construction business, or the amounts shown in Section 45-45 of the Code. For example, a business that is both a retailer and a wholesaler may not have total sales exceeding \$16,000,000 and the retail component may not exceed \$6,000,000 and the wholesale component may not exceed \$10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed 250.
- 2) A small business in Illinois is defined as an entity that meets the criteria in

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subsection (e)(1) and is a sole proprietor whose primary residence is in Illinois or is a business incorporated or organized as a domestic corporation under the Business Corporation Act of 1983 [805 ILCS 5/1.80] or is a business organized as a domestic partnership under the Uniform Partnership Act of 1997 [805 ILCS 206], or a business organized as a domestic limited partnership under the Uniform Limited Partnership Act of 2001 [805 ILCS 215], one that meets the definition of a "resident bidder" in Section 45-10 of the Code and either has headquarters in Illinois or has the majority of its workforce in Illinois.

- 3) A small business ~~that is~~ must not ~~be~~ dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
- 4) ~~If a business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the higher of \$10,000,000 for a wholesaler, \$16,000,000 for a retailer, \$10,000,000 for a construction business or the amounts shown in Section 45-45 of the Code. For example, a business that is both a retailer and a wholesaler may not have total sales exceeding \$16,000,000 and the retail component may not exceed \$16,000,000 and the wholesale component may not exceed \$10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed 250.~~
- 45) Businesses artificially divided to qualify as a small business will be disallowed. When computing the size status of a vendor and whether the vendor qualifies as a small business, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates, concerns and related entities shall be included. Concerns and related entities are affiliates of each other when ~~either~~ one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. In determining whether

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concerns and related entities are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management, identity of interest (substantially identical business or economic interests such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) and contractual arrangements. In determining whether affiliation exists, the CPO will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation. ~~A~~However, a franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

- f) Small Business Specialist
The CPO-GS shall designate a small business specialist who shall have the duties set forth in Section 45-45(e) of the Code and who shall also act as coordinator of small business. The designated small business specialist shall compile statistics provided by the State agency needed to make the small business annual report to the General Assembly required under Section 45-45(f) of the Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

Procurements made under the Code are subject to the requirements of the Business Enterprise for Minorities, Females and Persons with Disabilities Act [30 ILCS 575]. Each State agency is responsible for establishing goals or taking other action in furtherance of the Act.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART P: ETHICS

Section 1.5002 Continuing Disclosure; False Certification

- a) Multi-year contracts and subcontracts are subject to the annual recertification requirements of Section 50-2 of the Code. *Every person that has entered into a multi-year contract and every subcontractor with a multi-year subcontract subject to the Code, shall certify, by July 1 of each fiscal year covered by the contract*

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after the initial fiscal year, to the responsible CPO-GS whether it continues to satisfy the requirements of Article 50 of the Code pertaining to eligibility for a contract award. If a contractor or subcontractor is not able to truthfully certify that it continues to meet all requirements, it shall provide with its certification a detailed explanation of the circumstances leading to the change in certification status. A contractor or subcontractor that makes a false statement material to any given certification required under Article 50 of the Code is, in addition to any other penalties or consequences prescribed by law, subject to liability under the Illinois False Claims Act [740 ILCS 175] for submission of a false claim. [30 ILCS 500/50-2]

- b) The CPO-GS may prescribe a standard format for annual recertification and may include annual certifications as part of the prequalification process.
- c) Should a vendor be unable to certify that it continues to meet requirements of Section 50 of the Code, the relevant information shall be submitted to the SPO for review and disposition.
- d) Annual certification through the vendor portal pursuant to Section 1.535 satisfies the requirements of this Section.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5005 Bribery

- a) *Prohibition*
No person or business shall be awarded a contract or subcontract who:
 - 1) *Has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or*
 - 2) *Has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.*
- b) *Businesses*
No business shall be barred from contracting with any unit of State or local government, or subcontracting under such a contract, as a result of a conviction

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under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and:

- 1) *The business has been finally adjudicated not guilty; or*
- 2) *The business demonstrates to the governmental entity with which it seeks to contract or which is a signatory to the contract to which the subcontract relates, and that entity finds that the commission of the offense was not authorized, requested, commanded or performed by a director, officer or high managerial agent on behalf of the business, as provided in Section 5-4(a)(2) of the Criminal Code of ~~2012-1961~~ [720 ILCS 5].*
- c) *Conduct on Behalf of Business*
For purposes of this Section, when an official, agent or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.
- d) *Certification*
Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of the Code shall contain a certification by the contractor or the subcontractor, respectively, that the contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section, and acknowledges that the CPO-GS may declare the related contract void if any certifications required by this Section are false. If the false certification is made by a subcontractor, then the contractor's submitted bid and the executed contract may not be declared void, unless the contractor refuses to terminate the subcontract upon the State's request after a finding that the subcontractor's certification was false. A contractor or subcontractor who makes a false statement, material to the certification, commits a Class 3 felony. [30 ILCS 500/50-5]

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5010 Felons

- a) *Unless otherwise provided, no person or business convicted of a felony shall do business with the State of Illinois or any State agency, or enter into a subcontract,*

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from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. [30 ILCS 500/50-10]

- b) Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of the Code~~this Part~~ shall contain a certification by the bidder or contractor or subcontractor, respectively, that the bidder, contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges the CPO-GS may declare the related contract void if any of the certifications required by this Section are false. *If the false certification is made by a subcontractor, then the contractor's submitted bid and the executed contract may not be declared void, unless the contractor refuses to terminate the subcontract upon the State's request after a finding that the subcontractor's certification was false. [30 ILCS 500/50-10.5]*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5011 Debt Delinquency

- a) *No person shall submit a bid for or enter into a contract or subcontract if that person knows or should know that he or she or any affiliate is delinquent in the payment of any debt to the State, unless the person or affiliate has entered into a deferred payment plan to pay off the debt. [30 ILCS 500/50-11(a)] For purposes of this Section, terms shall have the meanings ascribed in Section 50-11 of the Code.*
- b) *Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of the Code shall contain a certification by the bidder, contractor or subcontractor, respectively, that the contractor or the subcontractor and its affiliate is not barred from being awarded a contract or subcontract under this Section and acknowledges that the CPO-GS may declare ~~the~~ related contract void if any of the certifications required by this Section~~completed pursuant to this subsection (b)~~ are false. *If the false certification is made by a subcontractor, then the contractor's submitted bid and the executed contract may not be declared void, unless the contractor refuses to terminate the subcontract upon the State's request after a finding that the subcontractor's certification was false.* [30 ILCS 500/51-11(b)]*

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5012 Collection and Remittance of Illinois Use Tax

- a) *No person shall enter into a contract with a State agency or enter into a subcontract unless the person and all affiliates of the person collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act [35 ILCS 105], regardless of whether the person or affiliate is a "retailer maintaining a place of business within this State" as defined in Section 2 of the Use Tax Act. [30 ILCS 500/50-12] For purposes of this Section, terms shall have the meanings ascribed in Section 50-12 of the Code.*
- b) *Every bid submitted and contract executed by the State and every subcontract subject to Section 20-120 of the Code shall contain a certification by the bidder, contractor or subcontractor, respectively, that the bidder, contractor or subcontractor is not barred from bidding for or entering into a contract under subsection (a) and acknowledges that the CPO-GS may declare the related contract void if any of the certifications completed pursuant to this subsection (b) are false. If the false certification is made by a subcontractor, then the contractor's submitted bid and the executed contract may not be declared void, unless the contractor refuses to terminate the subcontract upon the State's request after a finding that the subcontractor's certification was false. [30 ILCS 500/50-12]*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5013 Conflicts of Interest Prohibited by the Code

- a) Any bid, proposal, offer of acceptance, or proposed contract must be reviewed for conflicts of interest pursuant to Section 50-13 of the Code. If a conflict is found, no contract will be executed unless the CPO requests and is granted an exemptiona waiver is granted under Section 50-20 of the Code by the Executive Ethics Commission under Section 50-20 of the Code.
- 1) Office or Employment
It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives

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compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person, to have or acquire any contract, or any direct pecuniary interest in the contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority. [30 ILCS 500/50-13(a)]

2) Financial Interests

It is unlawful for any firm, partnership, association, or corporation, in which any person as described in subsection (a)(1) is entitled to receive more than 7½% of the total distributable income or an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein. [30 ILCS 500/50-13(b)]

3) Combined Financial Interests

It is unlawful for any firm, partnership, association or corporation, in which any person listed in subsection (a)(1) together with his or her spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income or an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein. [30 ILCS 500/50-13(c)]

- b) For the purpose of this Part, an individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise received a direct financial benefit in conjunction with performance of a contract, including finders fees and commission payments.
- c) For the purpose of this Part, "distributable income" means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, which is distributed to those entitled to receive a share of the income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income the entitlement shall be determined at the end of the company's most recent fiscal year.
- d) This Section applies to those elected to an office of Illinois State government.

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This Section does not apply to those elected to local government offices, including school districts, nor does it apply to those elected to Federal offices in this State. This Section does not apply to contracts with licensed professionals, provided those contracts are competitively bid. For purposes of this Section, "bid" means procured pursuant to the competitive procedures identified in Subpart E of this Part.

- e) Additional exemptions to the application of this Part are listed in Section 50-13(f) of the Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5014 Environmental Protection Act Violations

- a) *Unless otherwise provided, no person or business found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act [415 ILCS 5] shall do business with the State of Illinois or any State agency or enter into a subcontract from the date of the order containing the finding of violation until 5 years after that date, unless the person or business can show that no person involved with the violation continues to have any involvement with the business. [30 ILCS 500/50-14(a)]*
- b) *A person or business otherwise barred from doing business with the State of Illinois and any State agency or any subcontractors under the Code by subsection (a) may be allowed to do business with the State of Illinois or any State agency if it is shown that there is no practicable alternative to the State to contracting with that person or business. [30 ILCS 500/50-14(b)]*
- c) Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of the Code shall contain a certification by the bidder, contractor or subcontractor, respectively, that the bidder, contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the contracting State agency may declare the related contract void if any of the certifications completed pursuant to this subsection (c) are false. *If the false certification is made by a subcontractor, then the contractor's submitted bid and the executed contract may not be declared void, unless the contractor refuses to terminate the subcontract upon the State's request after a finding that the subcontractor's certification was false. [30 ILCS 500/50-14(c)]*

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5020 Exemptions

If the SPO finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the SPO shall forward to the CPO-GS the name of the vendor and a description of the proposed contract and of the ~~potential~~ conflict, and shall state why an exemption should be granted. State agencies shall determine, and include documentation of, the State agency's position on the conflict. The CPO-GS shall decide whether to disapprove the contract or submit the files to the Executive Ethics Commission to determine whether an exemption should be granted in accordance with Section 50-20 of the Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5021 Bond Issuances

- a) Definitions. For the purposes of this Section 1.5021, the following listed terms shall have the same meaning as in the Code and as further defined in this subsection (a).
- 1) "Entity" means brokers, dealers and municipal securities dealers as defined in, and subject to, Rule G-37 and Rule G-38 of the Municipal Securities Rulemaking Board (MSRB).
 - 2) "*Independent Consultant*" means a person used by the entity to obtain or retain securities business through direct or indirect communication by the person with a State official or employee (including an official or employee of the State agency) on behalf of the entity when the communication is undertaken by the person in exchange for or with the understanding of receiving payment from the entity or other person. Independent Consultant does not include:
 - A) *a finance professional employed by the entity; or*
 - B) *a person whose sole basis of compensation from the entity is the actual provision of legal, accounting or engineering advice, services or assistance in connection with the securities business that the entity seeks to obtain or retain. [30 ILCS 500/50-21(a)]*

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- 3) "Issuance of bonds or other securities by the State agency" means the purchase or placement on other than a competitive bid of a primary offering of the State agency's general obligation municipal securities.
- 4) "Issuance by the State agency" means the issuance of bonds or other securities by the State agency when acting as a governmental issuer specified in MSRB Rule G-37.
- 5) "MSRB Rule G-37" and "MSRB Rule G-38" refer to the Municipal Securities Rulemaking Board rules in effect on August 6, 2012, or any successor rules adopted by the MSRB on the same subject after August 6, 2012, as provided in Section 50-21(b) and (c) of the Code. MRSB Rule 37 went into effect April 25, 1994, and MRSB Rule G-38 went into effect on August 29, 2005. Copies of G-37 and G-38 are available to the public at the MSRB website: <http://www.mrsb.org>, at the United States Security and Exchange Commission's website: <http://sec.gov>, and at the office of the CPO-GS. (See 30 ILCS 500/50-21(b) and (c).)

b) Use of Independent Consultants

- 1) Section 50-21(a) of the Code prohibits the State agency from entering into a contract with respect to the issuance of bonds or other securities by the State agency with any entity that uses **anas** independent consultant to obtain or retain securities business through direct or indirect communications by the person with a State official or employee, including an official or employee of the State agency. Use of an independent consultant is also prohibited by MSRB Rule G-38. Every contract between the State agency and an entity relating to the issuance of bonds or other securities by the State agency shall include a certification that the entity did not use an independent consultant to obtain the contract and that the entity has not been found to have knowingly violated in Illinois MSRB Rule G-38 (or any successor rule) with respect to the prohibition on obtaining or retaining municipal securities business.
- 2) In the event a federal agency finds that an entity has knowingly violated MSRB Rule G-38 in the State of Illinois, the CPO-GS shall bar that entity from participating in any contract with respect to the issuance of bonds or

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other securities by any of the State agencies for a period of one year as specified in Section 50-21(c) of the Code.

- c) Prohibited Political Contributions
- 1) Section 50-21(b) of the Code requires that every contract between the State agency and an entity relating to the issuance of bonds or other securities by the State agency include a certification that the entity is, and will remain for the duration of the contract in compliance with the MSRB Rule G-37 requirement for reporting political contributions and that the entity has not been found to have knowingly violated in Illinois MSRB Rule G-37 (or any successor rule) with respect to the making of prohibited political contributions or payments. Failure to remain in compliance throughout the term of the contract shall make the contract voidable by the CPO-GS.
 - 2) In the event a federal agency finds that an entity has knowingly violated MSRB Rule G-37 in the State of Illinois by making prohibited political contributions, the CPO-GS shall impose a penalty that is at least twice the fine assessed by the federal agency. In addition, the CPO-GS shall bar the entity from participating in any contract with respect to the issuance of bonds or other securities by any of the State agencies for a period of one year as specified in Section 50-21(c) of the Code.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

- a) For purposes of Section 50-35(a) of the Code, an "offer from responsive bidders or offerors" means only those offers that are received under Section 20-10, 20-15 or 20-35 or Article 35 of the Code.
- 1) Disclosures shall be obtained from all prime vendors when the value of a contract exceeds \$25,000.
 - 2) Disclosures are not required in sole source and emergency contracts, but shall be obtained in whole or in part when practical and when the value exceeds \$25,000.

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- 3) Disclosures shall be obtained for small purchases exceeding \$25,000. If a small purchase could qualify as an emergency or sole source, disclosures shall be obtained when practical.
- 4) In circumstances in which the vendor refuses or is unable to provide disclosures, the SPO may authorize the State agency to move forward with the transaction. In granting that authorization, the State agency must provide documentation of efforts to obtain compliance in a form prescribed by the PPB and CPO-GS.
- b) For purposes of:
- 1) Section 50-35(b) of the Code, "parent entity" means an entity that owns 100% of the bidding entity.
 - 2) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, that is by and between the State and the named individual.
- c) "Distributable" or "distributive income" means the income of a company after payment of all expenses, including employee salaries and bonuses, and retained earnings that is distributed to those entitled to receive a share of that income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income, the entitlement shall be determined at the end of the company's most recent fiscal year.
- d) "Personal services" shall be any contract for services subject to the Code, including, by way of example, professional and artistic services, repair services, cleaning and guard services, but excludes contracts with employees who are exempt from the Code under Section 1-10(b)(4).
- e) "Subject to federal 10K reporting" means subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. "10K disclosure" means a report required under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 USC 78a et seq.).
- f) New disclosures are required on contract renewals. New disclosures are not required for contract amendments.

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g) 10K Disclosures

- 1) Any vendor subject to federal 10K reporting requirements may submit its 10K to the State in satisfaction of the disclosure requirement of Section 50-35(b) of the Code. The vendor may be required to identify the specific sections or parts in the 10K disclosure containing information, if any, pertaining to those who have an ownership interest or an interest in the distributable income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the State is not in the 10K, or in a document that may be submitted to the SEC in conjunction with, or in lieu of, the 10K, then that additional documentation shall be provided as well.
- 2) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of the CPO-GS or SPO shall be investigated.
- 3) In circumstances in which a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code, the SPO or designee may consider information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure in determining whether a potential conflict of interest exists.

h) Form of Disclosure

- 1) *The form of disclosure shall be prescribed by the CPO-GS and shall include at least the names, addresses and dollar or proportionate share of ownership of each person identified in this Section, their instrument of ownership or beneficial relationship, and notice of any potential conflict of interest resulting from the current ownership or beneficial relationship of each person identified in this Section having any of the following relationships:*
 - A) *State employment, currently or in the previous 3 years, including contractual employment of services;*

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- B) *State employment of spouse, father, mother, son or daughter, including contractual employment for services in the previous 2 years;*
- C) *Elective status: the holding of elective office in the State of Illinois, the government of the United States, any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois currently or in the previous 3 years;*
- D) *Relationship to anyone holding elective office currently or in the previous 2 years, including spouse, father, mother, son or daughter;*
- E) *Appointive office: the holding of any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois that entitles the holder to compensation in excess of expenses incurred in the discharge of that office currently or in the previous 3 years;*
- F) *Relationship to anyone holding appointive office currently or in the previous 2 years, including spouse, father, mother, son or daughter;*
- G) *Employment, currently or in the previous 3 years, as, or by, any registered lobbyist of the State government;*
- H) *Relationship to anyone who is or was a registered lobbyist in the previous 2 years, including spouse, father, mother, son or daughter;*
- I) *Compensated employment, currently or in the previous 3 years, by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections;*
- J) *Relationship to anyone, including spouse, father, mother, son or daughter, who is or was a compensated employee in the last 2*

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years of any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections. [30 ILCS 500/50-35(b)(1-10)]

- 2) *The disclosures required under this Section also include the name and address of each lobbyist required to register under the Lobbyist Registration Act [25 ILCS 170] and other agent of the bidder or offeror who is not identified under subsection (a) and who has communicated, is communicating, or may communicate with any State officer or employee concerning the bid or offer. The disclosure under this subsection (h)(2) is a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the contract if the bid or offer is successful. [30 ILCS 500/50-35(b-1)]*
- 3) *The disclosure required under this Section must also include, for each of the persons identified in subsection (h)(1) or (2), each of the following that occurred within the previous 10 years: debarment from contracting with any governmental entity; professional licensure discipline; bankruptcies; adverse civil judgments and administrative findings; and criminal felony convictions. The disclosure under this subsection (h)(3) is a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the contract if the bid or offer is successful. [30 ILCS 500/50-35(b-2)]*

i) Intent of Disclosure

The disclosure required in subsection (h) is not intended to prohibit or prevent any contract. The disclosure is meant to fully and publicly disclose any potential conflict to the CPO-GS, SPOs, their designees and executive officers so they may adequately discharge their duty to protect the State. [30 ILCS 500/50-35(c)]

1) Determination by Procurement Officer

~~When an alleged conflict of interest is identified~~ ~~When a potential conflict of interest is identified~~, discovered or reasonably suspected, it shall be reviewed by the CPO-GS or SPO, who will send the contract to the PPB. The PPB shall ~~recommend~~ ~~recommended~~ to the CPO-GS whether to allow or void the contract, bid, offer or subcontract weighing the best interest of the State of Illinois. If the CPO-GS disagrees with the PPB's

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~~recommendation to void a contract or void a bid or offer, the Executive Ethics Commission~~The CPO-GS will hold a hearing ~~if the PPB recommends to void a contract or void a bid or offer~~. No contract shall be awarded before a hearing if the PPB recommends a contract or bid or offer be voided. This written determination shall become a publicly available part of the contract, bid or proposal file.

- 2) Requirements for Reasonable Care and Diligence
These thresholds for disclosure do not relieve the CPO-GS, SPO or their designees from reasonable care and diligence for any contract, bid, offer or proposal. The CPO-GS, SPOs or their designees shall be responsible for using any reasonably known and publicly available information to discover any undisclosed potential conflict of interest and act to protect the best interest of the State of Illinois. [30 ILCS 500/50-35(e)]
- 3) Inadvertent or Accidental Failure to Fully Disclose
Inadvertent or accidental failure to disclose shall render the contract, subcontract, bid, proposal or relationship voidable by the CPO-GS if he or she deems it in the best interest of the State of Illinois and, at his or her discretion, may be cause for barring from future contracts, subcontracts, bids, proposals or relationships with the State for a period of up to 2 years. [30 ILCS 500/50-35(f)]
- 4) Intentional, Willful or Material Failure to Disclose
Intentional, willful or material failure to disclose shall render the contract, subcontract, bid, proposal or relationship voidable by the CPO-GS if he or she deems it in the best interest of the State of Illinois and shall result in debarment from future contracts, subcontracts, bids, proposals or relationships with the State for a period of not less than 2 years and not more than 10 years. Reinstatement after 2 years and before 10 years must be reviewed and commented upon by the CPO-GS, who must rule in writing whether and when to reinstate.
- 5) Other Procurements
In addition, all disclosures shall note any other current or pending contracts, proposals, subcontracts, leases or other ongoing procurement relationships the bidding, proposing, offering or subcontracting entity has with any other unit of State government and shall clearly identify the unit

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and the contract, proposal, lease or other relationship. [30 ILCS 500/50-35(h)]

- 6) Continuing Obligation
The contractor or bidder has a continuing obligation to supplement the disclosure required by this Section throughout the bidding process or during the term of any contract. [30 ILCS 500/50-35(i)]

j) **Hearing**
~~Any hearing required under Section 50-35 of the Code shall be conducted in accordance with Subpart W.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5037 Vendor Registration, Certification and Prohibition on Political Contributions

- a) Introduction
Illinois statute ~~[(10 ILCS 5/9-35 and 30 ILCS 500/20-160 and 50-37)]~~ restricts political contributions by vendors and affiliated entities; requires registration with the State Board of Elections (SBEL); ~~requires a copy of the registration certificate stamped by SBEL (Registration Certificate) to be submitted with bids/proposals and contracts;~~ and requires solicitation and contract certifications relative to the requirements of the statutes. This Section supplements requirements found in statutes and does not excuse compliance with any of those requirements.
- b) General Registration Requirements
- 1) These requirements apply to contracts, bids and proposals that are subject to the Code:
- A) Bids/proposals referenced in this Section are those submitted in response to a competitive solicitation that is posted to the Bulletin on or after January 1, 2009, regardless of the value assigned to the procurement.
- B) Bids and proposals include pending bids and proposals.
- C) These requirements generally apply to a vendor whose existing

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State contracts have an aggregate value in excess of \$50,000, or whose aggregate value of bids/proposals for State contracts exceeds \$50,000, or whose aggregate value of State contracts and bids/proposals exceeds \$50,000.

- D) This value is calculated on a calendar-year basis.
- 2) On a calendar-year basis, each vendor or potential vendor must keep track of the value of contracts and bids/proposals. Vendors must register with SBEL when the vendor determines that the value of the contracts and bids/proposals meets the threshold for registration.
- 3) An "executive employee" means:
- A) the President, Chairman of the Board, Chief Executive Officer and/or other individuals who fulfill equivalent duties as the President, Chairman of the Board, or Chief Executive Officer; and/or
- B) any employee whose compensation is determined directly, in whole or in part, by the award or payment of contracts by a State agency to the entity employing the employee, irrespective of the employee's title or status in the business entity. For the purposes of this subsection (b)(3)(B), compensation determined directly by award or payment of contracts means a payment over and above regular salary that would not be made if it were not for the award of the contract.
- c) Bids and Proposals
- 1) In order to be considered for award, a vendor who meets the requirements for registration must be registered with SBEL as of the date the bid or offer is due and shall provide a copy of the Registration Certificate or be able to produce the Registration Certificate on that date.~~A copy of the Registration Certificate must be submitted with bids/proposals. The CPO-GS may establish a prequalification procedure allowing advance submission of the SBEL certificate. A vendor who complies with the prequalification procedure shall be deemed to have submitted the SBEL certification with the bid or proposal.~~

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- 2) ~~If a vendor is not registered by the date the bid or offer is due, the SPO shall reject the bid or offer as non-responsive. If the Registration Certificate is not timely submitted, the procuring agency shall reject the bid/proposal.~~
- 3) ~~Prior to award or execution of contract, the SPO or a designee of the SPO shall verify that the vendor who meets the requirements for registration has registered with SBEL and shall document vendor compliance. The procuring agency shall not reject a bid/proposal if absence of the Registration Certificate is the result of delay or error by the State, but shall require the Registration Certificate before making an award.~~

d) Contracts

~~Documentation of vendor compliance~~ A copy of the Registration Certificate must be in the procurement file in relation to any contract for which a vendor is required to register as set forth in this subsection (d), unless the vendor certifies it is not required to register.

- 1) For contract renewals and extensions, if the value of the renewal or extension by itself, or in combination with the contract being renewed/extended and other contracts and bids/proposals exceeds \$50,000, the vendor must provide documentation of vendor compliance upon request ~~the Registration Certificate~~ and make the appropriate contract certification, if it has not already done so. The Registration Certificate or other evidence of vendor compliance may be provided by reference to and incorporation of the vendor's prequalification by the CPO-GS.
- 2) A State agency shall identify in the solicitation whether the contract is estimated to exceed \$50,000 annually. Vendors submitting bids or offers for master contracts estimated to exceed \$50,000 annually regardless of consumption are required to register with SBEL.
- 3) For indefinite quantity/estimated value contracts that are not estimated to exceed \$50,000 annually, a vendor who is otherwise not required to register shall register with SBEL when the value of orders placed pursuant to an indefinite/estimated value contract plus all other contracts and bids/proposals exceeds \$50,000. The vendor shall register with

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SBEL within 10 business days after orders exceed \$50,000.

- 43) For change order~~contract amendments~~, if the value of the change order amendment, by itself or in combination with the contract being renewed plus other contracts and bids/proposals, exceeds \$50,000, the vendor must provide the Registration Certificate or other evidence of vendor compliance upon request and make the appropriate contract certification, if it has not already done so.
- 54) Any contracts mistakenly executed in violation of this Section must be amended to include the contract certifications, and the vendor must supply the Registration Certificate or other evidence of vendor compliance upon request. If any violation by the vendor is not cured within 5 business days after receipt of notification of the violation, the contract is voidable by the State without penalty.
- 65) Contract certification required by Section 20-160 of the Code shall be included in or added to each contract that must be filed with the State Comptroller pursuant to Section 20-80 of the Code and those written two-party contracts that need not be filed with the Comptroller. Agencies may require written confirmation of the rule-imposed certification at any time.
- e) Voidable contracts
Every solicitation issued and contract executed by the State on or after January 2, 2009, shall contain a statement that the contract is voidable under Section 50-60 if the bidder, offeror or contractor fails to comply with Section 20-160 of the Code.
- f) Prohibited Political Contributions
- 1) Upon discovery of a political contribution that is potentially prohibited by Section 50-37 of the Code, the CPO shall send a letter requesting response from the business entity that made the potentially prohibited contribution within 5 business days acknowledging or denying that the contribution was prohibited.
- 2) If the CPO determines that a political contribution was prohibited, all contracts held by the contributing business entity are voidable, and the

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CPO shall determine if the circumstances surrounding the prohibited political contribution warrant the voiding of any of these contracts.

- 3) If a business entity violates Section 50-37(b) of the Code three or more times within a 36 month period, the CPO shall void all contracts with the business entity and the business entity shall be prohibited from responding to any solicitation issued by any State agency or entering into a contract with any State agency for 3 years from the date of the last violation.
- 4) If the CPO determines that a prohibited political contribution is grounds to suspend a business entity pursuant to Section 1.5560(b), the business entity shall have the right to a hearing pursuant to Section 1.5560(g), to be conducted in accordance with Subpart V.

g) Notice

- 1) Notice of each violation of Section 50-37 and any penalty imposed for each violation shall be published on the Illinois Procurement Bulletin and in the Illinois Register.
- 2) The CPO shall directly notify a political committee in receipt of a prohibited political contribution that payment equal to the amount of the contribution is due the State of Illinois within 30 days after publication of the violation in the Illinois Register.
- 3) If an amount owed by a political committee as a result of a prohibited political contribution is not paid and is deemed uncollectible for any reason, notice of the political committee's nonpayment shall be published on the Illinois Procurement Bulletin and in the Illinois Register.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5039 Procurement Communication Reporting Requirement

- a) Reporting Requirement
Any written or oral communication received by a State employee *who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract and* that imparts or requests material information or makes a material argument regarding potential action

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concerning ~~an active~~ procurement matter, including, but not limited to, an application, a contract or a project, shall be reported to the Procurement Policy Board in accordance with rules of the Executive Ethics Commission (2 Ill. Adm. Code 1620). [30 ILCS 500/50-39(a)]

b) Excepted Communications

1) These communication do not include the following:

A) statements made by a person publicly in a public forum. However, communications made in a public forum, if made privately, must be reported;

B) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and

C) statements made by ~~at the~~ State employee ~~to of the agency;~~

i) ~~to~~ the ~~State employee's~~ Agency Head~~agency head;~~

ii) ~~or~~ other employees of that agency;

iii) ~~or to the~~ employees of the Executive Ethics Commission, including the CPO-GS, SPOs, PCMs and other CPO-GS staff; ~~or;~~

iv) ~~an employee of another State agency who, through the communication, is either:~~

• ~~exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the purchasing agency or the appropriate SPO; or~~

• ~~exercising oversight, supervisory, or management authority over the procurement in the normal course of business and as part of official responsibilities;~~

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- D) *unsolicited communications providing general information about products, services, or industry best practices before those products or services become involved in a procurement matter;*
- E) *communications received in response to procurement solicitations, including, but not limited to, vendor responses to a:*
- i) *RFI;*
 - ii) *RFP;*
 - iii) *Request for Qualifications;*
 - iv) *IFB;*
 - v) *small purchase, sole source, or emergency solicitation; or*
 - vi) *questions or answers posted to the Illinois Procurement Bulletin to supplement the procurement action, provided that the communications are made in accordance with instructions contained in the procurement solicitation, procedures, or guidelines;*
- D) *communications that are privileged, protected, or confidential under law; and*
- E) *communications that are part of a formal procurement process as set out by statute, rule, or the solicitation, guidelines, or procedures, including, but not limited to:*
- i) *the posting of procurement opportunities;*
 - ii) *the process for approving a procurement business case or its equivalent;*
 - iii) *fiscal approval;*

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- iv) *submission of bids;*
 - v) *the finalization of contract terms and conditions with an awardee or apparent awardee; and*
 - vi) *any other similar formal procurement process.*
- 2) The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of a contract.
- 3) *No trade secret or other proprietary or confidential information shall be included in any communication reported to the Procurement Policy Board. [30 ILCS 500/50-39(b)]*
- c) *When an oral communication made by a person required to register under the Lobbyist Registration Act is received by a State employee that is covered under this Section, all individuals who initiate or participate in the oral communication shall submit a written report to that State employee that memorializes the communication and includes, but is not limited to, the items listed in Section 50-39 of the Code. [30 ILCS 500/50-39(c)]*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5060 Prohibited Bidders and Contractors

- a) *Unless otherwise provided, no business shall bid or enter into a contract or subcontract if the business or any officer, director, partner, or other managerial agent of the business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 (PL 107-204) or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 [815 ILCS 5] for a period of 5 years from the date of conviction.*
- b) *Every bid submitted to and contract executed by the State and every subcontract subject to Section 20-120 of the Code shall contain a certification by the bidder, contractor, or subcontractor, respectively, that the bidder, contractor, or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the chief procurement officer shall declare the*

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related contract void if any of the certifications pursuant to this subsection (b) are false. [30 ILCS 500/50-10.5]

- c) A person or business that assists a State agency with writing specifications, developing evaluation criteria, or participating in evaluations of bids or proposals shall not submit a bid or proposal or receive a contract or subcontract for that procurement.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART S: PROTESTS

Section 1.5550 Protests

- a) Procurement-Related Protests Allowed
- 1) Any person may submit a protest related to the notice of the procurement, the solicitation document, any pre-bid/proposal meeting and any decision to reject a late bid or proposal.
 - 2) Any person who has submitted a bid or proposal may protest a decision to reject the person's bid or proposal or to award to another person.
- b) Protest Review Officer
The CPO-GS may appoint one or more Protest Review Officers (PRO) to consider the procurement-related protests and make a recommendation to the CPO-GS for resolution of the protest. The CPO-GS may adopt the recommendation or take other action.
- c) Submission of Protest
- 1) A protesting party must submit a protest in writing to the PRO identified in the solicitation document. Fax and email qualify as writing, but the PRO does not guarantee receipt using those means.
 - 2) The protest must be physically received by the PRO at the location specified. A postmark or other carrier mark prior to the due date and time is not sufficient to show physical receipt.

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- A) In regard to the solicitation notice or solicitation document including specifications, a protest must be received within 14 days after the date the solicitation was posted to the Bulletin and must be received by the PRO at the designated address before the date for opening bids or proposals.
- B) In regard to rejection of individual bids or proposals or awards, the protest must be received by close of business no later than 14 days after the protesting party knows or should have known of the facts giving rise to the protest to ensure consideration, and, in any event, must be received before execution of the applicable contract.
- C) The PRO, for good cause shown, or when he or she determines that a protest raises issues significant to the procurement system, may consider an untimely protest. Good cause may include, but is not limited to, instances in which the procurement file is not available in a timely manner to interested parties or when a FOIA request has not been responded to by a State agency in full or in part.
- 3) Any notice posted to the Illinois Procurement Bulletin establishes the "known or should have known" date for the subject matter of the notice.
- 4) Protests must be clearly marked on the delivery container, the fax cover sheet or the e-mail subject line.
- 5) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise and logically arranged, and should clearly state legally sufficient grounds of protest. The written protest shall include as a minimum the following:
- A) the name and address of the protesting party;
- B) identification of the procurement, and, if a contract has been awarded, its number or other identifier;
- C) a statement of reasons for the protest specifically identifying any alleged violation of a procurement statute, a procurement rule or the solicitation itself, including the evaluation and award (conclusions with supporting facts and arguments may not be

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sufficient); and

D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated. If submitting the protest by fax, supporting documentation over 20 pages in length may not be included without authorization. If the protest is by fax or e-mail, the protesting party may be required to submit documentation by mail or carrier within 2 business days after the request; and

E) specific relief sought.

6) The protesting party shall clearly identify any information in the protest that is confidential, proprietary or a trade secret.

d) Requested Information

1) The State agency must supply a response to the protest within the time period set forth by the PRO. If a State agency fails to comply with this request, the PRO shall consider the protest on the basis of available information or may recommend to the CPO-GS that the relief requested in the protest be granted.

2) The protesting party must supply any additional information requested by the PRO within the time periods set in the request. If the protesting party fails to comply with this request, the PRO shall consider the protest on the basis of available information or may deny the protest.

3) The PRO may request that an interested party supply additional information within the time period set in the request. For purposes of a protest, an "interested party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

e) Stay of Procurements During Protest

Unless the CPO-GS determines the needs of the State require an immediate execution of a contract, the following apply:

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- 1) When a protest has been timely filed and before an award has been made, the SPO shall make no award of the contract until the protest has been resolved.
 - 2) If timely received but after award, the award shall be stayed without penalty to the State.
- f) Resolution
- The CPO-GS will resolve the protest by means of a written determination. ~~The resolution may include affirming the State's initial decision, in whole or in part, or revoking the State's decision in whole or in part.~~ The PRO will make a recommendation to the CPO-GS resolve the protest as expeditiously as possible after receiving all relevant, requested information. In determining the appropriate recommendation, the PRO shall consider the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the urgency of the procurement, and the impact of the recommendation on the State agency's mission. The recommendation may include, but is not limited to:
- 1) Affirming the State agency's initial decision, in whole or part;
 - 2) Directing the State agency to issue a new solicitation;
 - 3) Directing the State agency to award a contract consistent with statute and rule; or
 - 4) Directing such other action as is necessary to promote compliance with statute or rule.
- g) Effect of Judicial Proceedings
- If an action concerning the protest has commenced in a court or administrative body, the CPO-GS may defer resolution of the protest pending the judicial or administrative determination.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART T: SUSPENSION AND DEBARMENT

Section 1.5560 Suspension and Debarment

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- a) This Part applies to all debarments or suspensions of vendors from consideration for award of contracts under the Code. For the purposes of this Part, all references to "vendors" includes subcontractors.
- b) The CPO-GS may suspend a vendor from doing business with the State agency or with respect to certain types of supplies or services. A suspension may be issued upon a showing that the vendor violated the Code or this Part or failed to conform to specifications or terms of delivery.
- c) When the CPO-GS finds cause exists for the suspension or debarment, a notice of suspension or debarment, including a copy of that determination, shall be sent to the vendor. Notice shall be furnished in writing by personal service or by certified or registered mail. Bids or proposals will not be solicited from the vendor and, if received, will not be considered during the period of suspension or debarment.
- d) The CPO-GS may suspend a vendor for a period of time commensurate with the seriousness of the offense, but for no more than 10 years. The suspension will be effective 7 calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension shall not become effective until the evaluation of the objection is completed.
- e) The CPO-GS may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the State. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals received from the debarred vendor or proposing the use of a debarred subcontractor will not be considered as responsive. The debarment will be effective 7 calendar days after receipt of notice, unless an objection is filed. If an objection is filed, the debarment shall not become effective until the evaluation of the objection is completed.
- f) The CPO-GS shall post the public record of suspensions and debarments that are currently in effect on his or her web page and on the Bulletin.
- g) A vendor objecting to the suspension or debarment shall do so in writing, detailing why the action is not valid and providing any documentation to support

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that position. The vendor may request a hearing. This hearing shall be conducted in accordance with Subpart V.

- h) The CPO-GS shall maintain a master list of all suspensions and debarments. The master list shall retain information concerning suspensions and debarments as public records. These records will be maintained for a period of at least 3 years following the end of the suspension or debarment. This public information may be considered in determining responsibility.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART U: VIOLATION OF STATUTE OR RULE

Section 1.5620 Violation of Statute or Rule

- a) **Determination that Solicitation or Award Violates Statute or Rule**
If the CPO-GS or the SPO finds that the solicitation or proposed award is in violation of statute or rule, the CPO-GS or SPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if the correction may be legally accomplished.
- b) **Determination that Contract Violates the Code or this Part**
 - 1) If any contract or amendment to a contract is entered into, or purchase or expenditure of funds is made, at any time in violation of this Part or any other law, the contract or amendment may be declared void by the CPO-GS or may be ratified or affirmed, provided the CPO-GS determines that ratification is in the best interest of the State. If the contract is ratified and affirmed, it shall be without prejudice to the State's right to any appropriate damages.
 - 2) If, during the term of a contract, the SPO determines that the contractor is delinquent in the payment of debt as set forth in Section 50-11 of the Code, the CPO-GS may declare the contract void if it determines that voiding the contract is in the best interest of the State.
 - 3) If, during the term of a contract, the CPO-GS learns from an annual certification or otherwise determines that the contractor or subcontractor no longer qualifies to enter into State contracts, the CPO-GS may declare

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the contract void if it determines that voiding the contract is in the best interest of the State. However, the related contract shall not be declared void unless the contractor refuses to terminate the subcontract upon the State's request after a finding that the subcontractor no longer qualifies to enter into State contracts. [30 ILCS 500/50-60(e)]

- c) Effect of Declaring a Contract Null and Void
In all cases in which a contract is voided, the State agency shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART V: HEARING PROCEDURES

Section 1.5730 Notice of Hearing

- a) Notice that a hearing will be held as necessary to receive testimony or written comments regarding the subject matter identified in the notice will be published in the Bulletin. The hearing notice shall be published in the Bulletin as soon as practicable and in accordance with any statutory requirements.
- b) The hearing may be held as soon as the first working day following the end of the notice period. The notice shall contain the following information and may describe more than one matter to be considered at the same hearing:
- 1) The name of the affected parties (e.g., State agency and vendor);
 - 2) A description of the subject matter;
 - 3) A justification for the action under review;
 - 4) Requirements for testifying or submitting written comments;
 - 5) Hearing contact information;
 - 6) The date, time and location of the hearing;

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- 7) A statement that all written comments and oral testimony shall be considered public record and open to review by the public;
- 8) A statement of, or reference to, this hearing procedure.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.5740 Written Comments and Oral Testimony

~~Any person~~Interested parties wishing to comment for or against the determination may do so in writing alone, may testify in person and may submit written comments reflecting the oral testimony.

a) Written Comments

1) Submission of Written Comments

Written comments are requested by the hearing registration deadline, shown in the Bulletin notice, ~~to aid the Hearing Officer in preparing for the hearing.~~ However, All written comments received by the hearing date will be considered.

2) Incorporation of Written Comments

If the Hearing Officer has received any written comment, the name and affiliation of the person submitting the comment shall be stated for the record and the written comments shall be incorporated into the record. In addition, the Hearing Officer may read excerpts from or summarize the basic points of the written comments for the record.

b) Oral Testimony

1) Advance Registration

Any person who wishes to testify is requested to register with the Hearing Contact. Advance registration is requested to allow for efficient scheduling and to ensure the hearing room has sufficient capacity for those who wish to testify. Those who register in advance will be heard first on the matter for which they registered. The Hearing Officer has discretion to limit testimony for the efficiency of the hearing.

2) Written Copy of Testimony Requested

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Written comments reflecting proposed oral testimony are requested by the hearing registration deadline shown in the Bulletin notice to allow the Hearing Officer time to prepare for the hearing. A person testifying may submit written comments along with the testimony. The Hearing Officer may request a written copy of the oral testimony.

3) Witness Slip Required

Each person providing oral testimony must complete a witness slip and provide it to the Hearing Officer as instructed.

4) Duration of Testimony

Each person interested party shall have a reasonable period of time to present his or her position based on the complexity of the issue and the press of other business,

c) Sole Source and Emergency Contract Extensions – Supplemental Provisions

1) The notice, including attachments, as shown in the Bulletin represents the position of the State agency and the initial position of the CPO-GS. The Hearing Officer shall have the notice placed into the record. A copy of the notice will be posted in the hearing room.

2) The SPO and a representative of the State agency shall attend the hearing if any person registers in advance to testify in opposition to the sole source or emergency contract extension determination. Attendance may be by video or audio. The SPO and agency representative shall respond to questions of the Hearing Officer and shall be available for consultation after adjournment of the hearing.

3) The Hearing Officer may ask questions or request further written information in response to written comments or testimony or at the Hearing Officer's initiative. The Hearing Officer may allow parties to engage in dialogue and allow follow-up questions and answers as needed to ensure full understanding of the matter. The Hearing Officer is not required to respond to substantive questions at the hearing nor make commitments regarding the content of his or her recommendation.

d) Suspension and Debarment – Supplemental Provisions

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A party who receives notice of suspension or debarment may request a hearing to protest the suspension or debarment action. The hearing will be conducted in accordance with this Section and the following additional provisions shall apply.

- 1) The Hearing Officer may ask questions or request further written information in response to written comments or testimony or at the Hearing Officer's initiative. The Hearing Officer is not required to respond to substantive questions at the hearing or make commitments regarding the content of his or her recommendation.
 - 2) Both the affected State agency and the vendor affected by a suspension or debarment may, at the discretion of the Hearing Officer, bring in witnesses to present testimony regarding the facts or circumstances that led to the determination to suspend or debar.
 - 3) In addition to responding to questions of the Hearing Officer, the witnesses shall respond to questions by the affected vendor if, at the discretion of the Hearing Officer, the questions are allowed.
 - A) The Hearing Officer may allow questions when the subject matter of the question is relevant and the questioning will not unnecessarily delay the proceedings.
 - B) The Hearing Officer may deny questions when the subject matter seeks only to unnecessarily embarrass the witness or delay the proceedings.
- e) Recommendation
After conclusion of the hearing, the Hearing Officer shall review the State agency's position, any information obtained from public comment (written or oral), the applicable Sections of the Procurement Code, other laws and associated rules and written policies and other information deemed relevant.
- f) Decision of the CPO-GS
- 1) The CPO-GS shall, after considering the Hearing Officer's recommendation, make a decision in writing (which may be electronic) to uphold or overturn, in whole or in part, the State agency's decision.

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- 2) The CPO-GS may request additional information from the Hearing Officer, or any other party, including supplemental comments or testimony from the interested parties, prior to making a decision.
 - 3) The CPO-GS may adopt the recommendation, in whole or in part, or may reject the recommendation, or may write a separate decision.
- g) Notice of Decision
- 1) The decision of the CPO-GS shall be provided to the impacted parties and State agencies. A copy of the decision shall be posted to the Bulletin.
 - 2) Upon posting notice of a decision upholding the determination, the State agency may take action to have the contract executed.
- h) Maintenance of Records
- A copy of the public notices, any documents presented, any written comments, the recommendation of the Hearing Officer, and any decision of the CPO-GS shall be maintained in the procurement file. Any transcript or recording of a public hearing shall be available upon request.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART W: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section 1.7015 Inspections

- a) Inspection of Plant or Site
- The CPO-GS or a designee may enter a vendor's or subcontractor's plant or place of business and, pursuant to contract provisions, if any, to:
- 1) inspect supplies or services for acceptance by the State agency;
 - 2) audit the books and records of any vendor or subcontractor;
 - 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Code;
 - 4) determine whether the standards of responsibility have been met or are

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capable of being met;

- 5) determine if the contract is being performed in accordance with its terms;
and
 - 6) accomplish any other purpose permitted by law.
- b) The presence or absence of an inspector shall not relieve the vendor or subcontractor from any requirements of the contract.
 - c) When an inspection is made in the plant or place of business of a vendor or subcontractor, the vendor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.
 - d) Inspection or testing of supplies and services performed at the plant or place of business of any vendor or subcontractor shall be performed so as to not unreasonably delay the work of the vendor or subcontractor.
 - e) ~~Inspection of Construction Projects~~
On-site inspection of construction shall be performed in accordance with the terms of the contract.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART X: SELECTION OF A SUCCESSOR ILLINOIS LOTTERY
PRIVATE MANAGER IF A PRIVATE MANAGEMENT
AGREEMENT HAS BEEN TERMINATED

Section 1.8010 Selection Process

- a) *Notwithstanding any other law to the contrary, the Department of the Lottery (Lottery) shall select a private manager through a competitive request for qualifications process consistent with Section 20-35 of the Illinois Procurement Code. [20 ILCS 1605/9.1(e)]*
- b) Contents. The Request for Qualifications (RFQ) shall be in the form specified by the Lottery and shall contain at least the following information:

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- 1) the type of services required;
- 2) a description of the work involved;
- 3) an estimate of when and for how long the services will be required;
- 4) the type of contract to be used;
- 5) a date by which proposals for the performance of the services shall be submitted;
- 6) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:
 - A) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 - B) if deemed relevant, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFQ;
 - C) the abilities, qualifications and experience of all persons who would be assigned to provide the required services;
 - D) a listing of other contracts under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFQ;
 - E) a plan, giving as much detail as is practical, explaining how the services will be performed;
- 7) price or other proposed form of compensation (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package);
- 8) the factors to be used in the evaluation and selection process and their relative importance; and

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- 9) a plan for post-performance review to be conducted by the Lottery after completion of services and before final payment and to be made part of the procurement file.
- c) The RFQ may not require, stipulate, suggest or encourage a monetary or financial contribution, donation, incentive or economic investment as an explicit or implied term or condition for awarding the contract. The RFQ may not include a requirement that an individual or individuals employed by the Lottery or employed by Lottery advisors receive a consulting contract for professional services.
- d) Prior to the publication of the RFQ in the Illinois Procurement Bulletin, the Lottery shall obtain written approval of the evaluation factors from the CPO-GS or a designee.
- e) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the RFQ. Price or other form of compensation will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The minimum factors are:
 - 1) *the offeror's ability to market the Lottery to those residents who are new, infrequent or lapsed players of the Lottery, especially those who are most likely to make regular purchases on the internet;*
 - 2) *the offeror's ability to address the State's concern with the social effects of gambling on those who can least afford to do so;*
 - 3) *the offeror's ability to provide the most successful management of the Lottery for the benefit of the people of the State based on current and past business practices or plans of the offeror;*
 - 4) *the offeror's past performance in servicing, equipping, operating or managing a lottery on behalf of Illinois, another State or foreign government and attracting persons who are not currently regular players of a lottery and maximizing revenue in an ethical and socially responsible manner [20 ILCS 1605/9.1(e)];*
 - 5) the plan for performing the required services;

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- 6) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
 - 7) the personnel, equipment and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
 - 8) a record of past performance of similar work.
- f) Delivery, Receipt and Handling of Proposals
- 1) Receipt. ~~Each Upon its receipt, each~~ proposal and modification ~~received~~ shall be date- and time-stamped, ~~recorded in a log and but not opened and shall be~~ stored in a secure ~~manner (e.g., locked file cabinet, safe, locked room or other secure location) by the person responsible for receiving the proposals place until the time and date set for opening.~~ If a proposal is opened for identification purposes or opened in error, the file ~~shall should~~ state the reason for the error.
 - 2) ~~The Lottery shall maintain the confidentiality of the proposals. No information within the proposals shall be disclosed to anyone prior to opening. Lottery personnel may confirm receipt of the proposal to the offeror.~~
 - 3) ~~If a proposal is opened for identification purposes or in error, the procurement file shall include a signed statement explaining the reason for the mistake or error, including the name of every person involved. The proposal shall be resealed until the time set for opening.~~
 - 42) Proposals shall be submitted to and opened by the Lottery.
 - A) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFQ.
 - B) Opening shall be witnessed by a State witness or by any other person present, but the person opening proposals shall not serve as

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witness. A record shall be prepared that shall include the name of each offeror and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

- C) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only ~~authorized~~ State personnel and contractual agents authorized by the Lottery may review the proposals prior to award.

g) Evaluation Committee. Evaluation Committee members shall be determined by the Lottery, be tailored to the particular solicitation, and include, as appropriate, technical or other personnel with expertise to ensure a comprehensive evaluation of offers. The Evaluation Committee members shall be subject to the approval of the Director or his or her designee and committee members may be removed by the Director or his or her designee for failure to comply with instructions or directions.

hg) Discussions

- 1) Discussions Permissible. The ~~Evaluation Committee~~ Lottery may conduct discussions with any offeror to:
- A) determine in greater detail the offeror's qualifications; and
 - B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The Lottery may allow changes to the proposal based on those discussions.
- 2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the ~~Evaluation Committee~~ agency conducting the procurement shall not disclose any information contained in any proposal with any other offeror or person or entity other than personnel authorized by the Director or his or her designee ~~proposals~~ until after award of the proposed contract.
- 3) No discussions with offerors may occur unless the entire evaluation committee is present.

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- ih)** Selection of the Best Qualified Offerors
After conclusion of validation of qualifications, evaluation and discussion, the Lottery initially shall rank the acceptable offerors in the order of their respective qualifications compared to the qualifications outlined in the RFQ and not considering price.
- ji)** Evaluation of Pricing Data or Other Proposed Compensation
Pricing and other forms of proposed compensation submitted for all acceptable proposals timely submitted shall be opened and the offerors shall be ranked only after the initial ranking under subsection (**ih**) has been completed.
- k) Hearing**
- 1) After evaluation of all offerors' proposals, the Lottery shall select offerors as finalists.
 - 2) The Lottery shall hold a public hearing on the finalists' proposals.
 - 3) At least 7 days prior to the public hearing, the Lottery must provide public notice that includes:
 - A) The date, time and place of the hearing;
 - B) The subject matter of the hearing;
 - C) A brief description of the private management agreement to be awarded;
 - D) The identity of the offerors selected as finalists; and
 - E) The address and telephone number of the Lottery.
 - 4) At the public hearing, the Lottery shall:
 - A) Provide sufficient time to allow each of the finalists to present its proposal. Each finalist shall be afforded an identical, maximum amount of time for presentation, including any extensions of time that may be granted during the course of the hearing.

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B) Allow comments from the public and offerors that were not selected as finalists.

lj) Negotiation ~~and Award~~ of Contract

- 1) General. The Lottery shall designate a negotiation committee to attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The Lottery may, in the interest of efficiency, negotiate with the next highest ranked vendor while negotiating with the best qualified vendor.
- 2) The Lottery shall conduct compensation negotiations with the vendor determined to be most qualified based upon the evaluation factors contained in the RFQ prior to the publication of any notice of award.
- 3) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:
 - A) making certain that the offeror has a clear understanding of the scope of the work, specifically the essential requirements involved in providing the required services, and that the plan for service delivery is feasible;
 - B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 - C) agreeing upon compensation that is fair and reasonable and based upon realistic revenue projections, taking into account the estimated value of the required services and the scope, complexity and nature of those services.
- 4) Successful Negotiation of Contract with Best Qualified Offeror
 - A) If compensation, contract requirements and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is cancelled~~anceled~~.

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- B) Compensation must be determined in writing to be fair and reasonable by the ~~Director~~~~Superintendent~~ of the Lottery (~~Director~~)(~~Superintendent~~). The negotiation committee shall prepare a compensation analysis and recommendation for consideration by the ~~Director~~~~Superintendent~~. The analysis shall be based on specifications contained in the RFQ and include, but not limited to, the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, other available pricing information and the Lottery's identified budget.
- 5) Failure to Successfully Negotiate Contract with Best Qualified Offeror
- A) If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons shall be placed in the file. The Lottery shall advise the offeror of the termination of negotiations.
- B) Upon failure to successfully negotiate a contract with the best qualified offeror, the Lottery may enter into negotiations with the next most qualified offeror.
- k) Award
~~Award shall be made to the offeror determined in writing by the Department to be best qualified based on the evaluation factors set forth in the request for qualifications and negotiation of compensation determined to be fair and reasonable. [30 ILCS 500/20-35]~~
- l) Notice of Award
~~Written notice of award shall be public information and made a part of the contract file. The Lottery shall publish the names of its responsible decision makers, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be in the Illinois Procurement Bulletin.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1.8020 Public Hearing (Repealed)

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- a) ~~After receipt of all offerors' proposals, the Lottery shall select offerors as finalists.~~
- b) ~~The Lottery shall hold a public hearing on the finalists' proposals.~~
- e) ~~At least 7 days prior to the public hearing, the Lottery must provide public notice that includes:~~
 - 1) ~~The date, time and place of the hearing;~~
 - 2) ~~The subject matter of the hearing;~~
 - 3) ~~A brief description of the private management agreement to be awarded;~~
 - 4) ~~The identity of the offerors selected as finalists; and~~
 - 5) ~~The address and telephone number of the Lottery.~~
- d) ~~At the public hearing, the Lottery shall:~~
 - 1) ~~Provide sufficient time to allow each of the finalists to present its proposal. Each finalist shall be afforded an identical, maximum amount of time for presentation, including any extensions of time that may be granted during the course of the hearing.~~
 - 2) ~~Allow comments from the public and offerors that were not selected as finalists.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 1.8025 Award

- a) Prior to the Lottery's selection of the final offeror, the CPO-GS shall certify that the procurement process provided for under this Subpart has been followed. Notice of this determination shall be published in the Illinois Procurement Bulletin.
- b) The Lottery shall select a final offeror as private manager by publication of notice in the Bulletin. This notice shall include *a detailed explanation and the reasons why the final offeror is superior to other offerors and will provide management*

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services in a manner that best achieves the objectives of the Illinois Lottery Law.
[20 ILCS 1605(h)]

- c) Written notice of award shall be public information and made a part of the contract file. The Lottery shall publish the names of its responsible decision makers, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be on the Illinois Procurement Bulletin.
- de) *Within 7 days after award of the contract and subject to provisions of the Freedom of Information Act [5 ILCS 140], the Lottery shall make available for public inspection and copying all pre-award, post-award, administration and close-out documents relating to the contract. [30 ILCS 500/20-155]*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing and Regulation of Pawn Brokers
- 2) Code Citation: 38 Ill. Adm. Code 360
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
360.20	Amendment
360.110	Amendment
360.160	Amendment
- 4) Statutory Authority: Implementing and authorized by the Pawnbroker Regulation Act [205 ILCS 510]
- 5) A Complete Description of the Subjects and Issues Involved: The cost and duration of the pawnshop broker's license will be changed. Currently the pawnbroker's license cost \$765.00 per year. This rulemaking will put the license at a cost of \$2,000.00 for duration of two years. If a pawnbroker wants to enter the industry after the June 30th date, he or she can apply for a license on a prorated basis at \$84.00 per month until the subsequent June 30th. If the subsequent June 30th is an odd numbered year, the pawnbroker would then apply for a two-year year license at a cost of \$2,000.00. If the subsequent June 30th is an even numbered year, the pawnshop owner would pay the \$1,000.00 for the year leading up to June 30th of the odd numbered year.

Pawnbrokers will have the option to pay for the two-year \$2,000 pawnbroker license by either paying \$2,000 upon approval of the two-year license, or paying \$1,000 upon approval of the two-year license and then pay \$1,000 one year later on June 30th. In addition, the pawnshop manager's license will be changed from a one-year and \$50 fee to a two-year and \$100 fee.
- 6) Published studies or reports and sources of underlying data, used to comprise this rulemaking: None
- 7) Will this rulemaking replace any emergency rule 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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

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- 11) Statement of Statewide Policy Objectives: 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: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

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: This rulemaking applies to pawnshops regulated by the Department of Financial and Professional Regulation, Division of Banking.
 - B) Reporting, bookkeeping or other procedures required for compliance: Please refer to the proposed amendments to this Part that follow.
 - 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 2 most recent agendas.

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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER II: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 360

LICENSING AND REGULATION OF PAWNBROKERS

SUBPART A: DEFINITIONS AND FEES

- Section
- 360.10 Definitions
- 360.20 Fees

SUBPART B: PAWNSHOP LICENSE

- Section
- 360.100 Purpose
- 360.110 Application for License
- 360.120 Processing of Application
- 360.130 Standards for Licensure
- 360.135 Licensing Requirements for Pawnbroker Managers
- 360.140 Initial Applications for License from Persons Operating or Who Have Operated a Pawnshop for the Two Years Preceding July 1, 1998
- 360.150 Change in Control or Form of Ownership, Change in Location, Change in Name of Pawnshop, Voluntary Surrender of License; Fees
- 360.160 Expiration and Renewal of Licenses; Fees
- 360.170 Display of License; Duplicate License

SUBPART C: FORMS

- Section
- 360.200 Purpose and Scope
- 360.210 Forms

SUBPART D: UNIFORM RULES FOR HEARINGS BEFORE THE SECRETARY

- Section
- 360.300 Scope
- 360.310 Procedure for Hearings before the Secretary

SUBPART E: RULES AND PROCEDURES APPLICABLE

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TO PROCEEDINGS RELATING TO ORDERS

Section

360.400	Scope
360.410	Grounds for an Order
360.420	Effective Date of Order; Service

SUBPART F: RULES AND PROCEDURES APPLICABLE TO PROCEEDINGS RELATING TO ASSESSMENT AND COLLECTION OF CIVIL MONEY PENALTIES

Section

360.500	Scope
360.510	Assessment of Penalties
360.520	Effective Date of, Payment under, and Service of an Order to Pay

SUBPART G: RULES AND PROCEDURES APPLICABLE TO PROCEEDINGS FOR REVOCATION OR SUSPENSION OF LICENSE

Section

360.600	Scope
360.610	Grounds for Suspension of License
360.620	Grounds for Revocation of License
360.630	Notice to Customers
360.640	Effective Date of Revocation or Suspension; Service

SUBPART H: FEE SCHEDULE FOR UNREGISTERED BUYERS

Section

360.700	Definitions
361.710	Temporary Buying Location Registration Fees

AUTHORITY: Implementing and authorized by the Pawnbroker Regulation Act [205 ILCS 510].

SOURCE: Emergency Rule adopted at 22 Ill. Reg. 12963, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 19730, effective October 29, 1998; amended at 28 Ill. Reg. 6967, effective April 29, 2004; amended at 35 Ill. Reg. 14957, effective September 9, 2011; amended at 38 Ill. Reg. _____, effective _____.

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SUBPART A: DEFINITIONS AND FEES

Section 360.20 Fees

a) Fees

- 1) ~~Pawnshop Annual~~ License ~~\$2000~~~~\$765~~.
- 2) Pawnshop ~~Manager Manger~~ Biennial License ~~\$100~~~~\$50~~.
- 3) Change of Control of Ownership \$300.
- 4) Change of Name \$50.
- 5) Change of Location \$50.
- 6) Issuance of Duplicate License \$50.

- b) A comprehensive fees schedule will be available on ~~the Department's~~ website at <http://www.idfpr.com/Banks/CBT/PAWNBROK/pawnfee.asp> ~~http://www.obre.state.il.us/cbt/PAWNBROK/pawnfee.htm~~, and can also be provided in hardcopy upon written request.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART B: PAWNSHOP LICENSE

Section 360.110 Application for License

- a) Licensure Requirement, Where to File. Section 0.05(c) of the Pawnbroker Regulation Act [205 ILCS 510/0.05(c)] provides that it is unlawful to operate a pawnshop without a license issued by the Secretary. All requests for an application package must be directed to the Department of Financial and Professional Regulation-Division of Banking, Pawnbroker Regulation Section, 320 W. Washington Street, 6th Floor, Springfield, Illinois 62786; Telephone (217) 785-2900; or IL.Pawnbroker@illinois.gov, by written correspondence, telephone or electronic communication. A separate license is required for each pawnshop location.

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- b) Instructions, Contents. An application for a [pawnshop](#) license must be submitted on the form prescribed in Section 360.210-~~of this Part~~. An application for a license shall be made under oath and state the full name and address of the applicant, together with any other relevant information the Secretary shall require. The application shall also include, but not be limited to, the following requirements:
- 1) Disclosure of Principal Parties. The full name and place of residence of all principal parties must be provided.
 - 2) Background Investigation. The Secretary may require that credit and criminal history record investigations be conducted on each applicant and principal party. Each applicant and principal party shall complete an Authorization For Release of Personal Information form that authorizes the Secretary to conduct a criminal history record investigation and a review of retail credit agencies' records (including credit reports and ratings). At the request of the Secretary, each applicant and principal party shall submit to, and have performed, a criminal history record investigation in the form and manner required by the Department of State Police and the Federal Bureau of Investigation. The Secretary need not cause additional criminal history record investigations to be conducted on an applicant or principal party for whom the Secretary or any other government agency has caused ~~thosesueh~~ investigations to have been conducted previously unless ~~thesueh~~ additional investigations are otherwise required by law or unless the Secretary deems ~~thesueh~~ additional investigations to be necessary for the purposes of carrying out the Secretary's statutory powers and responsibilities.
 - 3) Insurance Requirement. The applicant, whether seeking a new license or renewing an existing license, shall provide the Secretary with proof of hazard insurance that evidences the name and address of the insuring company, the insurance policy number, the extent of coverage relating to property in active pawn, the amount of coverage, and the policy's expiration date. Thereafter, this information shall be held in file by the applicant for inspection at all times on demand by the Secretary.
 - 4) Fees. The payment of the \$2,000 fee may accompany the application. The applicant's only other option is to pay a \$1,000 fee with the application and a second \$1,000 fee on June 30 of the following year. ~~The applicant~~

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~~must submit the Application Fee of \$765 with the completed application.~~
Unless otherwise permitted by the Secretary, the payment of all fees shall be made by ~~certified check, money order,~~ an electronic transfer of funds, or an automatic debit of an account. ~~Certified checks or money orders shall be made payable to the Department.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 360.160 Expiration and Renewal of Licenses; Fees

- a) License Expiration. ~~Any license that is valid for the time period June 30, 2014 through June 30, 2015 will expire on June 30, 2015. A license that is valid June 30, 2015 shall expire on June 30 of the second calendar year following its issuance and every 2 years thereafter.~~ Every license shall expire on June 30 of each year. The holder of a license may request to renew ~~thesuch~~ license by filing an application with the Secretary.
- b) License Renewal. All applications for pawnshop license renewal for the succeeding license period must be sent to the Secretary by June 1 and, if mailed, shall to the Secretary and be postmarked no later than June 1 of the year in which the license will expire each year. An application package and related instructions will be mailed to all licensees prior to May 1 of the year in which the license will expire each year at the address listed on the licensee's their most recent application. All applications must be submitted on the form prescribed in Section 360.210 ~~of this Part~~, in accordance with the Secretary's instructions. The payment of the Renewal Fee of ~~\$2000 may \$765 must~~ accompany the application. The applicant's only other option is to pay a \$1,000 fee with the application and a second \$1,000 fee on June 30 of the following year. In addition to the applicable Renewal Fee, a Late Filing Fee of \$50 per day will shall be assessed for all applications received electronically after June 1 or postmarked after June 1 ~~of each year~~, unless an exception has been granted by the Secretary. All applications for license renewal will be held to the standards set forth in Section 360.130 ~~of this Part~~. The application process will be administered according to the rules set forth in Section 360.120 ~~of this Part~~. ~~The Renewal Fee will not be prorated.~~
- c) Licenses who are issued a pawnshop license by the Department between July 1 and June 29 shall pay an \$84.00 fee per month from the date of approval until June 30. The entire payment is due within 30 days after licensure approval. Any portion of a calendar month a licensee is approved for a pawnshop license shall be

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| [considered a full month with respect to fee calculation.](#)

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Illinois Certified Shorthand Reporters Act of 1984
- 2) Code Citation: 68 Ill. Adm. Code 1200
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1200.20	Amendment
1200.30	Amendment
1200.35	Amendment
1200.40	Amendment
1200.45	Amendment
1200.50	Amendment
1200.60	Repealed
1200.70	Amendment
1200.75	Amendment
1200.80	Amendment
1200.90	Amendment
- 4) Statutory Authority: Implementing the Illinois Certified Shorthand Reporters Act of 1984 [225 ILCS 415] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking includes updating the Continuing Education (CE) section as well as an increase of the fee for restoration of a non-renewed license from \$20 to \$50. It also makes numerous non-substantive changes, 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, including Section 1200.60 requiring the submission of an annual report from the Board, has been removed.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

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- 10) Are there any other rulemakings on this Part? No
- 11) Statement of Statewide Policy Objectives: 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: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice 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: Certified shorthand reporters regulated under the Act may be affected.
- B) Reporting, bookkeeping or other procedures required for compliance: Please see the new and revised requirements that follow in the proposed amendments to this Part.
- C) Types of professional skills necessary for compliance: Shorthand reporting skills are required for licensure.
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2013

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 PROFESSIONAL REGULATION
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1200

ILLINOIS CERTIFIED SHORTHAND REPORTERS ACT OF 1984

Section

1200.20	Application for Examination/Licensure
1200.30	Examinations
1200.35	Renewals
1200.40	Restoration
1200.45	Endorsement
1200.50	Fees for the Administration of the Act
1200.60	Annual Report of Board (Repealed)
1200.70	Conduct of Hearings
1200.75	Continuing Education
1200.80	Granting Variances
1200.90	Standards of Professional Conduct

AUTHORITY: Implementing the Illinois Certified Shorthand Reporters Act of 1984 [225 ILCS 415] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].

SOURCE: Adopted at 5 Ill. Reg. 7518, effective July 2, 1981; codified at 5 Ill. Reg. 11024; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; emergency amendments at 8 Ill. Reg. 672, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 16443, effective August 29, 1984; amended at 11 Ill. Reg. 14073, effective August 5, 1987; recodified from Chapter I, 68 Ill. Adm. Code 200 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1200 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2917; amended at 12 Ill. Reg. 16718, effective September 30, 1988; amended at 13 Ill. Reg. 18865, effective November 21, 1989; amended at 16 Ill. Reg. 3169, effective February 18, 1992; amended at 19 Ill. Reg. 940, effective January 17, 1995; amended at 23 Ill. Reg. 7102, effective June 4, 1999; amended at 27 Ill. Reg. 9026, effective May 27, 2003; amended at 38 Ill. Reg. _____, effective _____.

Section 1200.20 Application for Examination/Licensure

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- a) An applicant for examination/licensure shall file an application on forms supplied by the Department of Financial and Professional Regulation-Division of Professional Regulation (Division) ~~(the Department)~~ at least 60 days prior to an examination date. The application shall include:
- 1) Certification of graduation from high school or its equivalent;
 - 2) Either:
 - A) An Affidavit of Ability, signed by an official of a shorthand reporter school, stating that the applicant has successfully completed a verbatim record of unfamiliar testimony dictated for 5 minutes at a minimum speed of 225 words per minute with at least 94% accuracy; or
 - B) Proof that the applicant possesses at least minimum competency skills to sit for the examination, as recommended by the Certified Shorthand Reporters Board of Examiners (Board) and approved by the Division~~Department~~. In determining competency the Board shall review the applicant's education, training and/or experience (such as practicing with a restricted license in the court system pursuant to Section 6 of the Act or practice in another jurisdiction); and
 - 3) ~~A complete work history since graduation from high school; and 4)~~ The required application and examination fees ~~as~~ specified in Section 1200.50 of this Part.
- b) An applicant who submits an official copy of a Registered Merit Reporter or a Registered Professional Reporter certificate by examination issued by the National Shorthand Reporters Association shall not be required to sit for the examination. The Division~~Department~~, upon recommendation of the Board, has determined that the examinations given by the National Shorthand Reporters Association are equivalent to the examination set forth in Section 1200.30.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.30 Examinations

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- a) The examination for certification as a certified shorthand reporter shall be administered by the ~~Division~~Department or its designated testing service.
- 1) Written Knowledge Examination. The written examination is given to determine the applicant's competency and ability:
- A) To understand the English language, including reading, spelling and the applicant's knowledge of day to day vocabulary, as well as medical, legal and technical vocabulary, without the use of a dictionary;
 - B) To accurately report any of the matters comprising the practice of shorthand reporting as defined in the Illinois Certified Shorthand Reporters Act of 1984 [225 ILCS 415] (the Act), by the use of any system of manual or mechanical shorthand or shorthand writing;
 - C) To clearly understand the obligations between a shorthand reporter and the parties to any proceedings reported; and
 - D) To understand the provisions of the Act.
- 2) Dictation Examination
- A) This portion of the examination shall consist of the following parts:
 - i) General dictation at 200 words per minute for 5 minutes with an allowance of 50 errors. (Definition: spoken words presented in court proceedings, depositions, arbitrations, speeches and hearings).
 - ii) Testimony, 2 voice, 225 words per minute for 5 minutes with an allowance of 57 errors.
 - B) Transcription. Upon completion of both parts of the Dictation Examination, the applicant shall transcribe both parts in double-spaced form.
 - C) The applicant shall be allowed an aggregate of three hours to complete all transcription. Those retake applicants required to

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transcribe only one part of the Dictation Examination shall be allowed one and one-half hours.

b) Grading of the Examination

- 1) The passing score on the Written Knowledge Examination set forth in subsection (a)(1) of this Section is 75% or better.
- 2) An applicant shall pass the Dictation Examination set forth in subsection (a)(2) of this Section if he/she successfully transcribes within the given time periods set forth in subsections (b)(2)(A) and (B) ~~below~~:
 - A) 200 words per minute for 5 minutes with 50 errors or fewer on the general dictation part; and
 - B) 225 words per minute for 5 minutes with 57 errors or fewer on the 2 voice testimony.
- 3) In scoring the Dictation Examination, "Q" representing question and "A" representing answer shall not be counted as words in the testimony portion; however, such signs must appear in proper order in the transcript.
- 4) Applicants who fail a portion of an examination will be required to retake within a period of three years only the portion or dictation part of the examination they did not pass.

c) Required Supplies for the Examination

- 1) Each applicant must supply his/her own bound dictionary, pens, pencils, stenographic machine, erasers, stenograph paper, and notebooks or note paper. The use of only one dictionary per person is permitted. Computers shall be supplied at the location of the examination.
- 2) Applicants shall not be permitted to use tape recorders or other electronic recording devices during the examination sessions.
- 3) Typing paper will be provided.

d) The provisions of this Section shall apply to applicants upon adoption without

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regard to where the applicant is in the application process.

- e) An applicant for licensure who possesses an active Registered Professional Reporter certificate by examination or a Registered Merit Reporter certificate issued by the National Court Reporters Association shall not be required to sit for the examination. The ~~Division~~Department, upon recommendation of the Board, has determined that the Registered Professional Reporter and Registered Merit Reporter examinations are equivalent to the examination administered by the ~~Division~~Department.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.35 Renewals

- a) Every certificate of registration issued under the Act shall expire on May 31 of each odd numbered year. The holder of a certificate of registration may renew such certificate during the month preceding the expiration date thereof by paying the required fee.
- b) It is the responsibility of each registrant 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.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.40 Restoration

- a) A person seeking restoration of a certificate after it has expired or has been placed on inactive status for more than 5 years shall file an application with the ~~Division~~Department together with the required fees specified in Section 1200.50. ~~In of this Part. After May 31, 1997, in~~ order to restore a license, a person shall submit proof of 10 hours of continuing education completed within 2 years before restoration in accordance with Section 1200.75 ~~of this Part~~. The applicant shall also submit one of the following either:
- 1) Certification of current licensure from another jurisdiction completed by the appropriate board or licensure authority;

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- 2) Affidavits from 2 members of the bench or bar attesting to the applicant's active practice of shorthand reporting in a state that does not require licensure for at least one year immediately prior to the date of application;
 - 3) An affidavit attesting to military service as provided in Section 14 of the Act; or
 - 4) Other proof acceptable to the ~~Division~~Department of the applicant's fitness to have the certificate restored.
- b) A registrant seeking restoration of a certificate that has expired for less than 5 years shall have the certificate restored upon payment of \$10 plus all lapsed renewal fees required by Section 1200.50 ~~of this Part~~. After May 31, 1997, in order to restore a license, a person shall submit proof of 10 hours of continuing education completed within 2 years before restoration in accordance with Section 1200.75 ~~of this Part~~.
- c) When the accuracy of any submitted documentation or the relevance or sufficiency of the coursework or experience is questioned by the ~~Division~~Department or the Board because of lack of information, discrepancies or conflicts in information given or a need for clarification, the person seeking restoration of a license shall be requested to:
- 1) Provide such information as may be necessary; and/or
 - 2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information or clear up any discrepancies or conflicts in information. Upon the recommendation of the Board and approval of the ~~Division~~Department, an applicant shall have the license restored.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.45 Endorsement

- a) An applicant who is licensed under the laws of another jurisdiction shall file an application with the ~~Division~~Department, together with:
 - 1) a certification from the licensing authority of the jurisdiction stating:

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- ~~A)1)~~ The time during which the applicant was licensed in that jurisdiction;
- ~~B)2)~~ Whether the file on the applicant contains any record of any disciplinary actions taken or pending; and
- ~~C)3)~~ A brief description of the examination taken and the grades received. The brief description shall include the speeds of dictation, the percentage of accuracy to pass and the contents of the written knowledge test; and-
- ~~24)~~ a copy of the statuteAct and rulesRules from the state of original licensure thatwhich were in effect at the time of licensure.
- b) ~~A complete work history since date of original licensure in another jurisdiction to present;~~ c) The applicant may be required to appear for an oral interview:
- 1) To clarify or explain information contained in the submitted documentation;
 - 2) To provide additional documentation or information as requested by the Division;
 - 3) To determine substantial equivalence of the applicant's qualifications to the licensing requirements in this State.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.50 Fees for the Administration of the Act

The following fees shall be paid to the Department for the administration of the Act and shall be nonrefundable.

- a) ApplicationApplications Fees-
- 1) The fee for application and for a certificate as a certified shorthand reporter is \$25. In addition, the applicants may be required to pay the Department, or its designated testing service, a fee for the cost of providing the examination.

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- 2) The fee to be paid for a certificate issued at the request of the Director of the Administrative Office of the Courts as set forth under Section 6 of the Act is \$35.
- 3) The fee for application as a continuing education sponsor is \$300. State agencies, State colleges and State universities in Illinois shall be exempt from this fee.

b) ~~Renewal Fees-~~

- 1) The fee for the renewal of a certificate shall be calculated at the rate of \$20 per year.
- 2) The fee for the renewal as a continuing education sponsor shall be calculated at the rate of \$50 per year.

c) ~~General Fees-~~

- 1) The fee for placing a certificate on inactive status is \$20.
- 2) The fee for restoration of a certificate from inactive status is the current renewal fee.
- 3) The fee for restoration of a certificate from other than inactive status is ~~\$50~~~~\$10~~ plus all lapsed renewal fees, not to exceed \$150.
- 4) The fee for certification of a license record is \$20.
- 5) The fee for a wall certificate shall be the actual cost of producing ~~thesueh~~ certificate.
- 6) The fee for the issuance of a duplicate certificate, for the issuance of a replacement certificate, 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.
- 7) The fee for a roster of certificate holders is the cost of producing the

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roster. The cost of producing the roster shall be determined in accordance with the following formula: Total number of registrants in the list requested divided by 1000 multiplied by the Multiplier, plus Fixed Costs (such as personnel and handling) = Total Roster Cost.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.60 Annual Report of Board (Repealed)

~~The Board shall submit a written report on an annual basis, to the Director in which it shall evaluate its own and the Department's performance, inform the Department of practice developments within the shorthand reporting profession, and provide recommendations for statutory or regulatory program changes.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 1200.70 Conduct of Hearings

Any hearing conducted by the ~~Division~~Department pursuant to Section 23.2 of the Act shall be conducted in accordance with the ~~Division's~~Department's Rules of Practice in Administrative Hearings (68 Ill. Adm. Code 1110).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.75 Continuing Education

- a) Continuing Education (CE) Requirements
- 1) Beginning with the May 31, 1997, renewal and every renewal thereafter, every registrant who applies for renewal of a certificate of registration as a certified shorthand reporter shall complete during the prerenewal period 10 hours of continuing education (CE) relevant to the practice of shorthand reporting.
 - 2) A prerenewal period is the 24 months preceding May 31 of each odd-numbered year.
 - 3) A CE hour means a minimum of 50 minutes of actual clock time spent by a registrant in actual attendance at and completion of an approved CE

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activity. After completion of the initial CE hour, credit may be given in one-half hour increments.

- 4) A renewal applicant shall not be required to comply with CE requirements for the first renewal of an Illinois certificate of registration.
- 5) Shorthand reporters registered in Illinois but residing and practicing in other states shall comply with the CE requirements set forth in this Section.

b) How to Acquire CE Credits

1) CE hours may be earned from:

- A) Verified attendance at or participation in a program, activity or course through the National Court Reporters Association.
- B) Verified attendance (e.g., certificate of attendance or certificate of completion) at or participation in a program, activity or course ("program") presented by a continuing education sponsor in subsection (c) ~~below~~.
- C) Verified attendance at a program that is of general information value to shorthand reporters but does not directly relate to the reporter's ability to produce an accurate and timely transcript. A maximum of 5 hours credit may be counted during a prerenewal period for ~~thosesueh~~ programs, which include:
 - i) Professionalism, including knowledge and application of standards of professional responsibility, impartiality, public relations, attire; and
 - ii) Office procedures, record-keeping, health, including a reporter's approach to personal tax management, planning for retirement or changing careers within reporting, maintaining the individual reporter's health and emotional adjustment, ability to listen, to concentrate, to communicate, to cope.

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- D) Verified personal preparation of educational presentations pertaining to the profession of court reporting and serving as an instructor, speaker or panel member at an approved course will be allowed as CE credit for actual presentation time, plus actual preparation time of up to 2 hours for each hour of presentation. Credits for preparation time shall not be allowed for repetitious presentations. No more than 5 hours of credit can be earned under this category in any one renewal period.
- E) Writing articles pertaining to the profession of court reporting and published in a state or nationally recognized professional journal of court reporting or law. Each article shall be eligible for 2.5 hours of CE credit and no more than 5 hours of credit can be earned under this category in any one renewal period. Credits will not be allowed for the same article published in more than one publication.
- 2) Courses completed that are a part of the curriculum of a university, college or other educational institution. One semester of course work is equivalent to 15 hours of CE and one quarter of course work is equivalent to 10 hours of CE.
- 3) Passing any leg of the Registered Merit Reporter (RMR), Certified Realtime Reporter (CRR), Certified Communication Access Realtime Translation Provider (CCP), Certified Broadcast Captioner (CBC) or Registered Diplomate Reporter (RDR) exam offered by the National Court Reporters Association (NCRA). Successful passage of any of these examinations shall be eligible for 2.5 hours of CE credit.
- c) CE Sponsors and Programs
- 1) Sponsor, as used in this Section, shall mean the following:
- A) The NCRA or programs or courses approved by NCRA~~National Court Reporters Association~~;
- B) The Illinois Court Shorthand Reporters Association or any state court reporters association whose course or program has been approved for CE credits under the guidelines of the National Court

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Reporters Association;

C) ~~Any computer users group whose program or course has been approved for CE credits under the guidelines of the National Court Reporters Association;~~ D) A city, county, state or federal judicial body responsible for coordination and presentation of CE courses or programs for its employees;

~~D)E)~~ A university or college course or adult education program that contributes directly to the ~~certified shorthand reporter's~~ Certified Shorthand Reporter's knowledge, ability or competence to perform his/her duties; and

~~E)F)~~ Any other school, college or university, State agency, or any other person, firm or association that has been approved and authorized by the ~~Division~~ Department to coordinate and present CE courses and programs in conjunction with this Section.

2) Entities seeking approval as CE sponsors shall file an application, on forms supplied by the Division ~~Department~~, along with the application fee set forth in Section 1200.50 ~~of this Part~~. (State agencies, State colleges and State universities in Illinois shall be exempt from paying this fee.) Along with the application, the applicant shall submit a list of proposed programs including the description, location, date and time of the programs. The application shall include the following:

A) Certification:

i) That all programs offered by the sponsor for CE credit will comply with the criteria in subsection (c)(3) ~~below~~ and all other criteria in this Section;

ii) That the sponsor will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (c)(10) ~~below~~;

iii) That, upon request by the Division ~~Department~~, the sponsor will submit evidence (e.g., certificate of attendance or course materials) as is necessary to establish compliance

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with this Section. Evidence shall be required when the ~~Division~~Department has reason to believe that there is not full compliance with this Part and that the information is necessary to ensure compliance;

- iv) That each sponsor shall submit to the ~~Division~~Department written notice of program offerings, including program offerings of subcontractors, 30 days prior to course dates. Notice shall include the description, location, date and time of the program to be offered;
- B) A copy of sample program with faculty, course materials and syllabi.
- 3) All programs shall:
- A) Contribute to the advancement, extension and enhancement of the professional skills and knowledge of the individual registrant in the practice of shorthand reporting;
- B) Include one or more of the following subjects directly related to the shorthand reporter's ability to produce accurate and timely transcripts:
- i) English, including grammar, punctuation, general principles, spelling, vocabulary, etymology, usage, semantics, regional and minority dialects or colloquialisms, English history, transcript styles;
- ii) Medical, including Greek and Latin derivatives, homonyms, abbreviations, surgical procedures, pharmacy, anatomy and physiology, specialized medical fields (i.e., neurology, dentistry, radiology, gastroenterology), with emphasis on terminology and techniques or concepts likely to be encountered during litigation;
- iii) Legal, including terminology, research techniques, presentations on the various subdivisions of law (i.e., criminal torts, domestic relations, corporate, admiralty,

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- patent, environmental) and procedural law (i.e., depositions, trials, administrative proceedings) presentations by legal specialists or experts in the field, history of the American/world legal system;
- iv) Technical subjects presented by experts with emphasis on terminology and concepts encountered by the shorthand reporter during litigation (i.e., accident reconstruction, chemistry, construction, geology, insurance, maritime, aerospace, products liability, industrial and environmental pollution);
 - v) Technology related to new developments in the field of reporting (i.e., computer technology, computer techniques, video, telecommunications, equipment maintenance);
 - vi) General litigation procedures as they relate to court, deposition and administrative proceedings (i.e., reporting depositions, court hearings, arbitrations, conventions and the court reporter's responsibility with regard to these proceedings, notary responsibilities, marking exhibits, reading back, going on and off the record, review of statutes, rules related to the reporter);
 - vii) Transcript preparation, including indexing of witnesses, exhibits, formats, dictating, editing and scoping, reference libraries and research techniques, proofreading; and
 - viii) Management, including financial, marketing, personnel, equipment maintenance, time and stress management;
- C) Be relevant to the needs of shorthand reporters and also to the reporting service needs of the users ([i.e., courses in golf, tennis, dancing or basket-weaving shall not be given credit](#));
 - D) Be developed and presented by persons with education and/or experience in the subject matter of the program;
 - E) Specify for whom the program is primarily designed, the course

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objectives, course content and teaching methods to be used; and

- F) Specify the number of CE hours that may be applied to fulfilling the Illinois CE requirements for renewal of the certification of registration.
- 4) Each CE program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program or an evaluation questionnaire may be distributed to participants to be completed and returned by mail. The sponsor and the instructor, together, shall review the evaluation outcome and revise subsequent programs accordingly.
- 5) An approved sponsor may subcontract with individuals and organizations to provide approved programs.
- 6) Continuing education credits may be awarded for home study courses and correspondence courses, provided they are courses administered by approved sponsors.
- 7) All programs given by approved sponsors shall be open to all registered shorthand reporters and not be limited to members of a single organization or group.
- 8) Continuing education credit hours used to satisfy the CE requirements of another jurisdiction may be applied to fulfill the CE requirements of the State of Illinois.
- 9) To maintain approval as a sponsor, each sponsor shall submit to the ~~Division~~Department by May 31 of each odd-numbered year a renewal application, the required fee set forth in Section 1200.50 ~~of this Part~~, and a list of courses and programs offered within the last 24 months. The list shall include a brief description, location, date and time of each course given.
- 10) Certificate of Attendance. It shall be the responsibility of a sponsor to provide each participant in a program with a certificate of attendance or participation. The sponsor's certificate of attendance shall contain:

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- A) The name, address and certificate number of the sponsor;
 - B) The name and address of the participant;
 - C) A brief statement of the subject matter;
 - D) The number of hours attended in each program;
 - E) The date and place of the program; and
 - F) The signature of the sponsor.
- 11) The sponsor shall maintain attendance records for not less than 5 years.
- 12) The sponsor shall be responsible for assuring that no renewal applicant shall receive CE credit for time not actually spent attending the program.
- 13) Upon the failure of a sponsor to comply with any of the foregoing requirements, the DivisionDepartment, after notice to the sponsor and hearing before and recommendation by the Board (see 68 Ill. Adm. Code 1110), shall thereafter refuse to accept for CE credit attendance at or participation in any of that sponsor's CE programs until such time as the DivisionDepartment receives assurances of compliance with this Section.
- 14) Notwithstanding any other provision of this Section, the DivisionDepartment or Board may evaluate any sponsor of any approved CE program at any time to ensure compliance with requirements of this Section.
- d) Activities Not Qualifying for CE Credit
- 1) Certain activities that shall not be considered acceptable for continuing education credits include, but shall not be limited to, the following:
 - A) Attendance or participation at professional or association business meetings, conferences, general sessions, elections, policymaking sessions or program orientation;
 - B) Serving on committees;

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- ~~C) Entertainment and recreation;~~
- ~~D) Tours, visiting exhibits;~~
- ~~E) Any function for which the registrant receives remuneration as part of his/her regular employment;~~
- ~~F) In-house training on office equipment; and~~
- ~~G) Courses with a main thrust of teaching nonverbal skills (i.e., golf, tennis, dancing, basket weaving).~~

d)e) Certification of Compliance with CE Requirements

- 1) Each renewal applicant shall certify, on the renewal application, full compliance with the CE requirements set forth in subsections (a) and (b) ~~above~~.
- 2) The ~~Division may~~ Department shall conduct random audits to verify compliance with CE requirements.
- 3) The ~~Division~~ Department may require additional evidence (e.g., certificate of attendance). This additional evidence shall be required in the context of the ~~Division's~~ Department's random audit. It is the responsibility of each renewal applicant to retain or otherwise produce evidence of compliance.
- 4) 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].

e)f) Continuing Education Earned in Other Jurisdictions

- 1) If a registrant has earned CE hours offered in another state or territory not given by an approved sponsor for which the licensee will be claiming credit toward full compliance in Illinois, the applicant shall submit an individual program approval request form, along with a \$25 processing

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fee, prior to participation in the program or 90 days prior to expiration of the license. The Board shall review and recommend approval or disapproval of the program using the criteria set forth in subsection (c)(3) ~~of this Section.~~

- 2) If a licensee fails to submit an out of state CE approval form within the required time frame, late approval may be obtained by submitting the approval request form with the \$25 processing fee plus a \$10 per hour late fee not to exceed \$150. The Board shall review and recommend approval and disapproval of the program using the criteria set forth in subsection (c)(3) ~~of this Section.~~

~~f)g)~~ Restoration of Nonrenewed or Inactive Certificate of Registration. Upon satisfactory evidence of compliance with CE requirements, the ~~Division~~Department shall restore the certificate upon payment of the required fee as provided by Section 1200.50 ~~of this Part.~~

~~g)h)~~ Waiver of CE Requirements

- 1) Any renewal applicant seeking renewal of a certificate of registration without having fully complied with these CE requirements shall file with the ~~Division~~Department a renewal application along with the required fee set forth in Section 1200.50 ~~of this Part~~, a statement setting forth the facts concerning non-compliance and request a waiver of the CE requirements on the basis of these facts. A request for waiver shall be made prior to the renewal date. If the ~~Division~~Department, upon the written recommendation of the Board, finds from ~~the~~sueh affidavit or any other evidence submitted that extreme hardship has been shown for granting a waiver, the ~~Division~~Department shall waive enforcement of CE requirements for the renewal period for which the applicant has applied.
 - A) 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 CE requirements during the applicable prerenewal period because of:
 - i) Full-time service in the armed forces of the United States during a substantial part of the prerenewal period;

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- ii) An incapacitating illness documented by a statement from a currently licensed physician, nurse practitioner or physician's assistant; or;
 - iii) ~~A physical inability to travel to the sites of approved programs documented by a currently licensed physician; iv) Being retired from practice and not performing any reporting services; or v)~~ Any other similar extenuating circumstances.
- B) Persons employed as full-time court reporters under the Court Reporters Act [705 ILCS 70] may apply for a waiver from the continuing education requirements. The waiver shall be granted upon the submission of evidence satisfactory to the DivisionDepartment (i.e., statement from employer) that the certified shorthand reporter is employed as a full-time court reporter under the Court Reporters Act.
- 2) 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 DivisionDepartment.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.80 Granting Variances

- a) The Director may grant variances from ~~this Partthese rules~~ in individual cases when he or shewhere he 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 of the Department of Financial and Professional Regulation-

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Division of Professional Regulation with the authority granted by the Secretary (Director) shall notify the Certified Shorthand Reporters Board of Examiners of the granting of thesueh variance, and the reasons for granting the variance~~therefor~~, at the next meeting of the Board.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1200.90 Standards of Professional Conduct

In order to establish and maintain a high standard of integrity in the practice of shorthand reporting, the following Standards of Professional Conduct shall be binding on every person holding a certificate of registration as a certified shorthand reporter.

- a) A licensee shall be fair and impartial toward each participant in all aspects of reported proceedings.
- b) A licensee should only accept an assignment if his/her level of competence will result in the preparation of an accurate transcript and will remove himself/herself from an assignment if he/she believes his/her abilities are inadequate, recommending or assigning another licensee only if thesueh licensee has the competence required for thesueh assignment.
- c) A licensee, if requested, shall provide information regarding services to be rendered regarding administration of professional services to all parties. The licensee must strive to meet promised delivery dates whenever possible, make timely delivery of transcripts when no date is specified, and provide immediate notification of delays.
- d) A licensee shall be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict arises, the licensee must disclose that conflict or potential conflict.
- e) A licensee who becomes impaired and unable to function according to the standards of practice should immediately seek inactive status and refrain from practice. It is the licensee's responsibility to seek supervision and/or personal therapy for any problem that is interfering with the ability to perform professional services.
- f) A licensee shall preserve the confidentiality and ensure the security of

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information, oral or written, entrusted to the licensee by any and all of the parties in a proceeding.

- g) It is the licensee's responsibility to preserve his/her shorthand notes for a period of no less than 10 years from the date the notes or transcripts were taken~~five years~~, except as otherwise prescribed by law, through storage of the original paper notes and/or an electronic copy of either the shorthand notes or the English transcript of the notes on computer disks, cassettes, backup tape systems, ~~or~~ optical or laser disk systems, or other retrieval systems available at the time that the notes or transcripts were taken.
- h) A licensee's signature, license number and expiration date shall be affixed to a transcript of his/her stenographic notes to certify to its correctness if the transcript has been prepared by him/her or under his/her direct supervision.
- i) A licensee shall not permit the use of his/her name or firm's name, nor shall a licensee be associated in business ventures with persons or firms that the licensee has reason to believe to be engaging in fraudulent or dishonest business practices.
- j) A licensee having knowledge of any alleged violation of the Certified Shorthand Reporter Act shall cooperate with the Division~~Department~~ or appropriate governmental agency, furnishing such information or assistance as may be required to conduct an investigation resulting from a complaint.
- k) The licensee shall at all times be aware of and avoid not only the fact of, but the appearance of, impropriety, which may include, but is not limited to:
 - 1) The establishment of contingent fees as a basis of compensation.
 - 2) The giving or receiving of, directly or indirectly, any gift, incentive, reward or anything of value to anyone as a condition for the performance of professional services.
 - 3) The offering to pay, either directly or indirectly, any commission or other consideration in order to secure professional assignments.
 - 4) The entering into any financial relationship, written or oral, with counsel, parties in interest or their intermediaries that:

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- A) undermines the actual or perceived impartiality of the court reporter; or
 - B) does not provide or offer any party in interest comparable court reporting services in the same proceedings.
- l) A licensee shall be truthful and accurate when making public statements or when advertising qualifications or services provided.
 - m) A licensee shall meet all mandated continuing education requirements and should keep abreast of current literature and technological advances and developments.
 - n) The ~~Division~~Department hereby incorporates by reference "The Code of Professional Ethics" of the National Court Reporters Association, 8224 Old Courthouse Road~~118 Park Street, S.E.~~, Vienna, Virginia 22182-3808, 201322180, with no later amendments or editions.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Pharmacy Practice Act of 1987
- 2) Code Citation: 68 Ill. Adm. Code 1330
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1330.10	Amendment
1330.20	Amendment
1330.30	Amendment
1330.40	Amendment
1330.50	Amendment
1330.80	Amendment
1330.90	Amendment
1330.110	New Section
1330.200	Amendment
1330.210	Amendment
1330.220	Amendment
1330.400	Amendment
1330.410	Amendment
1330.500	Amendment
1330.510	Amendment
1330.520	Amendment
1330.530	Amendment
1330.550	Amendment
1330.560	Amendment
1330.600	Amendment
1330.610	Amendment
1330.620	Amendment
1330.640	Amendment
1330.660	Amendment
1330.670	Repealed
1330.680	Amendment
1330.710	Amendment
1330.740	Amendment
1330.750	Amendment
1330.770	Amendment
1330.780	Amendment
1330.790	Amendment
1330.800	New Section

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- 4) Statutory Authority: Implementing the Pharmacy Practice Act [225 ILCS 85] and authorized by Section 2105-15 of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15]
- 5) A Complete Description of the Subjects and Issues Involved: In 2007, the Pharmacy Practice Act was completely overhauled. It put into place, among its many changes, a framework for remote pharmacy and telepharmacy, and resulted in a complete rewrite of this Part in 2010. Those changes were a best guess at how new technology would be used in the practice of pharmacy and how best to regulate it to protect the public. Now, with three years of experience, the amendments contained in this proposed rulemaking are meant to adjust the regulations to the reality of what technology is being implemented and how it is being utilized. Among its many changes, this proposed rulemaking clarifies when pharmacy technicians must submit proof of certification to the Department. Section 1330.30, Unprofessional/Unethical Conduct, has been retitled "Standards" and now includes the definition of unprofessional conduct and as well as additional practices that constitute unprofessional conduct. Section 1330.510 concerning telepharmacy is being amended to more accurately reflect current technology and provide better regulatory oversight. Section 1330.640 clarifies that pharmacies may not sell bulk compounded products to physicians or others; that they may only compound pursuant to a patient-specific prescription or in anticipation of regularly received patient-specific prescriptions. A new provision is added to Section 1330.50 to implement PA 97-1043, permitting pharmacists to administer influenza and Tdap immunizations.
- 6) Published studies or reports, and sources of underlying data, used to comprise this rulemaking, in accordance with 1 Ill. Adm. Code 100.355: 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: 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.

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- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

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: Licensed pharmacists, pharmacy technicians, and pharmacies may be affected.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: Licensure pursuant to the Pharmacy Practice Act

- 14) Regulatory Agenda on which this rulemaking was summarized: July 2013

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 1330

PHARMACY PRACTICE ACT

SUBPART A: GENERAL PROVISIONS

Section

1330.10	Definitions
1330.20	Fees
1330.30	Standards Unprofessional/Unethical Conduct
1330.40	Violations
1330.50	Vaccinations/Immunizations
1330.60	Internet Pharmacies
1330.70	Granting Variances
1330.80	Renewals
1330.90	Restoration <u>of a Pharmacist License</u>
1330.100	Continuing Education
<u>1330.110</u>	<u>Confidentiality</u>

SUBPART B: PHARMACY TECHNICIAN

Section

1330.200	Application for Certificate of Registration as a Pharmacy Technician
1330.210	Pharmacy Technician Training
1330.220	<u>Application for Certificate of Registration as a</u> Certified Pharmacy Technician

SUBPART C: PHARMACIST

Section

1330.300	Approval of Pharmacy Programs
1330.310	Graduates of Programs Outside the United States
1330.320	Application for Examination
1330.330	Examination for Licensure
1330.340	Application for Licensure on the Basis of Examination
1330.350	Endorsement

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SUBPART D: PHARMACY LICENSURE

Section

- 1330.400 Application for a Pharmacy License
- 1330.410 Pharmacy Licenses
- 1330.420 Emergency Remote Temporary Pharmacy License

SUBPART E: TYPES OF PHARMACIES

Section

- 1330.500 Community Pharmacy Services
- 1330.510 Telepharmacy
- 1330.520 Offsite Institutional Pharmacy Services
- 1330.530 Onsite Institutional Pharmacy Services
- 1330.540 Nuclear Pharmacy Services
- 1330.550 Nonresident Pharmacies
- 1330.560 Remote Prescription/Medication Order Processing

SUBPART F: PHARMACY STANDARDS

Section

- 1330.600 Security Requirements
- 1330.610 Pharmacy Structural/Equipment Standards
- 1330.620 Electronic Equipment Requirements [for Remote Pharmacies](#)
- 1330.630 Sanitary Standards
- 1330.640 Pharmaceutical Compounding Standards
- 1330.650 Pharmacy Computer Regulations
- 1330.660 Pharmacist-in-Charge
- 1330.670 Compounded Sterile Preparation Standards [\(Repealed\)](#)
- 1330.680 Automated Dispensing and Storage Systems

SUBPART G: PHARMACY OPERATIONS

Section

- 1330.700 Patient Counseling
- 1330.710 Reporting Theft or Loss of Controlled Substances
- 1330.720 Transfer of Prescription
- 1330.730 Drug Prepackaging
- 1330.740 Multi-Med Dispensing Standards for Community Pharmacies
- 1330.750 Return of Drugs

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1330.760	Electronic Transmission of Prescriptions
1330.770	Centralized Prescription Filling
1330.780	Change of Ownership of a Pharmacy
1330.790	Closing a Pharmacy
<u>1330.800</u>	<u>Pharmacy Self-Inspection</u>

AUTHORITY: Implementing the Pharmacy Practice Act [225 ILCS 85] and authorized by Section 2105-15 of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15].

SOURCE: Rules and Regulations Promulgated for the Administration of the Illinois Pharmacy Practice Act, effective August 20, 1975; amended March 8, 1977; amended at 4 Ill. Reg. 1234, effective July 11, 1980; amended at 5 Ill. Reg. 2997, effective March 11, 1981; codified at 5 Ill. Reg. 11049; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; amended at 7 Ill. Reg. 6496, effective June 30, 1983; amended at 9 Ill. Reg. 16918, effective October 23, 1985; amended at 10 Ill. Reg. 21913, effective December 17, 1986; transferred from Chapter I, 68 Ill. Adm. Code 330 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1330 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2957; amended at 12 Ill. Reg. 17394, effective October 14, 1988; amended at 16 Ill. Reg. 19811, effective December 7, 1992; amended at 21 Ill. Reg. 12600, effective August 29, 1997; amended at 22 Ill. Reg. 21959, effective December 1, 1998; amended at 23 Ill. Reg. 14131, effective November 18, 1999; amended at 24 Ill. Reg. 8548, effective June 9, 2000; amended at 26 Ill. Reg. 18338, effective December 13, 2002; amended at 27 Ill. Reg. 19389, effective December 11, 2003; emergency amendment at 29 Ill. Reg. 5586, effective April 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 13639, effective August 25, 2005; amended at 30 Ill. Reg. 14267, effective August 21, 2006; amended at 30 Ill. Reg. 16930, effective October 12, 2006; emergency amendment at 31 Ill. Reg. 16045, effective November 19, 2007, for a maximum of 150 days; amended at 32 Ill. Reg. 3262, effective February 21, 2008; amended at 32 Ill. Reg. 7116, effective April 16, 2008; old Part repealed at 34 Ill. Reg. 6688, effective April 29, 2010; new Part adopted at 34 Ill. Reg. 6690, effective April 29, 2010; amended at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 1330.10 Definitions

"Act" means the Pharmacy Practice Act [225 ILCS 85].

"Automated Dispensing and Storage Systems" include, but are not limited to,

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mechanical systems that perform operations or activities, other than counting, compounding or administration, relative to the storage, packaging or dispensing of medications, and that collect, control and maintain all transaction information. An automated dispensing and storage system shall not include automated systems located and utilized wholly within a pharmacy.

"Beyond Use Date" means a drug's expiration date.

"Board" means the State Board of Pharmacy.

"Community Pharmacy" means any pharmacy that engages in general community pharmacy practice and that is open to, or offers pharmacy service to, the general public.

"Deliver" means the actual, constructive or attempted transfer of possession of a prescription medication.

"Department" means the Department of Financial and Professional Regulation.

"Direct Supervision" means in the immediate physical presence of the person supervised.

"Director" means the Director of the Division of Professional Regulation with the authority delegated by the Secretary.

"Dispense" means to interpret, verify computer entry of, select the prescribed product for, prepare and/or deliver a prescription medication to an ultimate consumer or to a person authorized to receive the prescription medication by or pursuant to the lawful order of a practitioner, including the compounding, packaging and/or labeling necessary for delivery and any recommending, advising and counseling concerning the contents, therapeutic values, uses and any precautions, warnings and/or advice concerning consumption. Dispense does not mean the physical delivery to a patient or a patient's representative in a home or institution by a designee of a pharmacist or by common carrier or the physical delivery of a drug or medical device to a patient or patient's representative by a pharmacist's designee within a pharmacy or drugstore while the pharmacist is on duty and the pharmacy is open.

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"Dispensing Error" means any preventable event that may cause or lead to inappropriate medication use or patient harm. Such events may be related to professional practice, health care products, procedures and systems, including: prescribing; order communication; product labeling, packaging and nomenclature; compounding; dispensing; distribution; administration; education; monitoring; and use.

"Distribute" means to deliver, other than by dispensing, a prescription medication.

"Division" means the Department of Financial and Professional Regulation-Division of Professional Regulation.

"Drug Compliance Coordinator" means the chief pharmacy coordinator, appointed by the Secretary, who shall serve as the executive administrator and the chief enforcement officer of the Act, pursuant to Section 11(d) of the Pharmacy Practice Act.

"Drug Regimen Review" means *and includes the evaluation of prescription drug orders and patient records for:*

known allergies;

drug or potential therapy contraindications;

reasonable dose, duration of use, and route of administration, taking into consideration factors such as age, gender, and contraindications;

reasonable directions for use;

potential or actual adverse drug reactions;

drug-drug interactions;

drug-food interactions;

drug-disease contraindications;

therapeutic duplication;

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patient laboratory values when authorized and available;

proper utilization (including over or under utilization) and optimum therapeutic outcomes; and

abuse and misuse [225 ILCS 85/3(y)].

"Electronic Format" may include information obtained via the Internet or stored on personal digital assistant, smart phone, tablet, etc.

"Electronic Transmission of Prescriptions" and "electronically transmitted prescriptions" means the communication of original prescriptions, refill authorizations, or medication orders, including controlled substances to the extent permitted by federal law, from an authorized licensed prescriber, or his or her authorized agent, to the pharmacy of the patient's choice by electronic means, including, but not limited to, telephone, facsimile machine, computer, computer modem or any other electronic device or authorized means.

"Institutional Pharmacy" means any pharmacy that is located in or outside a facility licensed under the Nursing Home Care Act, [210 ILCS 45], the Hospital Licensing Act [225 ILCS 85], or the University of Illinois Hospital Act [110 ILCS 330] or a facility that is operated by the Department of Human Services or the Department of Corrections, and that provides pharmacy services to residents or patients of the facility, as well as employees, prescribers and students of the facility.

"Medication Order" means a prescription issued by a physician or other authorized prescriber for a resident or patient of a facility served by an institutional pharmacy.

"Nonresident Pharmacy" means a pharmacy that is located outside this State that ships, delivers, dispenses or distributes into Illinois by any means any drugs, medicines, pharmaceutical services or devices requiring a prescription.

"Nuclear Pharmacist" means a pharmacist who provides radiopharmaceutical services and has satisfied the requirements of Section 1330.540(i).

"Nuclear Pharmacy" means any pharmacy that provides and/or offers for sale radiopharmaceuticals.

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"On File" as used in Section 19 of the Act and this Part means the maintenance at the transferor pharmacy of the transferred prescription, whether previously filled or unfilled. For previously filled prescriptions at a transferor pharmacy located in Illinois, the prescriptions shall be maintained pursuant to the recordkeeping requirements of Section 18 of the Act. For previously unfilled prescriptions at a transferor pharmacy located in Illinois, the prescriptions shall be maintained in a readily retrievable format in a suitable book, file or recordkeeping system for a period of not less than 5 years. For previously filled and unfilled prescriptions at a transferor pharmacy located in a state other than Illinois, the prescriptions shall be maintained pursuant to the recordkeeping requirements of that state.

"Patient Counseling" means the communication between a pharmacist or a student pharmacist under the supervision of a pharmacist and a patient or the patient's representative about the patient's medication or device for the purpose of optimizing proper use of prescription medications or devices. *"Patient counseling" may include without limitation:*

obtaining a medication history;

acquiring a patient's allergies and health conditions;

facilitation of the patient's understanding of the intended use of the medication;

proper directions for use;

significant potential adverse events;

potential food-drug interactions; and

the need to be compliant with the medication therapy.

A pharmacy technician may only participate in the following aspects of patient counseling under the supervision of a pharmacist:

obtaining medication history;

providing the offer for counseling by a pharmacist or student

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~~pharmacist~~~~intern~~; and

acquiring a patient's allergies and health conditions. [225 ILCS 85/3(r)]

"Patient Profiles" or "Patient Drug Therapy Record" means the obtaining, recording and maintenance of patient prescription and personal information.

"Pharmacist" means a currently licensed pharmacist ~~or registered assistant pharmacist~~.

"Pharmacy Services" means the provision of any services listed within the definition of the "practice of pharmacy" found in Section 3(d) of the Act.

"Radiopharmaceutical" means any substance defined as a drug in Section 3(b) of the Act that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds of potassium-containing salts that contain trace quantities of naturally occurring radionuclides. Radiopharmaceuticals include radioactive biological products as defined in the Federal Food, Drug and Cosmetic Act (21 USC 301 et seq.) and regulations promulgated under that Act.

"Radiopharmaceutical Quality Assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on potential radiopharmaceuticals, and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history and the keeping of proper records in these regards.

"Radiopharmaceutical Service" means the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals as determined by the Illinois Emergency Management Agency; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or required, of diagnostic and therapeutic values, hazards and use of radioactive pharmaceuticals; and the offering or performance of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a nuclear

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pharmacy.

"Registrant" means a licensed pharmacist, registered assistant pharmacist, certified pharmacy technician, student pharmacist, or registered pharmacy technician.

"Remote Medication Order Processing" means receiving, interpreting or clarifying medication orders; data entry and transferring of medication order information; performing drug utilization review; interpreting clinical data; performing therapeutic interventions; and providing drug information concerning medication orders or drugs from a remote pharmacy.

"Remote Pharmacy" means any pharmacy that provides pharmacy services at a location other than the home pharmacy.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation.

"Student Pharmacist" means a person registered as a pharmacy technician who is enrolled in a pharmacy program and is designated as a "student pharmacist" pursuant to Section 9 of the Act.

"Ultimate Consumer" means the person for whom a drug is intended.

"Unique Identifier" means an electronic signature, handwritten signature or initials, thumb print or other acceptable individual biometric or electronic identification process approved by the Division.

~~"Unprofessional Conduct" under Section 30 of the Act shall include, but not be limited to, any act or practice related to the practice of pharmacy that is willful, wanton, repeated or flagrant and likely to result in harm to an individual. In determining what constitutes unprofessional conduct, the Board shall consider, but shall not be limited to, the following standards as they relate to the person who is the subject of the proposed disciplinary action:~~

~~Violations set forth in Section 30(a) of the Act;~~

~~Repeated commission of an act or acts that are of a flagrant and obvious nature so as to constitute conduct of such a distasteful nature that accepted~~

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~~codes of behavior or codes of ethics are breached;~~

~~Repeated commission of an act or acts in a relationship with a patient so as to violate common standards of decency or propriety;~~

~~Willful violation or knowing assistance in the violation of any law relating to the use of habit-forming drugs;~~

~~Willful preparation or signing false statements in order to induce payment for pharmacy services by the Department of Healthcare and Family Services, or any other local, State or federal department, agency or governmental body, or any private insurance program; and~~

~~Violating the practice standards of the American Pharmaceutical Association (American Association of Colleges of Pharmacy Standards of Practice for the Profession of Pharmacy (March 1979)) and the Principles of Practice for Pharmaceutical Care (1996), which include no later editions or amendments, and which are herein incorporated by reference; however, noncompliance with these professional standards shall not alone be considered an act of unprofessional conduct unless these acts are of a flagrant, glaringly obvious nature constituting a substantial departure from these professional standards.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.20 Fees

The following fees are not refundable:

- a) ~~Registration as a Pharmacy Technician or Certified~~ Registration as a Pharmacy Technician or Certified ~~Certificate of Pharmacy Technician~~
 - 1) The fee for application for a certificate of registration as a pharmacy technician or certified pharmacy technician is \$40.
 - 2) The fee for the renewal of a certificate of registration as a pharmacy technician or certified pharmacy technician shall be calculated at the rate of \$25 per year.

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- b) License as a Pharmacist
- 1) The fee for application for a license as a pharmacist is \$75.
 - 2) In addition, applicants for any examination as a registered pharmacist shall be required to pay, either to the Division 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 or the designated testing service, shall result in the forfeiture of the examination fee.
 - 3) The fee for a license as a registered pharmacist, registered or licensed under the laws of another state or territory of the United States, is \$200.
 - 4) The fee for the renewal of a license shall be calculated at the rate of \$75 per year.
 - 5) The fee for the restoration of a license other than from inactive status is ~~\$50~~\$20 plus all lapsed renewal fees, not to exceed \$450.
 - 6) Applicants for the preliminary diagnostic examination shall be required to pay, either to the Division 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 application for examination has been received and acknowledged by the Division or the designated testing service, shall result in the forfeiture of the examination fee.
 - 7) The fee to have the scoring of an examination authorized by the Division reviewed and verified is \$20 plus any fee charged by the applicable testing service.
- c) License as a Pharmacy
- 1) The fee for application for a license for a pharmacy under the Act is \$100.

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- 2) The fee for the renewal of a license for a pharmacy under the Act shall be calculated at the rate of \$100 per year.
- 3) The fee for the change of a pharmacist-in-charge is \$25.
- d) General Fees
 - 1) 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 records when no duplicate certification is issued.
 - 2) The fee for a certification of a registrant's record for any purpose is \$20.
 - 3) The fee to have the scoring of an examination administered by the Division reviewed and verified is \$20.
 - 4) The fee for a wall certificate showing licensure or registration shall be the actual cost of producing the certificate.
 - 5) The fee for a roster of persons registered as pharmacists or registered pharmacies in this State shall be the actual cost of producing the roster.
 - 6) The fee for pharmacy licensing, disciplinary or investigative records obtained pursuant to a subpoena is \$1 per page.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

| **Section 1330.30 Standards~~Unprofessional/Unethical~~ Conduct**

| Unprofessional and unethical~~Unethical~~ conduct shall include, but not be limited to:

- a) Failing to establish and maintain effective controls against diversion of prescription drugs.
- b) Committing theft or diversion, or attempting to commit theft or diversion, by a registrant or licensee.

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- ~~c)b)~~ Making or filing a report or record that a pharmacist or pharmacy knows to be false or intentionally or negligently failing to file a report or keep records as required by the Act or this Part.
- ~~d)e)~~ Knowingly dispensing a prescription drug after the death of the person for whom the prescription was written.
- ~~e)d)~~ Billing or charging for quantities of drugs greater than that which was delivered or charging patients for a brand drug when a generic is dispensed.
- ~~f)e)~~ Submitting fraudulent billing or reports to a third party payer or claiming a fee for a service that is not performed or earned.
- ~~g)f)~~ Filling a prescription when a pharmacist knows, or reasonably should know, that no valid physician-patient relationship exists or failing to exercise sound professional judgment with respect to the accuracy and authenticity of any prescription/drug order dispensed.
- ~~h)g)~~ Failing to ensure that patient counseling is offered or refusing to respond to requests for patient counseling.
- ~~h)~~ ~~Failing to use appropriate professional judgment when dispensing drugs.~~
- ~~i)~~ ~~Unreasonably refusing to compound a valid prescription.~~
- ~~i)f)~~ Discriminating in any manner against a person or group based upon that person or group's religion, race, creed, color, gender, sexual orientation, age or national origin.
- ~~j)k)~~ Knowingly selling a prescription drug without a valid prescription. Selling or offering to sell any drug not approved by the Food and Drug Administration or found in the USP-NF.
- ~~l)~~ ~~Failing to exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order dispensed.~~
- ~~k)m)~~ ~~Failing~~~~Failure of a licensee or registrant~~ to keep one's self~~himself or herself~~ and one's~~his or her~~ apparel clean or to wear identification bearing ~~his or her~~ name and designation.

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- l) Directly or indirectly furnishing to a medical practitioner prescription order-blanks that refer to a specific pharmacist or pharmacy in any manner.
- m) Actively or passively participating in any arrangement or agreement in which a prescription order-blank is prepared, written or issued in a manner that refers to a specific pharmacist or pharmacy.
- ~~p) Claiming a fee for a service that is not performed or earned.~~
- n) Dividing a prescription order unless directed by the prescriber, payer or patient or when the full quantity of that prescription medication is not available at that location.
- o) Committing dispensing errors that result in hospitalization of a patient or showing a pattern of dispensing errors.
- p) Committing an act or acts that are of a flagrant and obvious nature so as to constitute conduct of such a distasteful nature that accepted codes of behavior or codes of ethics are breached.
- q) Committing an act or acts in a relationship with a patient that violate common standards of decency or propriety.
- r) Willfully violating, or knowingly assisting in the violation of, any law relating to the use of habit-forming drugs.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.40 Violations

- a) A registrant shall not:
 - 1) Engage in a professional association, with any place defined as a drug store or pharmacy in the Act where the practice of pharmacy is engaged in by any person who is not authorized to practice under the Act or that is not operated and conducted in compliance with the Act.
 - 2) Compound, sell or offer for sale, or cause to be compounded, sold or

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offered for sale, any drug, medicine, poison, chemical or pharmaceutical preparation, under or by a name recognized in the United States Pharmacopeia/National Formulary for internal or external use that differs from standard of strength, quality, purity or bioavailability as determined by the tests specified in the United States Pharmacopeia/National Formulary that is official at the time of the compounding, sale or offering for sale.

- 3) Compound, sell or offer for sale, or willfully cause to be compounded, sold or offered for sale, any drug, medicine, poison, chemical or pharmaceutical preparation the strength or purity of which falls below the professed standard of strength or purity under which it is sold.
 - 4) Purchase prescription drugs from any source that fails to meet provisions of the Wholesale Drug Distribution Licensing Act [225 ILCS 120].
- b) No registrant shall violate any of the following laws, or the rules or regulations promulgated pursuant to these laws, which relate to the practice of pharmacy:
- 1) Illinois Food, Drug and Cosmetic Act [410 ILCS 620].
 - 2) Hypodermic Syringes and Needles Act [720 ILCS 635].
 - 3) Federal Food, Drug and Cosmetic Act (21 USC 301 et seq.).
 - 4) Federal Controlled Substances Act (21 USC 801 et seq.).
 - 5) Illinois Controlled Substances Act [720 ILCS 570].
 - 6) Cannabis Control Act [720 ILCS 550].
 - 7) Illinois Poison Prevention Packaging Act [430 ILCS 40].
 - 8) Poison Prevention Packaging Act of 1970 (15 USC 1471 et seq.).
 - 9) Wholesale Drug Distribution Licensing Act [225 ILCS 120].
- c) If a licensee or registrant is disciplined in another state, he or she must inform the Division within 60 days.

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.50 Vaccinations/Immunizations

a) Qualifications

- 1) A pharmacist, or student pharmacist under the direct supervision of a pharmacist, may administer vaccinations/immunizations to persons who are 14 years of age or older pursuant to a valid patient specific prescription or a standing order by a physician licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 [225 ILCS 60].
- ~~2)~~ 2) A pharmacist, or student pharmacist under the direct supervision of a pharmacist, may administer influenza (inactivated influenza vaccine and live attenuated influenza intranasal vaccine) and Tdap (tetanus, diphtheria, acellular pertussis) vaccines/immunizations to persons who are 10 to 13 years of age pursuant to a valid patient specific prescription or a standing order by a physician licensed to practice medicine in all of its branches under the Medical Practice Act of 1987.
- ~~3)2)~~ 3)2) The pharmacist shall successfully complete a course of training accredited by the Accreditation Council on Pharmacy Education, or a similar health authority or professional body approved by the Division.
- ~~4)3)~~ 4)3) The pharmacist shall maintain a current Basic Life Support Certification for Healthcare Providers issued by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or an equivalent as determined by the Division~~Department~~.
- ~~5)4)~~ 5)4) Each pharmacy or pharmacist functioning outside of a pharmacy shall have available a current copy or electronic version of the CDC reference "Epidemiology and Prevention of Vaccine – Preventable Diseases" at the location where vaccinations are administered.
- ~~6)5)~~ 6)5) The administration of vaccines shall be done by a pharmacist or student pharmacist under the direct supervision of a pharmacist.

b) Protocols, Policies and Procedures

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- 1) Prior to administrating vaccinations/immunizations ~~to persons who are 14 years of age or older~~, a pharmacist or student pharmacist under the direct supervision of a pharmacist must follow protocols written by a physician licensed to practice medicine in all of its branches for the administration of vaccines and treatment of severe adverse events following administration of vaccines.
 - 2) The pharmacy must maintain written policies and procedures for handling and disposal of all used supplies or contaminated equipment.
 - 3) The pharmacist or student pharmacist under the direct supervision of a pharmacist must give the appropriate vaccine information statement (VIS) to the patient or legal representative prior to each vaccination. The pharmacist or student pharmacist under the direct supervision of a pharmacist must ensure that the adult patient or minor (age 14 or older) patient's parent or legal representative is available and has the vaccine information statement.
 - 4) The pharmacy must report adverse events as required by the Vaccine Adverse Events Reporting System (VAERS) and to the primary care provider named by the patient.
- c) Record Keeping and Reporting
- 1) All records regarding each administration of a vaccine must be kept for 5 years. These records shall include:
 - A) The name, address and date of birth of the patient.
 - B) Date of administration and site of injection of the vaccine.
 - C) Name, dose, manufacturer, lot number and beyond use date of the vaccine.
 - D) Name and address of the patient's primary health care provider named by the patient.
 - E) The name or unique identifier of the administering pharmacist.

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- F) Which vaccine information statement (VIS) was provided.
- 2) A pharmacist who administers any vaccine must report that administration, within 30 days after the date of administration, to the patient's primary healthcare provider named by the patient.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.80 Renewals

- a) Every license issued under the Act, except the certificate of registration as a pharmacy technician, shall expire on March 31 of each even-numbered year. Every certificate of registration as a pharmacy technician issued under the Act shall expire annually on March 31. The holder of a license or certificate of registration may renew the license or certificate during the 60 days preceding the expiration date by paying the required fee.
- b) It is the responsibility of each registrant to notify the Division of any change of address. Failure to receive a renewal form from the Division shall not constitute an excuse for failure to pay the renewal fee.
- c) Practicing or operating on a license or certificate that has expired shall be considered unlicensed activity and shall be grounds for discipline pursuant to Section 30 of the Act.
- d) Pharmacy technicians shall be required to submit with their second renewal proof of certification as a certified pharmacy technician, proof of enrollment in a first professional degree program in pharmacy, or proof of enrollment in clinical training by a graduate a foreign pharmacy program, as provided in Section 9 of the Act. This requirement does not apply to pharmacy technicians licensed prior to January 1, 2008. Failure to provide proof of certification results in non-renewal of the pharmacy technician's registration.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.90 Restoration of a Pharmacist License

- a) A pharmacist~~registrant~~ seeking restoration of a certificate of registration that has

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expired for 5 years or less shall have the license restored upon payment of all lapsed renewal fees required by Section 1330.20 and proof of 30 hours of continuing education (e.g., certificate of attendance or completion) in accordance with Section 1330.100 ~~of this Part.~~

- b) A ~~pharmacist~~registrant seeking restoration of a certificate of registration that has been placed on inactive status for 5 years or less shall have the license restored upon payment of the current renewal fee and proof of 30 hours of continuing education (e.g., certificate of attendance or completion) in accordance with Section 1330.100 ~~of this Part.~~
- c) A ~~pharmacist~~registrant seeking restoration of a certificate of registration 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, together with the fee required by Section 1330.20 and proof of 30 hours of continuing education (e.g., certificate of attendance or completion) in accordance with Section 1330.100 ~~of this Part.~~
- 1) The ~~pharmacist~~registrant shall also submit either:
- A) Certification of active practice in another jurisdiction. Evidence shall include a statement from the appropriate board or licensing authority in the other jurisdiction that the registrant was authorized to practice during the term of active practice; or
- B) An affidavit attesting to military service as specified in Section 12 of the Act. The applicant restoring a license shall be excused from the payment of any lapsed fee or any restoration fees.
- 2) A ~~pharmacist~~registrant who is unable to submit proof of satisfaction of either subsection (c)(1)(A) or (B) shall submit proof of completion of:
- A) 15 clock hours of refresher courses or continuing education for each year the license was expired; ~~and~~
- B) Either:
- i) ~~600~~Up to 400 hours of clinical practice under the supervision of a pharmacist completed within 2 years prior to restoration; or-

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- ii) Successful completion of the Pharmacist Assessment for Remediation Evaluation (PARE) examination. To be successful, an applicant must receive an overall score of 80 or higher, as well as a minimum score of 75 in each of the 3 content areas on the PARE examination.
- 3) The course work or clinical training described in subsections (c)(2)(A) and (c)(2)(B)(i) must have the prior approval of the Board.
- d) When the accuracy of any submitted documentation, or the relevance or sufficiency of the course work or experience, is questioned by the Division because of lack of information, discrepancies or conflicts in information given, or a need for clarification, the registrant will be requested to:
- 1) Provide information as may be necessary; and/or
 - 2) Appear for an interview before the Board to explain the relevance or sufficiency, clarify information given, or clear up any discrepancies in information.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.110 Confidentiality

All information collected by the Department in the course of an examination or investigation of a licensee or applicant, including, but not limited to, any complaint against a licensee filed with the Department and information collected to investigate any such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed. The Department shall not disclose the information to anyone other than law enforcement officials, regulatory agencies that have an appropriate regulatory interest as determined by the Secretary, or a party presenting a lawful subpoena to the Department. Information and documents disclosed to a federal, State, county or local law enforcement agency shall not be disclosed by the agency for any purpose to any other agency or person. A formal complaint filed against a licensee by the Department or any order issued by the Department against a licensee or applicant shall be a public record, except as otherwise prohibited by law.

(Source: Added at 38 Ill. Reg. _____, effective _____)

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SUBPART B: PHARMACY TECHNICIAN

Section 1330.200 Application for Certificate of Registration as a Pharmacy Technician

- a) An applicant for registration as a pharmacy technician shall file an application on forms supplied by the Division, together with:
- 1) A copy of his or her high school diploma or its equivalent, or proof of current enrollment in a high school program; and
 - 2) The fee required by Section 1330.20 ~~of this Part.~~
- b) Pursuant to Section 9 of the Act, an applicant may assist a registered pharmacist for 60 days upon submission of an application or, submission for reinstatement not due to disciplinary action, to the Division in accordance with subsection (a). A copy of the application must be maintained by the applicant at the site of employment during and until notice of registration or disqualification is received by the applicant and must be readily retrievable for review by the Drug Compliance Investigator.
- c) A pharmacy technician must renew his or her registration with the Division on an annual basis.
- d) Technician certificate of registration must be displayed and visible to the public in the pharmacy where the pharmacy technician is employed.
- e) Every registered pharmacy technician shall notify the Division of any change in the address on record within 30 days after the change.
- f) No pharmacist whose license has been denied, revoked, suspended or restricted for disciplinary purposes is eligible to be registered as a pharmacy technician ~~Pharmacy Technician~~.
- g) No person who holds an active Illinois pharmacist's license may concurrently hold an active Illinois pharmacy technician registration.
- h) Any pharmacy technician who is permitted to use the title "student pharmacist" pursuant to Section 9 of the Act shall notify the Division within 10 days if he or she has dropped out of or been expelled from an ACPE accredited college or

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school of pharmacy, failed to complete his or her 1,200 hours of Board approved clinical training within 24 months, or failed the pharmacist licensure examination 3 times. When this occurs, the technician shall have 90 days to obtain a certified pharmacy technician license as provided in Section 1330.220, unless that pharmacy technician was registered prior to January 1, 2008. During the period prior to registering as a pharmacy technician, the individual is not permitted to use the title student pharmacist. If the individual does not become registered as a certified pharmacy technician within 90 days, the pharmacy technician registration shall expire.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.210 Pharmacy Technician Training

- a) It shall be the joint responsibility of a pharmacy and its pharmacist-in-charge to have trained all of its pharmacy technicians or obtain proof of prior training in all of the following topics as they relate to the practice site:
 - 1) The duties and responsibilities of the technicians and pharmacists.
 - 2) Tasks and technical skills, policies and procedures.
 - 3) Compounding, packaging, labeling and storage.
 - 4) Pharmaceutical and medical terminology.
 - 5) Record keeping requirements.
 - 6) The ability to perform and apply arithmetic calculations.
- b) Within 6 months after initial employment or changing the duties and responsibilities of a pharmacy technician, it shall be the joint responsibility of the pharmacy and the pharmacist-in-charge to train the pharmacy technician or obtain proof of prior training in the areas listed in subsection (a) as they relate to the practice site or to document that the pharmacy technician is making appropriate progress.
- c) All pharmacies shall maintain an up to date training program describing the duties and responsibilities of a pharmacy technician.

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- d) All pharmacies shall create and maintain retrievable records of training or proof of training as required in this Section.
- e) Ensuring registered pharmacy technicians and certified pharmacy technicians are properly trained shall be the responsibility of the pharmacy, the pharmacist-in-charge, and the pharmacy technician.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.220 Application for Certificate of Registration as a Certified Pharmacy Technician

- a) An individual may receive certification as a certified pharmacy technician if he or she:
- 1) Has submitted a written application in the form and manner prescribed;
 - 2) Has attained the age of 18;
 - 3) Is of good moral character, as determined by the Division;
 - 4) Graduated from a pharmacy technician training program approved by a nationally recognized accrediting body or obtained documentation from the pharmacist-in-charge of the pharmacy where the applicant is employed verifying that he or she has successfully completed a training program as provided for in Section 1330.210(a);
 - 5) Has successfully passed an examination accredited by the National Commission for Certifying Agencies of the Institute for Credentialing Excellence (NCCA)~~National Organization for Competency Assurance (NOCA)~~, as approved and required by the Board. The Division, upon the recommendation of the Board, has determined that the Exam for the Certification of Pharmacy Technicians offered by the Institute for the National Healthcareer Association (or its successor)~~Certification of Pharmacy Technicians~~, and the Pharmacy Technician Certification Examination offered by the Pharmacy Technician Certification Board (or its successor), are accredited by NCCANOCA and are, therefore, approved examinations for certification; and

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- 6) Has paid the required certification fees.
- b) No pharmacist whose license has been denied, revoked, suspended or restricted for disciplinary purposes may be eligible to be registered as a certified pharmacy technician. No person who holds an active Illinois pharmacist license may concurrently hold an active Illinois certified pharmacy technician registration.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: PHARMACY LICENSURE

Section 1330.400 Application for a Pharmacy License

- a) Establishing, Relocating or Changing Ownership
 - 1) Any person who desires to establish, relocate or change the ownership of a pharmacy shall file an application on forms supplied by the Division, together with the fee required by Section 1330.20, and specify the types of pharmacy services to be provided as described in Sections 1330.500, 1330.510, 1330.520, 1330.530, 1330.540, 1330.550 and 1330.560.
 - 2) Upon determination that the application is in good order, an inspection of the premises will be conducted to determine compliance with Sections 1330.610, 1330.620, 1330.630, 1330.640, ~~1330.670~~ and 1330.680. An application shall be in good order when it is signed and notarized and the license of the pharmacist-in-charge has been verified to be in good standing with the Division.
 - 3) Upon recommendation of the Drug Compliance Coordinator, the Board may request the owner of the pharmacy and the pharmacist-in-charge to appear for an interview with the Board.
- b) For a change of name of pharmacist-in-charge only, the owner shall be required to file an application on forms supplied by the Division, together with the required fee, and submit the present license. The Division shall evaluate the application and, if satisfactory, issue a new license.

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- c) Within 30 days after issuance of a pharmacy license, the pharmacy for which the licensure was requested shall be open to the public for pharmaceutical services.
- d) Any reduction in hours of operation shall be reported to the Division within 30 days.
- e) Upon receipt by the Division of a change of ownership application, the purchaser may begin operations prior to the issuance of a new pharmacy license only when the purchaser and seller have a written power of attorney agreement. This agreement shall provide, among other things, that violations during the pendency of the application process shall be the sole responsibility of the seller. This agreement shall be provided to the Division upon request.
- f) No pharmacies shall relocate prior to the inspection of the premises. All drugs shall be transferred within 24 hours after issuance of the license.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.410 Pharmacy Licenses

- a) Each individual, partnership, corporation or any other applicant for a pharmacy license shall indicate, on forms supplied by the Division, the type of pharmacy services to be provided by the licensee.
- b) The Board may review and make recommendations to the Director regarding pharmacy applications filed with the Division.
- c) A pharmacy who provides more than one type of pharmacy service shall be issued one pharmacy license and shall be charged the appropriate fee, as set forth in Section 1330.20.
- d) A pharmacy shall designate a pharmacist-in-charge as provided for in Section 1330.660.
- e) When a management company is hired to run a pharmacy, that management company shall be the license holder; however, the license may be issued ~~with~~ the name of the pharmacy, as a d/b/a, or with the name of the management company. The Illinois Controlled Substance license shall be issued ~~to~~ in the name ~~of~~ the management company unless the management company and the pharmacy

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or hospital cosigns a pharmacy service agreement that assigns overall responsibility for controlled substances to the hospital or pharmacy.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART E: TYPES OF PHARMACIES

Section 1330.500 Community Pharmacy Services

- a) Pharmacies that engage in general or specialty community pharmacy practice and are open to, or offer pharmacy service to, the general public shall, in addition to any other requirements of the Act and this Part, comply with this Section. A community pharmacy that, in addition to offering pharmacy services to the general public, provides institutional services shall also comply with Section 1330.520.
- b) Staffing of the Pharmacy
 - 1) Whenever the hours of the pharmacy differ from those of the establishment in which the pharmacy is located, the schedule during which pharmacy services are provided shall be conspicuously displayed.
 - 2) Whenever a pharmacy is open and a pharmacist is not present and available to provide pharmacy services, a sign stating that situation shall be conspicuously displayed.
 - 3) No prescription may be dispensed when a pharmacist is not physically present in the establishment and on duty.
- c) Record Keeping Requirements for Dispensing Prescription Drugs
 - 1) For every prescription dispensed, the prescription record shall contain the name, initials or other unique identifier of the pharmacist who dispenses the prescription drugs. No prescription may be dispensed after one year from the date of the original issuance of the prescription by the prescriber.
 - 2) Whenever a prescription is dispensed by a registered pharmacy technician or certified pharmacy technician under the supervision of a pharmacist, the prescription record shall contain the names, initials or other unique

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identifier of both the supervising pharmacist and the registered pharmacy technician or certified pharmacy technician who dispenses the prescription.

- 3) Refilling a Prescription
 - A) Each refilling of a prescription shall be entered on the prescription or on another appropriate, uniformly maintained, readily retrievable record that indicates, by the number of the prescription, the following information:
 - i) The name and dosage form of the drug;
 - ii) The date of each refilling;
 - iii) The quantity dispensed;
 - iv) The name or initials of the pharmacist and the pharmacy technician, if applicable, in each refilling; and
 - v) The total number of refills remaining for the prescription.
 - B) If the pharmacist ~~does not~~~~doesn't~~ otherwise indicate in a uniformly maintained record, ~~he or she~~~~he/she~~ shall be deemed to have dispensed a refill for the full face amount of the prescription.
- 4) Presentation of a written prescription copy or prescription label shall be for information purposes only and has no legal status as a valid prescription order. The recipient pharmacist of the copy or prescription label shall contact the prescribing practitioner to obtain a new prescription order.
- 5) Copies of prescriptions given to an ultimate consumer shall be marked "For Information Purposes Only".
- 6) Subject to Section 18 of the Act, any information required to be kept pursuant to this Section may be recorded and stored in a computerized pharmaceutical information system that meets the standards of performance stated in the regulations of the Drug Enforcement

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Administration (21 CFR 1306; 1998), except as provided in subsection (c)(7), and shall include the capability to:

- A) Retrieve the original prescription order information for those prescription orders currently authorized for refilling;
- B) Retrieve the current prescription orders, including, at a minimum, name of drug, date of refill, quantity dispensed, name and identification code of the manufacturer in the case of a generically written prescription or a generic interchange, name or initials of the dispensing pharmacist and technician for each refill, and the total number of refills dispensed to date;
- C) Supply documentation of refill information entered by the pharmacist using the system through a hard copy printout of each day's refill data that has been verified for correctness. This printout must include for each prescription filled at least the following information:
 - i) The name and dosage form of the drug;
 - ii) The date of each refilling;
 - iii) The quantity dispensed;
 - iv) The name or initials of the pharmacist in each refilling and the pharmacy technician, if applicable;
 - v) The patient's name;
 - vi) The prescriber's name; and
 - vii) The prescription number for the prescription.
- 7) In lieu of the printout required by subsection (c)(6), the pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in the dispensing shall sign a statement each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by him/her and is correct as shown. The book

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or file must be maintained at the pharmacy employing the system for a period of 5 years after the date of dispensing the appropriately authorized refill.

- 8) All refill data shall be maintained by the pharmacy on the premises for 5 years, in accordance with Section 18 of the Act. The pharmacy shall have the appropriate equipment on the premises to provide readily retrievable information in the course of an on-site inspection. A hard copy printout shall be provided to the Division, upon request, within 48 hours.

d) Any drug that is dispensed pursuant to prescription, other than vaccinations administered in the pharmacy, shall have affixed to its container a label as provided in Section 22 of the Act.

e)ⓓ No person shall establish or move to a new location any pharmacy unless the pharmacy is licensed with the Division and has on file with the Division a verified statement that:

- 1) The pharmacy is or will be engaged in the practice of pharmacy; and
- 2) The pharmacy will have in stock and will maintain sufficient prescription drugs and materials to protect the public it serves within 30 days after opening of the pharmacy.

f)ⓓ Pharmacies have a duty to deliver lawfully prescribed drugs to patients and to distribute nonprescription drugs approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies, or to substitute a generic drug as permitted in Section 25 of the Act in a timely manner, or to contact the prescriber to obtain authorization to dispense a different drug that produces a similar clinical effect in a timely manner, except for the following or substantially similar circumstances:

- 1) When, in the pharmacist's professional judgment, after screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including, but not limited to, serious interactions with nonprescription or over-the-counter drugs), drug-food interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, or clinical abuse or misuse, pursuant

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to ~~Section~~ ~~subsection~~ 3(aa) of the Act, she or he determines that the drug should not be dispensed due to one of the foregoing clinical reasons;

- 2) National or State emergencies or guidelines affecting availability, usage or supplies of drugs;
- 3) Lack of specialized equipment or expertise needed to safely produce, store or dispense drugs, such as certain drug compounding or storage for nuclear medicine;
- 4) Potentially fraudulent prescriptions;
- 5) Unavailability of drug; or
- 6) The drug is not typically carried in similar practice settings in the State.

g) Nothing in this Section requires pharmacies to dispense a drug without payment of their usual and customary or contracted charge.

h) All pharmacies shall be required to maintain the following current resource materials, either in hard copy or electronic format:

- 1) Copies of the Act and this Part;
- 2) The Illinois Controlled Substances Act and 77 Ill. Adm. Code 3100;
- 3) 21 CFR (Food and Drugs); and
- 4) the Illinois Hypodermic Syringes and Needles Act [720 ILCS 635].

i) If the lawfully prescribed drug or nonprescription drug approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies is not in stock or is otherwise unavailable, or the prescription cannot be filled pursuant to subsection (f)(1) or (f)(6), the pharmacy shall provide the patient or agent a timely alternative for appropriate therapy that, consistent with customary pharmacy practice, may include obtaining the drug. These alternatives include but are not limited to:

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- 1) Contact the prescriber to address concerns such as those identified in subsection (f)(1);
 - 2) If requested by the patient or his or her agent, return unfilled lawful prescriptions to the patient or agent; or
 - 3) If requested by the patient or his or her agent, communicate or transmit, as permitted by law, the original prescription information to a pharmacy of the patient's choice that will fill the prescription in a timely manner.
- j) Any mail order pharmacy that provides services in Illinois shall provide, during its regular hours of operation, but not less than 6 days per week for a minimum of 40 hours per week, a toll-free telephone service to facilitate communication between patients in this State and a pharmacist at the pharmacy who has access to the patient's records. The toll free number must be disclosed on the label affixed to each container of drugs dispensed to residents of the State.
- k)h) Engaging in or permitting any of the following shall constitute grounds for discipline or other enforcement actions:
- 1) Intentionally destroying unfilled lawful prescriptions;
 - 2) Refusing to return unfilled lawful prescriptions;
 - 3) Violating a patient's privacy;
 - 4) Discriminating against patients or their agents in a manner prohibited by State or federal laws;
 - 5) Intimidating or harassing a patient; or
 - 6) Failing to comply with the requirements of this Section.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.510 Telepharmacy

- a) Telepharmacy shall be limited to the ~~following~~ types of operations described in this Section. Each site where such operations occur shall be a separately licensed

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pharmacy. Home pharmacies that are located outside of Illinois must be licensed as a nonresident pharmacy. Nonresident pharmacies shall abide by all Illinois laws and rules when filling prescriptions for Illinois residents, except that the dispensing pharmacist and the pharmacist-in-charge shall not be required to be licensed in Illinois, except as otherwise provided in this Part.

b) ~~Operations~~ Remote Dispensing Site

~~1)A)~~ Written prescriptions presented to the remote dispensing site shall be scanned into the electronic data processing equipment to ensure initial dispensing and each refill and the original prescription may be viewed on the monitor at both the remote dispensing site and home pharmacy site. All written prescriptions shall be delivered to the home pharmacy for filing within 72 hours. Records shall be maintained at the home pharmacy in files separate from the home pharmacy files.

~~2)B)~~ A remote site is considered to be under the supervision of the pharmacist-in-charge of the home pharmacy.

~~3)C)~~ The remote site shall use its home pharmacy and pharmacy management system.

~~A)i)~~ The system shall assign consecutive prescription numbers.

~~B)ii)~~ All records must be maintained at the home pharmacy.

~~C)iii)~~ Prescriptions dispensed at the remote site shall be distinguishable from those dispensed from the home pharmacy.

~~D)iv)~~ Daily reports must be separated for the home and remote site.

~~4)D)~~ A pharmacist at the home pharmacy must verify each prescription before it leaves the remote site.

~~A)i)~~ Pharmacist and pharmacy technician initials or unique identifiers must appear on the prescription record and the prescription label.

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- ~~B)ii)~~ A pharmacist shall electronically compare via video link the stock bottle, drug dispensed, the strength and its beyond use date. The entire label must be checked for accuracy on the video link.
- ~~C)iii)~~ The remote dispensing site shall utilize a barcode system that prints the barcode of the stock bottle on the label of the dispensed drug. The technician shall scan both the stock bottle and the label of the dispensed drug to verify that the drug dispensed is the same as the drug in the stock bottle for each prescription dispensed.
- ~~D)iv)~~ A pharmacy may utilize a different electronic verification system that accomplishes the same purpose after review and approval of the Division.
- ~~5)E)~~ Counseling must be done by a pharmacist via video link and audio link before the script is released. The pharmacist must counsel the patient or the patient's agent on all new prescriptions and refills.
- ~~6)F)~~ A pharmacist-in-charge or his or her designated pharmacist must complete monthly inspections of the remote site. Inspection criteria must be included in the policies and procedures for the site. The inspection report must be available on site for pharmacy investigator inspection.
- ~~7)G)~~ Controlled substances shall be kept at the remote site in accordance with the Act and this Part. All records must be stored at the home pharmacy and at the remote site.
- ~~8)H)~~ There shall be a working computer link, video link and audio link to a pharmacist at a home pharmacy whenever the prescription area is open to the public. The communication link must be checked daily and the remote site pharmacy must be closed if the link malfunctions, unless a pharmacist is physically present at the remote site.
- ~~A)i)~~ The pharmacy technician must have one year of experience and be registered as a certified pharmacy technician.
- ~~B)ii)~~ New prescriptions received at the remote dispensing site may be entered into the remote computer system with all verification,

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interaction, checking and profile review by the pharmacist at the home pharmacy.

~~C)iii)~~ Each pharmacist at the home pharmacy may electronically supervise no more than 3 remote sites that are simultaneously open.

~~9)H)~~ The facility must have a sign clearly identifying it as a remote dispensing site.

~~10)~~ Security of filled prescriptions must be maintained by a separate lock drawer or cabinet.

~~11)~~ The facility shall have a room for patient consultation, exclusive of any waiting area.

~~c)2)~~ Remote Consultation Site

~~1)A)~~ These sites have no prescription inventory.

~~2)B)~~ Only filled prescriptions, filled at the home pharmacy, with final patient labeling attached are allowed at these sites.

~~3)C)~~ These sites must be staffed with a pharmacy technician or certified pharmacy technician who has the knowledge necessary to use computer audio/video link for dispensing and consultation to occur.

~~4)D)~~ Written prescriptions may be received at a remote consultation site. All written prescriptions presented at a remote consultation site shall be delivered to the home pharmacy within 72 hours.

~~5)E)~~ Security of filled prescriptions must be maintained by a separate lock drawer or cabinet.

~~6)F)~~ Record keeping shall be conducted by the pharmacist (time/date) when dispensing and counseling occurred.

~~7)G)~~ The facility shall have a room for patient consultation exclusive of any waiting area.

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~~8)H)~~ The facility must have a sign clearly identifying it as a remote consultation site.

d) Automated Pharmacy Systems (Section 22(b) of the Act)

~~1)3)~~ Remote Automated Pharmacy Systems (RAPS)

A) These devices shall maintain a bulk prescription drug inventory that is controlled electronically by the home pharmacy, which shall be utilized to dispense patient specific prescriptions.

~~B)A)~~ These ~~systems shall~~ sites have prescription inventory, which must be secured in an automated pharmacy system and electronically dispensing device connected to and controlled by the home pharmacy.

~~C)B)~~ A pharmacist, ~~or prescriber when the RAPS is located on the same premises as the prescriber,~~ must approve all the prescription orders before they are released from the RAPS automated dispensing device.

~~D)C)~~ Dispensing and counseling are performed by a pharmacist employed or contracted by the home pharmacy via audio link ~~and video link or by the prescriber when the RAPS is located on the same premises as the prescriber.~~

~~E)D)~~ All filled prescription must have a label that meets the requirements of the Act attached to the final drug container.

~~F)E)~~ The pharmacist-in-charge of the home pharmacy, or a designated registrant, shall conduct and complete monthly inspections of the RAPS remote telepharmacy dispensing machine site. Inspection criteria must be included in the policies and procedures for the site. The report must be available to the pharmacy investigators when requested.

~~G)F)~~ The RAPS must be licensed with the Division as an automated pharmacy system and will be subject to random inspection by

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pharmacy investigators. Notwithstanding that the RAPS shall possess a license, the home pharmacy shall remain responsible for inventory control and billing. For purposes of random inspections, a pharmacist with access to the system must be available at the site within one hour, or as otherwise approved by the drug compliance investigator. In the event the Chief Pharmacy Coordinator determines that the RAPS poses a significant risk of patient harm, the RAPS must be disabled until such time as the pharmacist with access to the system is available to the site.

- H)4) Medication dispensed at the automated pharmacy system site may only be packaged by a licensed manufacturer or repackager. Prepackaging must occur at the home pharmacy, a pharmacy sharing common ownership with the home pharmacy, or a pharmacy that has contracted with the home pharmacy to perform prepackaging services in compliance with Section 1330.730. The following requirements shall apply whenever medications are prepackaged by a pharmacy other than the home pharmacy:
- i) The prepackaging pharmacy shall be licensed in Illinois as a resident or nonresident pharmacy.
 - ii) The prepackaging pharmacy shall share a common database with the home pharmacy, or have in place an electronic or manual process to ensure that both pharmacies have access to records to verify the identity, lot numbers and expiration dates of the prepackaged medications stocked in the RAPS.
 - iii) The prepackaging and repackaging pharmacy shall maintain appropriate records to identify the responsible pharmacist who verified the accuracy of the repackaged medication.
- I) Written prescriptions may be received at an RAPS. All written prescriptions presented to an RAPS shall be scanned utilizing imaging technology that permits the reviewing pharmacist to determine its authenticity. The sufficiency of the technology shall be determined by the Department. If sufficient technology is not

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used, the written prescriptions must be delivered to the home pharmacy and reviewed by a pharmacist prior to being dispensed to the patient.

2) Kiosk

- A) A kiosk is a device that maintains individual patient prescription drugs that were verified and labeled at the home pharmacy.
- B) A home pharmacy may only use the kiosk with prior approval of a patient.
- C) A kiosk located on the same premises or campus of the home pharmacy shall operate under the same license as the home pharmacy. However, a kiosk must be licensed with the Division if it is not so located.
- D) A kiosk shall:
- i) When located on the same premises or campus as the pharmacy, inform a patient, if he or she is using the device when the pharmacy is open, that the patient may address questions and concerns regarding the prescription to a pharmacist at the pharmacy;
 - ii) When not located on the same premises or campus as the pharmacy, inform a patient, if he is using the device when the pharmacy is closed, that he or she may immediately direct any questions and concerns regarding the prescription to a licensed pharmacist via a pharmacy provided audio/video link;
 - iii) Inform a patient that a prescription is not available to be delivered by the device if the pharmacist has determined that he or she desires to counsel the patient in person regarding the prescription.
- 3) A pharmacy may use an automated pharmacy system to deliver prescriptions to a patient when the device:

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- A) Is secured against a wall or floor;
 - B) Provides a method to identify the patient and delivers the prescription only to that patient or the patient's authorized agent;
 - C) Has adequate security systems and procedures to prevent unauthorized access, to comply with federal and State regulations, and to maintain patient confidentiality;
 - D) Records the time and date that the patient removed the prescription from the system.
- 4) A licensed automated pharmacy system shall not be utilized by prescribers. Nothing in this Section shall prevent a prescriber from utilizing an automated pharmacy system in connection with his or her own dispensing. However, a prescriber may not utilize or access an automated pharmacy system licensed pursuant to this Section.
- e)e) All pharmacists performing services in support of ~~at~~the remote dispensing site, remote consultation site, kiosk, or RAPSsites must display a copy or electronic image of their licenses at ~~the~~any remote site where they provide services, and be licensed in this State, unless employed by a pharmacy licensed in Illinois as a nonresident pharmacy, in which case, the pharmacist providing the services shall hold an active license as a pharmacist in the state in which the nonresident pharmacy is located and only the pharmacist-in-charge of the remote site must be licensed in Illinois.
- f)e) Each remote site must display a sign, easily viewable by the customer, that states:
- 1) The facility is a telepharmacy supervised by a pharmacist located at (address); and
 - 2) The pharmacist is required to talk to you, over an audio/visual link, each time you pick up a prescription.
- g)e) No remote site may be open when the home pharmacy is closed, unless ~~at~~the pharmacist employed or contracted by the home pharmacy, or by a pharmacy contracted with the home pharmacy, is present at the remote site or is remotely

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~~providing supervision and consultation as required under this Section. No employees are allowed access to the remote site when the home pharmacy is closed. The security system must allow for tracking of entries into a pharmacy. The pharmacist in charge must review the log of entries weekly.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.520 Offsite Institutional Pharmacy Services

- a) Pharmacies that are not located in the facilities they serve and whose primary purpose is to provide services to patients or residents of facilities licensed under the Nursing Home Care Act, the Hospital Licensing Act, or the University of Illinois Hospital Act shall, in addition to any other requirements of the Act and this Part, comply with this Section.
- b) Recordkeeping Requirements for Dispensing Prescriptions or Orders
 - 1) Every prescription or order dispensed shall be documented with the name, initials or other unique ~~identifiers~~ ~~identifies~~ of the pharmacist (and pharmacy technician if one is used) authorized to practice pharmacy under the provisions of the Act who dispenses the prescription or order. For purposes of the Act, an authorized person is:
 - A) A pharmacist licensed in the State of Illinois; or
 - B) A registered pharmacy technician, certified pharmacy technician or student pharmacist under the supervision of a pharmacist.
 - 2) Each pharmacy must maintain records for 5 years that contains the information in subsection (b)(3). This information shall be readily retrievable and in a format that provides enforcement agents a concise, accurate and comprehensive method of monitoring drug distribution via an audit trail. This system may require ~~two~~ or more documents that, when read together, will provide all the information required by federal (e.g., the regulations of the Drug Enforcement Administration (21 CFR 1300 et seq.; 1998)) and State (e.g., the Pharmacy Practice Act and the Illinois Controlled Substances Act [720 ILCS 570]) statute.

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- 3) In addition to the record keeping requirements of subsection (b)(2), a uniformly maintained, readily retrievable hard copy record or back-up documentation of each prescription or order dispensed shall be maintained by the pharmacy for 5 years and shall include:
 - A) Name of resident;
 - B) Date of order;
 - C) Name, strength and dosage form of drug, or description of the medical device ordered;
 - D) Quantity dispensed (a separate record should be maintained when the quantity billed differs from the quantity dispensed, e.g., unit dose transfer systems);
 - E) Directions for use;
 - F) Quantity billed;
 - G) Prescriber's name;
 - H) Prescriber's signature and/or DEA number when required for controlled substances; and
 - I) The drug name and identification code or the manufacturer in case of a generically ordered medication or a generic interchange.
- 4) No prescription may be filled or refilled for a period in excess of one year from the date of the original issuance of the prescription or order by the prescriber.
- 5) Subject to Section 18 of the Act, any information required to be kept pursuant to this Section may be recorded and stored in a:
 - A) computerized pharmaceutical information system that meets the standards of performance required by the regulations of the Drug Enforcement Administration (21 CFR 1306; 1998) and shall include the capability to:

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- i) Retrieve the original medication order information for those medication orders that are currently authorized;
 - ii) Retrieve the current history of medication orders that shall, at a minimum, include the name of drug, the date of filling, the quantity dispensed, the name and identification code of manufacturer in the case of a generically written prescription or a generic interchange, for each filling, and the total number of refills when read in conjunction with any off-line hard copy of the history of medication orders dispensed to date; and
 - iii) Supply documentation of the correctness of filling information entered into a system must be provided by the pharmacist using the system by way of a hard copy printout of each day's filling data that has been verified, dated and signed by the dispensing pharmacist; or
- B) bound log book, or separate file, in which each individual pharmacist involved in dispensing shall sign a statement each day attesting to the fact that the refill information entered into the computer that day has been reviewed by him/her and is correct as shown. The book or file must be maintained at the pharmacy employing the system for a period of 5 years after the date of dispensing the appropriately authorized refill.
- c) In the event the long term care facility changes pharmacy provider services, their new provider must obtain the orders from the long term care facility and verify the authenticity and accuracy of the orders with the prescriber.
 - d) Staffing of the Pharmacy. When the pharmacy is closed, the public and any employees not registered under the Act are to be prohibited access to the filling and dispensing area.
 - e) Labeling Requirements
 - 1) Medications for Future Use

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- A) Parenteral solutions to which a drug or diluent has been added or that are not in their original manufacturer's packaging shall contain the following information on the outer label:
 - i) Name, concentration and volume of the base parenteral solution;
 - ii) Name and strength of drugs added;
 - iii) Beyond use date and date of the admixture. Beyond use date, unless otherwise specified in the individual compendia monograph shall be not later than the beyond use date on the manufacturer's container or one year from the date the drug is repackaged, whichever is earlier; and
 - iv) Reference code to identify source and lot number of drugs added.
 - B) Non-parenterals repackaged for future use shall be identified with the following information:
 - i) Brand and/or generic name;
 - ii) Strength (if applicable);
 - iii) Beyond use date. Unless otherwise specified in the individual monograph, the beyond use date shall be not later than the beyond use date on the manufacturer's container or one year from the date the drug is repackaged, whichever is earlier; and
 - iv) Reference code to identify source and lot number.
- 2) Medications Prepared for Immediate Use
- A) All medications prepared by the pharmacy for immediate dispensing to a specific resident or patient in the facility shall be dispensed in a container identified with:

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- i) Name of the resident;
 - ii) Resident's room and bed number;
 - iii) Dispensing date;
 - iv) Name, strength and dosage form of drug, or description of the medical device ordered;
 - v) Quantity dispensed;
 - vi) Directions for use;
 - vii) Prescriber's name; and
 - viii) Beyond use date if less than 60 days from date of dispensing.
- B) Pharmacies dispensing medications to a specific resident or patient in the facility via unit dose shall label each order with the following information:
- i) Name of the resident;
 - ii) Resident's room and bed number;
 - iii) Date of order;
 - iv) Name, strength and dosage form of drug, or description of the medical device ordered;
 - v) Directions for use; and
 - vi) Prescriber's name.
- f) Pharmacies that compound and dispense sterile products shall comply with SectionSections 1330.640 ~~and 1330.670~~.

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- g) Medication Dispensing in the Absence of a Pharmacist. The availability of necessary medications for immediate therapeutic use during those hours when the institutional pharmacy is not open shall be met in the following manner:
- 1) An after-hour cabinet, which is a locked cabinet or other enclosure located outside of the pharmacy area containing a minimal supply of the most frequently required medication, may be utilized provided that only personnel specifically authorized by the institution in which the pharmacy is located may obtain access and it is sufficiently secure to deny access to unauthorized persons. After-hour cabinets shall only be used in the absence of a pharmacist. When medication is removed from the cabinet or enclosure, written physician's orders authorizing the removal of the medication shall be placed in the cabinet or enclosure. A log shall be maintained within the cabinet or enclosure and authorized personnel removing medication shall indicate on the log the signature of the authorized personnel removing the medication, the name of the medication removed, the strength (if applicable), the quantity removed and the time of removal. An automated dispensing and storage system may be used as an after hours cabinet. This use shall be in compliance with Section 1330.680.
 - 2) Emergency kits containing those drugs that may be required to meet the immediate therapeutic needs of the patient, and that are not available from any other source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining the drugs from the other source, may be utilized. Emergency kits shall be supplied and maintained under the supervision of a pharmacist. Drugs shall be removed from emergency kits only by authorized pharmacy personnel or persons authorized to administer medication pursuant to a valid physician's order of a physician licensed to practice medicine in all of its branches in Illinois. Emergency kits shall be sealed in some manner that will indicate when the kit has been opened. A label shall be affixed to the outside of the emergency kit indicating the beyond use date of the emergency kit. The beyond use date of the emergency kit shall be the earliest beyond use date of any drug contained in the kit. After an emergency kit has been used or upon discovery that the seal has been broken or upon the occurrence of the beyond use date, the kit shall be secured and returned to the pharmacy to be checked and/or restocked by the last authorized user. If the pharmacy is closed at that time, the kit shall be returned when it opens. An automated

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dispensing and storage system may be used as an emergency kit. This use shall be in compliance with Section 1330.680.

- 3) Whenever any drug is not available from night cabinets or emergency kits, and the drug is required to treat the immediate needs of a patient, the drug may be obtained from the pharmacy in sufficient quantity to meet the immediate need by an authorized nurse. When medication is removed from the pharmacy by an authorized nurse, a copy of the physician's order authorizing the removal of the medication shall be conspicuously placed in the pharmacy with the container from which the drug was removed so that it will be found by a pharmacist and checked promptly. A form shall be available in the pharmacy upon which shall be recorded the signature of the authorized nurse who removed the medication, the name, strength (if applicable) and quantity of medication removed.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.530 Onsite Institutional Pharmacy Services

- a) Pharmacies located in facilities licensed under the Nursing Home Care Act, the Hospital Licensing Act, or the University of Illinois Hospital Act, or that are operated by the Department of Human Services or the Department of Corrections, and that provide pharmacy services to residents, patients, employees, prescribers and students of these facilities, shall, in addition to other requirements of the Act and this Part, comply with this Section.
- b) Recordkeeping Requirements
- 1) Every prescription or medication order filled or refilled shall contain the name, initials or other unique identifier of the pharmacist (and pharmacy technician if one is used) who fills or refills the prescription or medication order, or the name, initials or other unique identifier may be recorded on another appropriate, uniformly maintained and readily retrievable record that indicates, at least, the following information:
- A) The name and dosage form of the drug;
- B) The date of filling or refilling; and

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- C) The quantity dispensed.
- 2) No prescription may be dispensed for a period in excess of one year from the date of the original issuance of the prescription by the prescriber.
 - 3) The pharmacist-in-charge shall maintain or have access to the following records for at least 5 years or as otherwise required by law:
 - A) Records of medication orders and medication administration to patients;
 - B) Procurement records for controlled substances;
 - C) Records of packaging, bulk compounding or manufacturing; and
 - D) Records of actions taken pursuant to drug recalls.
- c) Labeling Requirements
- 1) All medication repackaged by the pharmacy for future use inside the institution or facility and not intended for immediate dispensing to a specific patient shall be identified as follows:
 - A) Single dose or multi-dose drugs, except sterile solutions to which a drug has been added, shall be labeled with:
 - i) Brand and/or generic name;
 - ii) Strength (if applicable);
 - iii) Beyond use date; and
 - iv) Reference code to identify source and lot number.
 - B) Sterile solutions to which drugs have been added shall contain on the outer label:
 - i) Name, concentration and volume of the base sterile solution;

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- ii) Name and strength of drugs added;
 - iii) Beyond use date and time of the admixture; and
 - iv) Reference code to identify source and lot number of drugs added.
- 2) All medication prepared by the pharmacy for immediate dispensing to a specific patient or resident in the institution or facility shall be identified as follows:
- A) Single dose or multi-dose drugs, except parenteral solutions to which a drug has been added, shall be identified with:
 - i) Brand and/or generic name; and
 - ii) Strength (if applicable).
 - B) Sterile solutions to which drugs have been added shall be identified with:
 - i) Name, concentration and volume of the base sterile solution;
 - ii) Name and strength of drugs added; and
 - iii) Beyond use date and time of the admixture.
 - C) All medication dispensed to a specific patient in the institution shall be dispensed in a container identified with the name of the patient and the patient's location. Those institutions or facilities utilizing a unit-dose and medication cart system may identify the name of the patient and the patient's location on the outside of the bin of the medication cart, when those carts are filled by the pharmacy.

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- 3) Labels on all medications dispensed by the pharmacy for immediate dispensing to a patient being discharged, emergency room patient and/or employee shall contain the following:
 - A) The name and dosage form of the drug;
 - B) The date filled; ~~and~~
 - C) The quantity dispensed; ~~and-~~
 - D) Directions for use.
- 4) Investigational new drugs, authorized by the U.S. Food and Drug Administration, shall be dispensed pursuant to a valid prescription order of the principal physician-investigator or his authorized clinician. All investigational drugs shall be stored in and dispensed from the pharmacy and shall be identified with the following information:
 - A) Name of drug and strength (if applicable);
 - B) Beyond use date;
 - C) Reference code to identify source and lot number;
 - D) A label indicating "For Investigational Use Only"; and
 - E) Name and location of the patient. Those institutions or facilities utilizing a unit-dose and medication cart system may identify the name of the patient and the patient's location on the outside of the bin of the medication cart, when those carts are filled by the pharmacy.
- 5) A pharmacist providing a copy of a prescription to an ultimate consumer for the purpose of transfer or any other purpose shall cancel the face of the original prescription and record the date the copy is issued, to whom issued, and the pharmacist's signature on the face of the original prescription. Copies of prescriptions shall be marked "For Information Purposes Only" and require prescriber authorization to fill.

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- d) Staffing of the Pharmacy
- 1) The responsibilities of the pharmacist-in-charge shall include:
 - A) Supervision of all the activities of all employees as they relate to the practice of pharmacy;
 - B) Establishment and supervision of the method and manner for storage, dispensing and safekeeping of pharmaceuticals in all areas of the institution or facility, including maintenance of security provisions to be used when the pharmacy is closed. The following security provisions shall be utilized:
 - i) The pharmacy shall be staffed at all times by a registered pharmacist during open hours; and
 - ii) Only registrants and licensees shall have access to the pharmacy, except as provided in Section 1330.530(e)(1);
 - C) Establishment and supervision of the recordkeeping system for the purchase, sale, delivery, possession, storage and safekeeping of drugs;
 - D) The development and implementation of a procedure to be utilized in the event of a drug recall that can be readily activated to assure that all drugs included on the recall are returned to the pharmacy for proper disposition;
 - E) Establishment of specifications for the procurement of all drugs that will be dispensed by the pharmacy; and
 - F) Establishment and supervision of a method of documenting an oral prescription from a licensed physician to a pharmacist and for transmission of that information to the appropriate members of the nursing staff of the institution or facility.
 - 2) The operations of the pharmacy and the maintenance of security provisions are the responsibility of the pharmacist-in-charge whether the

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owner is a sole proprietor, partnership, association, corporation or any other entity.

- 3) Within 30 days after the change of a pharmacist-in-charge, the Division shall be notified in writing by the departing pharmacist-in-charge.
- 4) The departing pharmacist-in-charge shall, on the effective date of the change, inventory the following controlled substances:
 - A) All Schedule II drugs, as defined in the Illinois Controlled Substances Act, by actual physical count; and
 - B) All other scheduled drugs, as defined in the Illinois Controlled Substances Act, by estimated count.
- 5) The inventory shall constitute, for the purpose of this Section, the closing inventory of the departing pharmacist-in-charge and the initial inventory of the incoming pharmacist-in-charge. This inventory record shall be preserved in the pharmacy for a period of 5 years. An affidavit attesting to the completion and preservation of the inventory record bearing the date of the inventory and the signatures of the departing and incoming pharmacist-in-charge shall be submitted to the Division, at its principal office, within 30 days after the change in the pharmacist-in-charge.
- 6) Failure on the part of a registrant to provide the affidavit required in subsections (d)(4) and (5) shall be grounds for denying an application or renewal application for a pharmacy license or for disciplinary action against a registrant. Denial shall be based on the recommendation of the Board.
- 7) In the event the departing pharmacist-in-charge refuses to complete the inventory as provided for in subsection (d)(4), or that pharmacist-in-charge is incapacitated or deceased, the initial inventory for the incoming pharmacist-in-charge shall be the inventory as completed by the incoming pharmacist-in-charge. The incoming pharmacist-in-charge will not be responsible for any discrepancy that may exist in the inventory prior to his or her initial inventory.

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- 8) When the accuracy, relevance or completeness of any submitted documentation is reasonably questioned by the Division because of lack of information, discrepancies or conflicts in information given, or a need for clarification, the registrant will be required to:
 - A) Provide information as may be necessary; and/or
 - B) Appear for an interview before the Board to explain the relevance or sufficiency, clarify information given or clear up any discrepancies or conflicts in information.
- 9) Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, reissue or resale dispensed medications, chemicals, poisons or medical devices, except for:
 - A) Medical devices that can be properly sanitized prior to reuse, resale or re-rent; and
 - B) Medications that are dispensed and stored under conditions defined and supervised by the pharmacist and are unopened in sealed, intact and unaltered containers that meet the standards for light, moisture and air permeation as defined by a current United States Pharmacopoeia/National Formulary published by the United States Pharmacopoeial Convention, Inc.
- e) Medication Dispensing in the Absence of a Pharmacist. The availability of necessary medications for immediate therapeutic use during those hours when the institutional pharmacy is not open shall be met in the following manner:
 - 1) An after-hour cabinet, which is a locked cabinet or other enclosure located outside of the pharmacy area containing a minimal supply of the most frequently required medication, may be utilized provided that only personnel specifically authorized by the institution in which the pharmacy is located may obtain access and it is sufficiently secure to deny access to unauthorized persons. After-hour cabinets shall only be used in the absence of a pharmacist. When medication is removed from the cabinet or enclosure, written physician's orders authorizing the removal of the medication shall be placed in the cabinet or enclosure. A log shall be maintained within the cabinet or enclosure and authorized personnel

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removing medication shall indicate on the log the signature of the authorized personnel removing the medication, name of the medication removed, the strength (if applicable), the quantity removed and the time of removal. An automated dispensing and storage system may be used as an after hours cabinet. This use shall be in compliance with Section 1330.680.

- 2) Emergency kits containing those drugs that may be required to meet the immediate therapeutic needs of the patient, and that are not available from any other source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining the drugs from the other source, may be utilized. Emergency kits shall be supplied and maintained under the supervision of a pharmacist. Drugs shall be removed from emergency kits only by authorized pharmacy personnel, persons authorized to administer medication pursuant to a valid physician's order of a physician licensed to practice medicine in all of its branches in Illinois. Emergency kits shall be sealed in some manner that will indicate when the kit has been opened. A label shall be affixed to the outside of the emergency kit indicating the beyond use date of the emergency kit. The beyond use date of the emergency kit shall be the earliest beyond use date of any drug contained in the kit. After an emergency kit has been used or upon discovery that the seal has been broken or upon the occurrence of the beyond use date, the kit shall be secured and returned to the pharmacy to be checked and/or restocked by the last authorized user. If the pharmacy is closed at such time, the kit shall be returned when it opens. An automated dispensing and storage system may be used as an emergency kit. This use shall be in compliance with Section 1330.680.
- 3) Whenever any drug is not available from night cabinets or emergency kits, and the drug is required to treat the immediate needs of a patient, the drug may be obtained from the pharmacy in sufficient quantity to meet the immediate need by an authorized nurse. When medication is removed from the pharmacy by an authorized nurse, a copy of the physician's order authorizing the removal of the medication shall be conspicuously placed in the pharmacy with the container from which the drug was removed so that it will be found by a pharmacist and checked promptly. A form shall be available in the pharmacy upon which shall be recorded the signature of the authorized nurse who removed the medication, the name, strength (if applicable) and quantity of medication removed.

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- 4) Drugs may be dispensed from the emergency room only by a practitioner licensed to prescribe and dispense, and only to patients treated in the institution. This shall occur only during hours in which outpatient institutional pharmacy services are not available. The quantity dispensed should be limited to no more than a 72 hour supply, except for antimicrobial drugs and unit of use packages (e.g., inhalers, ophthalmic, otics, etc., or as provided for in Section 1330.510(b)(3)) to meet the immediate needs of the patient until pharmacy services are available. Drugs dispensed in this manner must meet all labeling requirements pertaining to community pharmacies as specified in Section 1330.500. There shall be written policies and procedures, approved by the medical staff, regarding the dispensing of drugs from the emergency room.
- f) Pharmacies that compound and dispense sterile products shall comply with ~~Section Sections 1330.640 and 1330.670 of this Part.~~
- g) Pharmacies that utilize automated dispensing and storage systems shall comply with Section 1330.680 ~~of this Part.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.550 Nonresident Pharmacies

- a) The Division shall require and provide for an annual nonresident special pharmacy registration for all pharmacies located outside of this State that dispense medications for Illinois residents and mail, ship or deliver prescription medications into this State. Home pharmacies (of remote pharmacies located in Illinois) that are located outside of Illinois must be licensed as a nonresident pharmacy. Nonresident pharmacies shall abide by all Illinois laws and rules when filling prescriptions for Illinois residents, except that pharmacists employed at those pharmacies and the pharmacist-in-charge of those pharmacies shall not be required to be licensed in Illinois except as otherwise provided in this Part. Nonresident special pharmacy registration shall be granted by the Division upon the disclosure and certification by a pharmacy:
- 1) That it is licensed in the state in which the dispensing facility is located and from which the drugs are dispensed;

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- 2) Of the location, names and titles of all principal corporate officers and all pharmacists who are dispensing drugs to residents of this State;
 - 3) That it complies with all lawful directions and requests for information from the board of pharmacy of each state in which it is licensed or registered, except that it shall respond directly to all communications from the Division concerning emergency circumstances arising from the dispensing of drugs to residents of this State;
 - 4) That it maintains its records of drugs dispensed to residents of this State so that the records are readily retrievable from the records of other drugs dispensed;
 - 5) That it cooperates with the Division in providing information to the board of pharmacy of the state in which it is licensed concerning matters related to the dispensing of drugs to residents of this State; and
 - 6) That, during its regular hours of operation, but not less than 6 days per week for a minimum of 40 hours per week, a toll-free telephone service is provided to facilitate communication between patients in this State and a pharmacist at the pharmacy who has access to the patients' records. The toll-free number must be disclosed on the label affixed to each container of drugs dispensed to residents of this State.
- b) To obtain nonresident special pharmacy registration in Illinois, an applicant shall file an application with the Division, on forms provided by the Division, that includes:
- 1) Disclosure and certification of information required in subsection (a); and
 - 2) The fee required by Section 1330.20.
- c) Nonresident special pharmacy registration shall expire on March 31 of each even-numbered year and may be renewed during the 60 days preceding the expiration date by paying the fee required by Section 1330.20.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.560 Remote Prescription/Medication Order Processing

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- a) Any pharmacy may provide remote prescription/medication order processing services to any other pharmacy as provided in Section 25.10 of the Act and the following further requirements:
- 1) Any nonresident pharmacy remote prescription/medication order processing services shall first be registered in its resident state and licensed in this State.
 - 2) There shall be a secure, HIPAA compliant, electronic communication system that shall include but not be limited to computer, telephone and facsimile connections.
 - 3) The communication system shall give remote access to all relevant patient information to allow the pharmacist of the remote pharmacy to perform remote medication order processing that shall include all laboratory results and every patient's or resident's medication profile, if appropriate.
 - 4) The secure electronic communication system shall be maintained on a daily basis. If this system malfunctions, the remote processing pharmacy shall cease operations related to the institution affected.
 - 5) Nothing in this Section shall relieve the pharmacist-in-charge of dispensing pharmacies of compliance with Sections 1330.520 and 1330.530.
- b) Record Keeping Requirements
- 1) A policy and procedure manual shall be maintained by the remote prescription/medication order processing pharmacy pertaining to the pharmacy's operations. The manual shall:
 - A) Be accessible to the remote prescription/medication order processing pharmacy staff and the staff at the dispensing pharmacy;
 - B) Be available for inspection by the Division;

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- C) Outline the responsibilities of the remote prescription/medication order processing pharmacy staff and the staff at the dispensing pharmacy;
 - D) Include a current list of the name, address, telephone number and license number of each pharmacist involved in remote prescription/medication order processing;
 - E) Include policies and procedures for:
 - i) Protecting the confidentiality and integrity of patient information;
 - ii) Ensuring that pharmacists performing remote prescription /medication order processing have access to appropriate drug information resources;
 - iii) Ensuring that medical and nursing staff when appropriate, understand how to contact a pharmacist;
 - iv) Maintaining records to identify the name, initials or identification code of each pharmacist who performs any processing function;
 - v) Complying with federal and State laws and regulations;
 - vi) Operating or participating in a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems;
 - vii) Reviewing the written policies and procedures and documenting the review annually.
- 2) Every pharmacist providing remote prescription/medication order processing services shall record on the order, in the computer system, or on another appropriate, unalterable, uniformly maintained and readily

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retrievable record the following information for every medication order or prescription processed on behalf of a dispensing pharmacy:

- A) The name, initials or other unique identifier of the pharmacist who verifies the medication order or prescription;
 - B) The name of the patient or resident;
 - C) The name, dose, dosage form, route of administration and dosing frequency of the drug;
 - D) The date and time of verification;
 - E) The name of the prescribing/ordering practitioner;
 - F) Any other information that is required by the dispensing pharmacy being served for use in its own records.
- 3) The records for medications entered at the remote prescription/medication order processing pharmacy must be distinguishable and readily retrievable from those entered at the institution being served.
 - 4) The pharmacist-in-charge of the remote prescription/medication order processing pharmacy shall maintain and have access to the following records for a minimum of 5 years:
 - A) Records of medication orders processed;
 - B) Records of the electronic communication system maintenance.
 - 5) The remote prescription/medication order processing pharmacy shall maintain a record containing the names and license numbers of all pharmacies to which they are providing services and the number of hours per day the services are being provided.
- c) All pharmacists providing remote prescription/medication order processing at a remote pharmacy shall be licensed in Illinois. However, when pharmacists are providing remote prescription/medication order processing for a community pharmacy licensed in Illinois from a community pharmacy

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licensed in Illinois but located out-of-state, only the pharmacist-in-charge of the remote pharmacy must be licensed in Illinois.

- d) Only licensed pharmacists at the pharmacy providing remote pharmacy services shall conduct the drug utilization evaluation or review and validation of any order processed within the remote pharmacy, except as provided for in subsection (c).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART F: PHARMACY STANDARDS

Section 1330.600 Security Requirements

- a) Whenever the pharmacy (prescription area) is not occupied by a registrant, the pharmacy (prescription area) must be secured and inaccessible to non-licensed persons (employees and public). This may be accomplished by measures such as walling off, locking doors or electronic security equipment, as approved by the Division.
- b) Schedule II drugs shall be secured in rooms, vaults, safes, cabinets, etc., under lock, whether by key, combination or electronically.
- c) Schedule II drugs shall not be distributed among regular stock.
- d) All secured Schedule II drugs shall be accessible only when a pharmacist is physically present, except as provided for in Section 1330.530(e). For pharmacies operating pursuant to Section 1330.510, secured Schedule II drugs shall be accessible only when a pharmacist or certified pharmacy technician is present.
- e) ~~A pharmacist shall be physically present whenever Schedule II drugs are not secured and are to be dispensed, except as provided for in Section 1330.530(e).~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.610 Pharmacy Structural/Equipment Standards

~~All pharmacies~~Any new pharmacy or any existing pharmacy that is remodeled, other than institutional pharmacies, must comply with the following provisions:

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- a) Notification shall be submitted to the Division that an existing pharmacy will be remodeled.
- b) Other than on-site institutional pharmacies, all dispensing and drug storage areas of the pharmacy must be contiguous.
- c) The pharmacy area and all store rooms shall be well-lighted and properly ventilated.
- d) Refrigerators shall be for the exclusive use of prescription drugs. No personal or food items shall be stored in the refrigerator. Refrigeration shall be capable of maintaining temperature within a range compatible with the proper storage of drugs requiring refrigeration or freezing.
- e) The pharmacy area shall not be used for storage of merchandise that interferes with the practice of pharmacy.
- f) Suitable current reference sources, either in book or electronic data form (available in the pharmacy or on-line), which shall include Facts and Comparisons (<http://www.factsandcomparisons.com>) or other suitable references determined by the Division to be pertinent to the practice carried on in the licensed pharmacy.
- g) A telephone shall be immediately accessible in the pharmacy area.
- h) These requirements are in addition to any other requirements found in this Part.
- i) At a minimum, the equipment and references listed in Section 1330.640 must be maintained at all dispensing pharmacies.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.620 Electronic Equipment Requirements for Remote Pharmacies

All remote pharmacies operating in Illinois shall meet the following equipment requirements:

- a) The pharmacy shall have a computer, scanner, fax capability and printer.
- b) All prescriptions shall be scanned and sequentially numbered, and the prescription labels shall be produced on site and viewed at the home pharmacy.

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- c) Scanned prescriptions shall be displayable on a computer terminal at both the remote pharmacy and home pharmacy.
- d) All patient's demographic and prescription information shall be viewable at both the remote and home pharmacy in real time.
- e) Prescriptions dispensed at the remote pharmacy site must be distinguishable from those dispensed at the home pharmacy.
- f) In all cases in which electronic data processing equipment is used, the original prescription (either hard copy or an exact, unalterable image) shall be retained on file according to law to assure access to the information contained on the prescription in the event of a computer malfunction.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.640 Pharmaceutical Compounding Standards

All pharmaceutical compounding standards, both sterile and non-sterile, shall be governed by the USP-NF, as set forth in USP on Compounding: A Guide for the Compounding Practitioner (2013), except~~The minimum standards and technical equipment considered adequate for compounding drugs shall include:~~

- a) The size of the compounding area shall be of sufficient size to allow for appropriate performance of processes depending on the scope and volume of compounding to be performed.
- b) A pharmacy may only dispense compounded products pursuant to a patient-specific prescription.
- c) A drug may not be compounded for office use. However, a compounded drug may be delivered to the prescribing practitioner's office for administration to the patient for whom the drug was compounded.
- d) All pharmacies that dispense drugs must maintain, at a minimum, the following standards and equipment:
 - 1)a) A storage area separate for materials used in compounding.

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- ~~2)b)~~ Scales and balances for the compounding done in the pharmacy.
- ~~3)e)~~ An area of the pharmacy used for compounding activities.
- ~~d)~~ ~~A heating apparatus.~~
- ~~4)e)~~ A logbook or record keeping system to track each compounded prescription and the components used.
- ~~5)f)~~ A book or reference containing formulas with directions for compounding. The books and references may be in electronic format and/or available via the Internet.
- ~~g)~~ ~~The pharmacy operations manual shall contain the policies and procedures pertinent to the level of complexity and the size of the compounding operations of the practice at that specific pharmacy. Electronic versions are acceptable.~~
- ~~6)h)~~ Consumable materials, as appropriate to the pharmacy services provided at that specific pharmacy, such as filter paper, powder papers, empty capsules, ointment jars, bottles, vials, safety closures, powder boxes, labels and distilled water.
- ~~i)~~ ~~The pharmacy may compound drug products to be used by practitioners in their office for administration to patients.~~
- ~~e)j)~~ Sales of compounded drugs to other pharmacies not under common ownership, or to clinics, hospitals or manufacturers are not allowed, except for sales provided by pharmacies contracted to provide centralized prescription filling services pursuant to Section 25.5 of the Act, including compounding in anticipation of receiving a prescription or order based on routine, readily observed dispensing patterns.
- ~~f)~~ For sterile compounding, a pharmacy must comply with the following requirements:

 - 1) The following current resource materials and texts shall be maintained in the pharmacy:

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- A) Copies of the Act and this Part, the Illinois Controlled Substances Act [720 ILCS 570] and 77 Ill. Adm. Code 3100, 21 CFR (Food and Drugs) and the Illinois Hypodermic Syringes and Needles Act [720 ILCS 635];
- B) One compatibility reference, such as:
- i) Trissel's Handbook on Injectable Drugs;
 - ii) King's Guide to Parenteral Admixtures; or
 - iii) Any other Division approved publication;
- C) A file or reference on extended (more than 24 hours) stability data given to finished preparations.
- 2) Staffing. A pharmacist shall be accessible at all times for each licensed facility to respond to patients' and health professionals' questions and needs. A 24-hour telephone number shall be included on the prescription label of compounded medication and medication infusion devices if used off site.
- 3) Drug Distribution and Control
- A) Patient Profile or Medication Record System. A pharmacy generated patient profile or medication record system shall be maintained, in addition to the prescription file. The patient profile or medication record system shall contain, at a minimum:
- i) Patient's full name;
 - ii) Date of birth or age;
 - iii) Gender;
 - iv) Compounded sterile preparations dispensed;
 - v) Date dispensed, if off site;

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- vi) Drug content and quantity;
 - vii) Patient directions, if preparation is administered off site;
 - viii) Identifying number;
 - ix) Identification of dispensing pharmacist and, if applicable, pharmacy technician;
 - x) Other drugs or supplements the patient is receiving, if provided by the patient or his or her agent;
 - xi) Known drug sensitivities and allergies to drugs and foods; and
 - xii) Lot numbers of components or individual medicine if the compounded sterile preparation is not used within 48 hours after preparation.
- B) Labeling. Each compounded sterile preparation dispensed to patients shall be labeled with the following information, using a permanent label:
- i) Name, address and telephone number of the licensed pharmacy, if not used within the facility;
 - ii) Date dispensed, and identifying number if used off site;
 - iii) Patient's full name and room number, if applicable;
 - iv) Name of each drug, strength and amount;
 - v) Directions for use and/or infusion rate if used off site;
 - vi) Prescriber's full name if used off site;
 - vii) Required controlled substances transfer warnings, when applicable;

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- viii) Beyond use date and time;
 - ix) If used offsite, identity of pharmacist compounding and dispensing, or other authorized individual; and
 - x) Auxiliary labels storage requirements, if applicable.
- C) The pharmacist-in-charge shall ensure that records are maintained for 5 years and are readily retrievable and in a format that provides enforcement agents an accurate and comprehensive method of monitoring distribution via an audit trail. The records shall include at least the following information:
- i) Patient profile;
 - ii) Medication record system; and
 - iii) Purchase records.
- 4) Delivery Service. The pharmacist-in-charge shall assure the environmental control of all preparations shipped or delivered off site. Therefore, any compounded, sterile pharmaceutical must be shipped or delivered to a patient in temperature controlled (as defined by USP Standards) delivery containers.
- 5) Emergency Medications. Pharmacies that dispense compounded sterile preparations to patients in facilities off site or for administration in the patient's residence shall stock supplies and medications appropriate for treatment of allergic or other common adverse effects, to be dispensed upon the prescription or order of an authorized prescriber.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.660 Pharmacist-in-Charge

- a) No pharmacy shall be granted a license without a pharmacist being designated on the pharmacy license as pharmacist-in-charge.

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- b) A pharmacy shall have one pharmacist-in-charge who shall be routinely and actively involved in the operation of the pharmacy.
- c) A pharmacist may be the pharmacist-in-charge for more than one pharmacy; however, the pharmacist-in-charge must work an average of at least 8 hours per week at each location where he or she is the pharmacist-in-charge. If a pharmacist in charge is on a leave of more than 90 days, a new pharmacist-in-charge must be designated.
- d) The responsibilities of the pharmacist-in-charge shall include:
- 1) Supervision of all activities of all employees as they relate to the practice of pharmacy;
 - 2) Establishment and supervision of the method and manner for storage and safekeeping of pharmaceuticals, including maintenance of security provisions to be used when the pharmacy is closed (see Section 1330.600); and
 - 3) Establishment and supervision of the record keeping system for the purchase, sale, delivery, possession, storage and safekeeping of drugs.
- e) The operations of the pharmacy and the establishment and maintenance of security provisions are the dual responsibility of the pharmacist-in-charge and the owner of the pharmacy.
- f) Within 30 days after a change of a pharmacist-in-charge, the Division shall be notified in writing by the departing pharmacist-in-charge.
- g) In addition to notifying the Division within 30 days, the departing pharmacist-in-charge shall, on the effective date of the change, inventory the following controlled substances:
- 1) All Schedule II drugs, as defined in the Illinois Controlled Substances Act, by actual physical count; and
 - 2) All other scheduled drugs, as defined in the Illinois Controlled Substances Act, by estimated count.

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- h) The inventory described in subsection (g) ~~of this Section~~ shall constitute, for the purpose of this Section, the closing inventory of the departing pharmacist-in-charge and the initial inventory of the incoming pharmacist-in-charge. This inventory record shall be preserved in the pharmacy for a period of 5 years. An affidavit attesting to the completion of the inventory and preservation of the inventory record, bearing the date of the inventory and the name and signatures of the departing and the incoming pharmacist-in-charge, shall be submitted to the Division at its principal office within 30 days after the change in the pharmacist-in-charge.
- i) In the event the departing pharmacist-in-charge refuses to complete the inventory as provided for in subsection (g), or that pharmacist-in-charge is incapacitated or deceased, the initial inventory for the incoming pharmacist-in-charge shall be the inventory as completed by the incoming pharmacist-in-charge. The incoming pharmacist-in-charge will not be responsible for any discrepancy that may exist in the inventory prior to his or her initial inventory.
- j) When the accuracy, relevance or completeness of any submitted documentation is questioned by the Division, because of a lack of information, discrepancies or conflicts in information given, or a need for clarification, the registrant will be required to:
- 1) Provide information as may be necessary; and/or
 - 2) Appear for an interview before the Board to explain the relevance or sufficiency, clarify information given, or clear up any discrepancies or conflict of information.
- k) Records shall be retained as provided for in Section 18 of the Act. Invoices for all legend drugs shall be maintained for a period of 5 years either on site or at a central location where records are readily retrievable. Invoices shall be maintained on site for at least one year from the date of the invoice.
- l) Whenever a pharmacy intends on changing or adding to the type of pharmacy services it offers, as listed in Sections 1330.500, 1330.510, 1330.520, 1330.530, 1330.540 and 1330.560, it shall notify the Division no less than 30 days prior to the change or addition.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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Section 1330.670 Compounded Sterile Preparation Standards (Repealed)

- a) ~~This Section sets forth standards for pharmacies whose practice includes the preparation, labeling and distribution of compounded sterile preparations pursuant to prescriptions or medication orders, as defined in the Act. These activities may include, but are not limited to:~~
- ~~1) Sterile preparation of parenteral therapy and parenteral nutrition;~~
 - ~~2) Sterile preparations of cytotoxic or antineoplastic agents; and~~
 - ~~3) Other sterile preparations to be used topically or internally by humans or animals.~~
- b) ~~Definitions~~
- ~~1) "Barrier Isolation Chamber" means an apparatus designed to provide a Class 5, 6 or 7 environment, as spelled out in ISO (International Organization for Standardization) 14644-1, for preparation of sterile preparations using solid walls rather than air movement (laminar air flow) to create a critical zone for preparation handling, a high efficiency particulate air (HEPA) filtration system that conditions the air flowing through the unit to remove initial particles and particles generated within the controlled environment, and a means by which preparations are introduced and people interact with the preparation being prepared within the unit.~~
 - ~~2) "Biological Safety Cabinet" or "BSC" means a containment unit suitable for the preparation of low to moderate risk agents when there is a need for protection of the preparation, personnel and environment, according to ISO 14644-1.~~
 - ~~3) "Compounded Sterile Preparation" or "CSP" means a sterile pharmaceutical that has been prepared by a pharmacist, or under the supervision of a pharmacist. It shall be a preparation prepared for or in anticipation of a specific patient prescription or medication order issued by a prescribing practitioner. The preparation may include commercially~~

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~~available dosage forms that may need to be altered by the pharmacist to meet a specific patient's need.~~

- 4) ~~"Cytotoxic" means a pharmaceutical that has the capability of killing living cells. These agents shall include, but are not limited to, agents classified as cancer chemotherapeutic, carcinogenic, mutagenic and antineoplastic.~~
- 5) ~~"Laminar Airflow Hood" means an apparatus designed to provide a Class 5, 6 or 7 environment, as spelled out in ISO 14644-1 for preparation of sterile products using air circulation in a defined direction that passes through a HEPA filter to remove the initial particles and particles generated within the controlled environment.~~
- 6) ~~"Parenteral" means sterile preparations of drugs for injection through one or more layers of the skin.~~
- 7) ~~"Terminal" means a patient whose medical condition indicates his or her life expectancy to be 6 months or less.~~

e) ~~Physical Requirements of Pharmacies Preparing Compounded Sterile Preparations~~

- 1) ~~The pharmacy shall have a designated area for preparing compounded sterile preparations. The area shall be designed to minimize outside traffic and airflow disturbances from activity within the facility. It shall be of sufficient size to accommodate a laminar airflow hood (LAF), barrier isolation chamber or BSC and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation and security. It shall be ventilated in a manner so as not to interfere with the equipment specified in this subsection (c)(1).~~
- 2) ~~The licensed pharmacy preparing compounded sterile preparations shall have the following:~~
 - A) ~~LAF workstation~~
 - i) ~~LAF shall be certified annually in accordance with ISO 14644-1;~~

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- ~~K) Known drug sensitivities and allergies to drugs and foods;~~
 - ~~L) Diagnosis; and~~
 - ~~M) Lot numbers of components or individual medicine if the compounded sterile preparation is not used within 48 hours after preparation.~~
- 2) ~~Labeling. Each compounded sterile preparation dispensed to patients shall be labeled with the following information, using a permanent label:~~
- ~~A) Name, address and telephone number of the licensed pharmacy, if not used within facility;~~
 - ~~B) Administration date and identifying number if used on site, date dispensed, and identifying number if used off site;~~
 - ~~C) Patient's full name and room number, if applicable;~~
 - ~~D) Name of each drug, strength and amount;~~
 - ~~E) Directions for use and/or infusion rate if used off site;~~
 - ~~F) Prescriber's full name if used off site;~~
 - ~~G) Required controlled substances transfer warnings, when applicable;~~
 - ~~H) Beyond use date and time;~~
 - ~~I) Identity of pharmacist compounding and dispensing, or other authorized individual; and~~
 - ~~J) Auxiliary labels storage requirements, if applicable.~~
- 3) ~~The pharmacist in charge shall ensure that records are maintained for 5 years and are readily retrievable and in a format that provides enforcement agents an accurate and comprehensive method of monitoring distribution~~

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~~via an audit trail. The records shall include at least the following information:~~

- ~~A) Patient profile;~~
 - ~~B) Medication record system;~~
 - ~~C) Purchase records; and~~
 - ~~D) Lot numbers of the components used in compounding sterile prescriptions/orders traceable to a specific patient, if not included on patient profile and if the preparation is not utilized within 48 hours after preparation.~~
- f) ~~Delivery Service. The pharmacist in charge shall assure the environmental control of all preparations shipped or delivered off site. Therefore, any compounded, sterile pharmaceutical must be shipped or delivered to a patient in temperature controlled (as defined by USP Standards) delivery containers.~~
- g) ~~Cytotoxic Drugs. The following additional requirements are necessary for those licensed pharmacies that prepare cytotoxic drugs:~~
- ~~1) Safety and containment techniques or devices for compounding cytotoxic drugs shall be used.~~
 - ~~2) Disposal of cytotoxic waste shall comply with all applicable local, State and federal requirements.~~
 - ~~3) Prepared doses of cytotoxic drugs shall be dispensed, labeled with proper precautions inside and outside, and shipped in a manner to minimize the risk of accidental rupture of the primary container.~~
 - ~~4) The pharmacy must have as a reference Safe Handling of Hazardous Drugs Video Training Program and Workbook (American Society of Health System Pharmacists (ASHP), 7272 Wisconsin Avenue, Bethesda MD 20814, (301)657-3000, <http://www.ashp.org>).~~
- h) ~~Emergency Medications. Pharmacies that dispense compounded sterile preparations to patients in facilities off site or in the patient's residence shall stock~~

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~~supplies and medications appropriate for treatment of allergic or other common adverse effects, to be dispensed upon the prescription or order of an authorized prescriber.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 1330.680 Automated Dispensing and Storage Systems

- a) This Section sets forth standards for pharmacies whose practice includes the use of automated dispensing and storage systems. Automated dispensing and storage systems shall not be used in nuclear pharmacies.
- b) Automated Dispensing and Storage Systems
 - ~~1)~~ ~~Automated dispensing and storage systems may be utilized in licensed community or institutional pharmacies.~~
 - 1)2) Documentation as to type of equipment, serial numbers, content, policies and procedures, and locations shall be maintained on-site in the pharmacy for review by the Division. Documentation shall include, but not be limited to:
 - A) Name and address of the pharmacy or facility where the automated dispensing and storage system is operational;
 - B) Manufacturer's name and model;
 - C) Quality assurance policy and procedures to determine continued appropriate use and performance of the automated device; and
 - D) Policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access, controlled substances, data retention or archival, definitions, downtime procedures, emergency or first dose procedures, inspection, installation requirements, maintenance, medication security, quality assurance, medication inventory, staff education and training, system set-up and malfunction.

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- ~~2)3)~~ Automated dispensing and storage systems shall be used only in settings that ensure medication orders and prescriptions are reviewed by a pharmacist in accordance with established policies and procedures and good pharmacy practice. This provision shall not apply when used as an after hours cabinet or emergency kit as provided in Section 1330.530(e).
- ~~3)4)~~ Automated dispensing and storage systems shall have adequate security systems and procedures, evidenced by written pharmacy policies and procedures, to:
- A) Prevent unauthorized access or use;
 - B) Comply with any applicable federal and State regulations; and
 - C) Maintain patient confidentiality.
- ~~4)5)~~ Records and/or electronic data kept by automated dispensing and storage systems shall meet the following requirements:
- A) All events involving access to the contents of the automated dispensing and storage systems must be recorded electronically;
 - B) Records must be maintained by the pharmacy and must be readily available to the Division. The records shall include:
 - i) ~~Identify~~identity of system accessed;
 - ii) ~~Identification~~identification of the individual accessing the system;
 - iii) ~~Type~~type of transaction;
 - iv) ~~Name~~name, strength, dosage form and quantity of the drug accessed;
 - v) ~~Name~~name of the patient for whom the drug was ordered;
 - vi) ~~Identification~~identification of the registrants stocking or restocking and the pharmacist checking for the accuracy of

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the medications to be stocked or restocked in the automated dispensing and storage system; and

- vii) ~~Such~~ ~~sueh~~ additional information as the pharmacist-in-charge may deem necessary.

~~5)6)~~ The stocking or restocking of all medications in the automated dispensing and storage systems shall be accomplished by registrants under the Act.

~~6)7)~~ All ~~containers~~ of medications stored in the automated dispensing and storage systems shall be packaged as a unit of use for single patient use (e.g., unit dose tab/cap, tube of ointment, inhaler, etc.) and labeled as specified in this subsection (b)(~~67~~):

- A) Sterile solutions to which a drug or diluent has been added, or that are not in their original manufacturer's packaging, shall contain the following information on the outer label:
- i) Name, concentration and volume of the base sterile solution;
 - ii) Name and strength of drugs or diluent added;
 - iii) Date and beyond use date of the admixture. The beyond use date, unless otherwise specified in the individual compendia monograph, shall be no later than the beyond use date on the manufacturer's container or one year from the date the drug is repackaged; and
 - iv) Reference code to identify source and lot number of drugs or diluent added.
- B) Non-parenterals repackaged for future use shall be identified with the following information:
- i) Brand and/or generic name;
 - ii) Strength (if applicable);

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- iii) Beyond use date. Unless otherwise specified in the individual monograph, the beyond use date shall be no later than the beyond use date on the manufacturer's container or one year from the date the drug is repackaged; and
 - iv) Reference code to identify source and lot number.
- C) Exceptions to the "unit of use" requirements in this subsection (b)(~~67~~) are as follows:
- i) Injectable medications stored in their original multi-dose vial (e.g., insulin, heparin) when the medication may be withdrawn into a syringe or other delivery device for single patient use; or
 - ii) Over-the-counter (OTC) products stored in their original multi-dose container (e.g., antacids, analgesics) when the medication may be withdrawn and placed into an appropriate container for single patient use.
- D) The pharmacy providing services to the University of Illinois College of Veterinary Medicine shall be exempt from the requirement that all medications stored in the automated dispensing and storage systems be packaged as a unit for single patient use. This exemption is solely for dispensing medications to animals.
- ~~7)8)~~ For medication removed from the system for on-site patient administration, the system must document the following information:
- A) Name of the patient or resident;
 - B) Patient's or resident's unique and permanent identifier, such as admissions number or medical records number;
 - C) Date and time medication was removed from the system;
 - D) Name, initials or other unique identifier of the person removing the drug; and

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E) Name, strength and dosage form of the drug or description of the medical device removed. The documentation may be on paper, via electronic media or via any other media or mechanisms as set forth by the Act or this Part or as approved by the Division.

~~8)9)~~ The automated dispensing and storage systems shall provide a mechanism for securing and accounting for medications once removed from and subsequently returned to the automated dispensing and storage systems (e.g., return bin). No medication or device shall be returned directly to the system for immediate reissue or reuse by a non-registrant under the Act. Medication or devices once removed shall not be reused or reissued except for:

A) Medical devices that can be properly sanitized prior to reuse or reissue; and

B) Medication that is dispensed and stored under conditions defined and supervised by the pharmacist and are unopened in sealed, intact and unaltered containers that meet the standards for light, moisture and air permeation as defined by the current USP/NF, or by the USP Conventions, Inc.

~~9)10)~~ The automated dispensing and storage systems shall provide a mechanism for securing and accounting for wasted medications or discarded medications.

~~10)11)~~ The quality assurance documentation for the use and performance of the automated dispensing and storage systems shall include at least the following:

A) Safety monitors (e.g., wrong medications removed and administered to patient);

B) Accuracy monitors (e.g., filling errors, wrong medications removed); and

C) Security monitors (e.g., unauthorized access, system security breaches, controlled substance audits).

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~~11)~~¹²⁾ Errors in the use or performance of the automated dispensing and storage systems resulting in patient hospitalization or ~~resident~~ death shall be reported to the Division by the pharmacist-in-charge within 30 days after acquiring knowledge of the incident.

~~12)~~¹³⁾ Policy and procedures for the use of the automated dispensing and storage systems shall include a requirement for pharmacist review of the prescription or medication order prior to the system profiling and/or removal of any medication from the system for immediate patient administration. This does not apply to the following situations:

- A) The system is being used as an after-hours cabinet for medication dispensing in the absence of a pharmacist (see Section 1330.530(e)(1));
- B) The system is being used in place of an emergency kit (see Section 1330.530(e)(2));
- C) The system is being used to provide access to medication required to treat the immediate needs of a patient (see Section 1330.530(e)(3)). A sufficient quantity to meet the immediate needs of the patient may be removed until a pharmacist is on duty and available to review the prescription or medication order. A pharmacist shall check the orders promptly once on duty (e.g., floor stock system, emergency department, surgery, ambulatory care or same day surgery, observation unit, etc.).

~~13)~~¹⁴⁾ Policies and procedures for the use of the automated dispensing and storage systems shall include the following:

- A) List of medications to be stored in each system;
- B) List of medications qualifying for emergency or first dose removal without pharmacist prior review of the prescription or medication order; ~~and~~
- C) ~~List of medications qualifying for control purposes.~~

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~~14)15)~~ The pharmacist-in-charge shall maintain or have access to all records or documentation specified in this Section for 5 years or as otherwise required by law.

~~15)16)~~ A copy of all pharmacy policies and procedures related to the use of an automated dispensing and storage system shall be maintained at all locations where the system is being used.

c) Duties and Responsibilities of the Pharmacist-in-Charge

1) The pharmacist-in-charge shall be responsible for:

A) Assuring that the automated dispensing and storage system is in good working order and accurately provides the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

B) Establishment of a quality assurance program prior to implementation of an automated dispensing and storage system and the supervision of an ongoing quality assurance program that monitors appropriate use and performance of the automated dispensing and storage system, evidenced by written policies and procedures developed by the pharmacy;

C) Providing the Division with written notice 30 days prior to the installation of, or at the time of removal of, an automated storage and dispensing system. The notice must include, but is not limited to:

i) ~~The~~ name and address of the pharmacy;

ii) ~~The~~ address of the location of the automated dispensing and storage system, if different from the address of the pharmacy;

iii) ~~The~~ automated dispensing and storage system's manufacturer and model;

iv) ~~The~~ pharmacist-in-charge; and

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- v) ~~A~~ written description of how the facility intends to use the automated storage and dispensing system;
- D) Determining and monitoring access to and the limits on access (e.g., security levels) to the automated storage and dispensing system. Access shall be defined by policies and procedures of the pharmacy and shall comply with State and federal regulations.
- 2) Additional responsibilities of the pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall include:
 - A) Authorizing the assigning of access to, discontinuing access to, or changing access to the system;
 - B) Ensuring that access to the medications complies with State and federal regulations, as applicable; and
 - C) Ensuring that the automated dispensing and storage system is stocked/restocked accurately and in accordance with established, written pharmacy ~~policies~~ ~~polices~~ and procedures.
- d) An automated dispensing and storage system is authorized for use in any licensed hospital, long-term care facility, or hospice residence ("facility"). For all nonresident pharmacies, the pharmacist-in-charge and all pharmacy personnel who provide services while physically present at a facility located in Illinois must be licensed in Illinois. In addition to compliance with all other provisions in this Section, an automated dispensing and storage system shall comply with the following:
 - 1) Drugs in the automated dispensing and storage system are not considered dispensed until removed from the system by authorized personnel at the facility, after being released by the pharmacy pursuant to a prescription, unless otherwise provided for in this Part.
 - 2) Only the doses of medication needed for contemporaneous administration may be removed from the automated pharmacy system at one time.

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- 3) Automated dispensing and storage systems utilized at a facility shall operate under the same license as the pharmacy utilizing it.
 - 4) All records shall be maintained for a period of 5 years either at the pharmacy providing services to the facility or a central location where records are readily retrievable.
 - 5) Only pharmacies under common ownership may share an automated pharmacy system at a facility.
- d) ~~Kiosk~~
- 1) ~~A pharmacy may use automated dispensing and storage systems to deliver prescriptions to a patient when the device:~~
 - A) ~~Allows a patient to choose whether or not to use the system;~~
 - B) ~~Is located within the physical premises at which the licensed pharmacy is located. The automated dispensing and storage system shall be secured against a wall or floor in such a manner as to prevent the unauthorized removal of the system;~~
 - C) ~~Contains only prescriptions that have been processed, verified and completed in the same manner as if the prescriptions were going to be delivered manually by the pharmacy;~~
 - D) ~~Can deliver any one, any combination of, or all of the prescriptions available to a patient at the option of the patient at the time the patient picks up his prescriptions;~~
 - E) ~~Provides a method to identify the patient and delivers the prescription only to that patient or the patient's authorized agent;~~
 - F) ~~Has adequate security systems and procedures to prevent unauthorized access, to comply with federal and State regulations, and to maintain patient confidentiality;~~
 - G) ~~Records the time and date that the patient removed the prescription from the system;~~

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- H) ~~Informs a patient, if he or she is using the device when the pharmacy is open, that the patient may address questions and concerns regarding the prescription to a pharmacist at the pharmacy;~~
 - I) ~~Informs a patient, if he is using the device when the pharmacy is closed, that he or she may immediately direct any questions and concerns regarding the prescription to a licensed pharmacist via a pharmacy provided audio/video link;~~
 - J) ~~Informs a patient that a prescription is not available to be delivered by the device if the pharmacist has determined that he or she desires to counsel the patient in person regarding the prescription.~~
- 2) ~~The system must be approved by the Board prior to its operation.~~
 - 3) ~~The Board may prohibit a pharmacy from using an automated dispensing and storage system to deliver prescriptions to a patient if the Board determines that the device does not comply with this Section or that the pharmacy's use of the device does not comply with this Section.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART G: PHARMACY OPERATIONS

Section 1330.710 Reporting Theft or Loss of Controlled Substances

In every instance that a pharmacy is required by federal regulation (21 CFR 1301.76) to file with the U.S. Drug Enforcement Agency a Report of Theft or Loss of Controlled Substances (Form 106), a copy shall concurrently be sent to the Division, Attention of the Drug Compliance Unit, along with the printed name of the person who signed the form. Failure to do so may result in discipline of the pharmacy or the pharmacist-in-charge.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.740 Multi-Med Dispensing Standards for Community Pharmacies

- a) In lieu of dispensing 2 or more prescribed drug products in separate containers, a

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pharmacist may, with the consent of the patient, the patient's caregiver, or a prescriber, provide a customized patient medication package (patient med pak).

- b) A patient med pak is a package prepared by a pharmacist for a specific patient comprising a series of containers and containing 2 or more prescribed solid oral dosage forms. The patient med pak is designed, or each container is labeled, to indicate the day and time or period of time when the contents within each container are to be taken.
- 1) The patient med pak shall include information stating:
 - A) The name of the patient;
 - B) A serial number for the patient med pak itself and a separate identifying serial number for each of the prescription orders for each of the drug products contained in the med pak;
 - C) The name, strength, physical description or identification, and total quantity of each drug product contained in the med pak;
 - D) The directions for use and cautionary statements, if any, contained in the prescription order for each drug product contained in the med pak;
 - E) Any storage instructions;
 - F) The name of the prescriber of each drug product;
 - G) The date of preparation of the patient med pak; and
 - H) The name, address and telephone number of the pharmacist and any other registrant involved in dispensing.
 - 2) Once a med pak has been delivered to an institution, a patient, or a patient's agent, the drugs in the med pak can be accepted for return by the pharmacy only when a medication must be added or removed, or when drug therapy is discontinued. Med paks returned to the pharmacy can only be re-dispensed for the same patient. Medications removed from the med pak shall not be reused and must be disposed of properly. The revised med

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~~pak shall be given a new serial number. Once a patient med pak has been delivered to an institution or to a patient, the drugs dispensed in the med pak shall not be accepted for return to the pharmacy.~~

- 3) When a pharmacist utilizes drugs dispensed from another pharmacy in creating an initial med pack, that pharmacist shall bear full responsibility for the drugs as if dispensed from that pharmacy; otherwise, a pharmacy is prohibited from creating a patient med pak utilizing drugs dispensed from a different pharmacy.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.750 Return of Drugs

- a) Once a dispensed drug is removed from the premises by a patient or the patient's agent, that drug shall not be accepted for return or exchange by a pharmacy or pharmacist.
- b) The provision of subsection (a) shall not apply to a drug dispensed to a patient of an institutional healthcare facility where a licensed healthcare professional administers the drug and the pharmacist ensures that:
 - 1) ~~The~~ drugs were stored in compliance with Sections 1330.610 and 1330.630;
 - 2) ~~The~~ drugs are not contaminated, deteriorated or beyond their use date;
 - 3) ~~The~~ returns are properly documented; and
 - 4) ~~Obtaining~~ payment twice for the same drug is prohibited.
- c) The provisions of subsection (a) shall not apply to drugs returned for purposes of destruction. The returned drugs must be stored separately from the pharmacy's active stock.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.770 Centralized Prescription Filling

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Pharmacies providing centralized prescription filling, as provided in Section 25.5 of the Act, shall:

- a) Share a common electronic file to allow access to sufficient information necessary or required to fill or refill a prescription order.
- b) Maintain appropriate records to identify the responsible pharmacist in the dispensing process.
- c) Maintain a mechanism for tracking the prescription drug order during each step in the process.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.780 Change of Ownership of a Pharmacy

- a) A new pharmacy application must be filed whenever:
 - 1)a) 10% or more of the ownership of the business, other than a publicly traded business, to which the pharmacy licensee was issued is sold or otherwise transferred to a person or entity that does not hold any interest in the business issued the pharmacy license prior to the sale or transfer; or
 - 2)b) ~~More~~ more than half the board of directors or executive officers of a business issued a pharmacy license change.
- b) Any change of ownership of a parent company that owns a pharmacy shall not be considered a change of ownership of the pharmacy.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.790 Closing a Pharmacy

Whenever a pharmacy intends to close, the following procedures must be followed:

- a) Provide notice to the Drug Compliance Unit of ~~Notify~~ the Division, in writing, postmarked at least 30 days in advance of the closing date.
- b) Notify customers of the closure at least 15 days in advance of the closing date and

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where the customer's records will be maintained.

- c) Comply with all DEA requirements for closing a pharmacy.
- d) On the day the pharmacy closes:
 - 1) Conduct an inventory of the pharmacy's controlled substances and maintain the inventory record for inspection by the Division for 5 years.
 - 2) Return the pharmacy license to the Division's drug compliance investigator or other authorized Division personnel.
 - 3) Notify the Division in writing as to where the controlled substances inventory and records will be kept and how the controlled substances were transferred or destroyed. Records involving controlled substances must be kept available for 5 years for inspection by the Division.
 - 4) Notify the Division in writing of the name of the person responsible for and the location where the closing pharmacy's prescription files and patient profiles will be maintained. These records shall be kept for a minimum of 5 years from the date the last original or refill prescription was dispensed.
- e) The pharmacy acquiring prescription records from a closing pharmacy must inform the Division prior to the date when the transaction is going to take place.
- f) After the closing date, only the pharmacist in-charge, or other designated pharmacist, of the pharmacy discontinuing business shall have access to the prescription drugs until those drugs are transferred to the new owner or other purchaser or are properly destroyed.
- g) Cover all signage indicating "Drug Store" or "Pharmacy" as soon as practicable. The signage shall be removed in a timely manner. A sign shall be prominently posted that the pharmacy is closed.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 1330.800 Pharmacy Self-Inspection

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Every licensed pharmacy shall conduct an annual self-inspection using forms provided by the Division. The annual self-inspection shall be conducted during the same month, annually, as determined by the pharmacy. Documentation of the self-inspection shall be maintained at the pharmacy for 5 years.

(Source: Added at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: The Illinois Oil and Gas Act
- 2) Code Citation: 62 Ill. Adm. Code 240
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
240.131	Amendment
240.132	Amendment
240.133	Amendment
240.210	Amendment
240.310	Amendment
240.460	Amendment
240.1440	Amendment
240.1705	Amendment
240.1830	Amendment
240.1905	Amendment
- 4) Statutory Authority: Implementing and authorized by the Illinois Oil and Gas Act [225 ILCS 725]
- 5) A Complete Description of the Subjects and Issues Involved: This Part is being amended pursuant to the PA 97-1136, to insert language pertaining to a filing fee for petitions for hearings, alter the fees associated with permits and transfers and to delete language pertaining to transfers involving more than 50 wells and amend its annual well fees to include only two categories.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
240.796	New Section	37 Ill. Reg. 18081, November 15, 2013

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- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Robert G. Mool, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/782-1809
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Oil and gas operators will be affected. This should not have any affect on municipalities or not for profit organizations.
 - 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 2013

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

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 240

THE ILLINOIS OIL AND GAS ACT

SUBPART A: GENERAL PROVISIONS

Section	
240.10	Definitions
240.20	Prevention of Waste (Repealed)
240.30	Jurisdiction (Repealed)
240.40	Enforcement of Act (Repealed)
240.50	Delegation of Authority (Repealed)
240.60	Right of Inspection (Repealed)
240.70	Right of Access (Repealed)
240.80	Sworn Statements (Repealed)
240.90	Additional Reports (Repealed)
240.100	When Rules Become Effective (Repealed)
240.110	Notice of Rules (Repealed)
240.120	Forms (Repealed)
240.130	Hearings – Notices (Repealed)
240.131	Unitization Hearings
240.132	Integration Hearings
240.133	Hearings to Establish Pool-Wide Drilling Units
240.140	Violations Not Requiring Formal Action
240.150	Notice of Violation
240.155	Civil Complaint
240.160	Director's Decision
240.170	Cessation Order (Repealed)
240.180	Enforcement Hearings and Enforcement Cessation Orders
240.185	Cessation of Oil Production Operations
240.186	Cessation of Conditions Creating an Imminent Danger to Public Health and Safety and the Environment
240.190	Temporary Relief Hearings
240.195	Subpoenas

SUBPART B: PERMIT APPLICATION PROCEDURES FOR PRODUCTION WELLS

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Section

240.200	Applicability
240.210	Application for Permit to Drill, Deepen or Convert to a Production Well
240.220	Contents of Application
240.230	Authority of Person Signing Application
240.240	Additional Requirements for Directional Drilling
240.245	Additional Requirements for Horizontal Drilling
240.250	Issuance of Permit to Drill or Operate
240.251	Revocation of Permit to Drill
240.255	Conversion of a Production Well to a Water Well
240.260	Change of Well Location
240.270	Application for Approval of Enhanced Recovery Injection and Disposal Operations (Repealed)
240.280	Duration of Underground Injection Well Orders (Repealed)

SUBPART C: PERMIT APPLICATION PROCEDURES FOR CLASS II UIC WELLS

Section

240.300	Applicability
240.305	Transfer of Management (Recodified)
240.310	Application for Permit to Drill, Deepen, or Convert or Amend to a Class II UIC Well
240.311	Application for Freshwater Aquifer Exemption
240.312	Freshwater Aquifer Exemptions
240.320	Contents of Application
240.330	Authority of Person Signing Application
240.340	Proposed Well Construction and Operating Parameters
240.350	Groundwater and Potable Water Supply Information
240.360	Area of Review
240.370	Public Notice
240.380	Issuance of Permit
240.385	Conversion of a Class II Well to a Water Well
240.390	Permit Amendments
240.395	Update of Class II UIC Well Permits Issued Prior to July 1, 1987

SUBPART D: SPACING OF WELLS

Section

240.400	Definitions
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240.410	Drilling Units
240.420	Well Location Exceptions within Drilling Unit
240.430	Drilling Unit Exceptions
240.440	More Than One Well on a Drilling Unit
240.450	Directional Drilling
240.455	Horizontal Drilling
240.460	Modified Drilling Unit
240.465	Special Drilling Unit
240.470	Establishment of Pool-Wide Drilling Units Based Upon Reservoir Characteristics

SUBPART E: WELL DRILLING,
COMPLETION AND WORKOVER REQUIREMENTS

Section	
240.500	Definitions
240.510	Department Permit Posted
240.520	Drilling Fluid Handling and Storage
240.525	Saltwater or Oil Based Drilling Fluid Handling and Storage
240.530	Completion Fluid and Completion Fluid Waste Handling and Storage
240.540	Drilling and Completion Pit Restoration
240.550	Disposal of General Oilfield Wastes and Other Wastes

SUBPART F: WELL CONSTRUCTION, OPERATING AND REPORTING
REQUIREMENTS FOR PRODUCTION WELLS

Section	
240.600	Applicability
240.605	Drilled Out Plugged Hole (DOPH) Notification
240.610	Construction Requirements for Production Wells
240.620	Remedial Cementing of Leaking Wells
240.630	Operating Requirements
240.640	Reporting Requirements
240.650	Confidentiality of Well Data
240.655	Mechanical Integrity Testing for Class II Injection Wells (Repealed)
240.660	Monitoring and Reporting Requirements for Enhanced Recovery Injection and Disposal Wells (Repealed)
240.670	Avoidable Waste of Gas (Repealed)
240.680	Escape of Unburned Gas Prohibited (Repealed)

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SUBPART G: WELL CONSTRUCTION, OPERATING
AND REPORTING REQUIREMENTS FOR CLASS II UIC WELLS

Section	
240.700	Applicability and Definitions
240.710	Surface and Production Casing Requirements for Newly Drilled Class II UIC Wells
240.720	Surface and Production Casing Requirements for Conversion to Class II UIC Wells
240.730	Surface and Production Casing Requirements for Existing Class II UIC Wells
240.740	Other Construction Requirements for Class II UIC Wells
240.750	Operating Requirements for Class II UIC Wells
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240.810	Tanks, Tank Batteries and Containment Dikes
240.820	Flowlines
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240.840	Equipment Storage
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240.870	Leaking Unpermitted Drill Hole
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240.890	Crude Oil Spill Remediation Requirements
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SUBPART I: LIQUID OILFIELD WASTE HANDLING AND

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DISPOSAL

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240.920	Issuance of Liquid Oilfield Waste Transportation System and Vehicle Permits
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240.926	Liquid Oilfield Waste Transportation System and Vehicle Operating Requirements
240.930	Produced Water
240.940	Crude Oil Bottom Sediments
240.945	Lease Road Oiling
240.950	Crude Oil Spill Waste Disposal (Repealed)
240.960	Oil Field Brine Hauling Permit Conditions (Repealed)
240.970	Inspection of Vehicles (Repealed)
240.980	Transfer of Permits (Repealed)
240.985	Revocation of Oil Field Brine Hauling Permit (Repealed)
240.990	Records and Reporting Requirements (Repealed)
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240.1010	Application for Vacuum Permit
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240.1151	Procedures for Plugging Coal Seams
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240.1230	Authority of Person Signing Application
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240.1350	Casing and Protective Work
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240.1520	Bond Requirements
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SUBPART P: WELL PLUGGING AND RESTORATION PROGRAM

Section	
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- 240.1620 Plugging Orphaned Wells
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Section

- 240.1700 Fee Liability
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Section

- 240.1800 Applicability
- 240.1805 Definitions
- 240.1810 Submission of Underground Gas Storage Field Map
- 240.1820 Permit Requests in a Underground Gas Storage Field
- 240.1830 Application for Permit to Drill or Convert Wells
- 240.1835 Content of Application for Permit to Drill or Convert to an Observation or Gas Storage Well
- 240.1840 Authority of Person Signing Application
- 240.1850 Issuance of Permit
- 240.1852 Gas Storage and Observation Well, Construction, Operating and Reporting Requirements
- 240.1855 Well Drilling Completion and Workover Requirements
- 240.1860 Storage Field Operating Requirements
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- 240.1870 Plugging of Gas Storage and Observation Wells

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SUBPART S: REQUIREMENTS FOR SERVICE WELLS

Section

240.1900	Applicability
240.1905	Application for Permit to Drill or Convert to Other Types of Wells or Drill Holes
240.1910	Contents of Application for Permit to Drill or Convert to a Service Well
240.1920	Authority of Person Signing Application
240.1930	Issuance of Permit
240.1940	When Wells Shall Be Plugged and Department Notification
240.1950	Plugging and Restoration Requirements
240.1960	Converting to Water Well

AUTHORITY: Implementing and authorized by the Illinois Oil and Gas Act [225 ILCS 725].

SOURCE: Adopted November 7, 1951; emergency amendment at 6 Ill. Reg. 903, effective January 15, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5542, effective April 19, 1982; codified at 8 Ill. Reg. 2475; amended at 11 Ill. Reg. 2818, effective January 27, 1987; amended at 14 Ill. Reg. 2317, effective January 25, 1990; recodified at 14 Ill. Reg. 3053; amended at 14 Ill. Reg. 13620, effective August 8, 1990; amended at 14 Ill. Reg. 20427, effective January 1, 1991; amended at 15 Ill. Reg. 2706, effective January 31, 1991; recodified at 15 Ill. Reg. 8566; recodified at 15 Ill. Reg. 11641; emergency amendment at 15 Ill. Reg. 14679, effective September 30, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 15493, effective October 10, 1991; amended at 16 Ill. Reg. 2576, effective February 3, 1992; amended at 16 Ill. Reg. 15513, effective September 29, 1992; expedited correction at 16 Ill. Reg. 18859, effective September 29, 1992; emergency amendment at 17 Ill. Reg. 1195, effective January 12, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 2217, effective February 8, 1993; amended at 17 Ill. Reg. 14097, effective August 24, 1993; amended at 17 Ill. Reg. 19923, effective November 8, 1993; amended at 18 Ill. Reg. 8061, effective May 13, 1994; emergency amendment at 18 Ill. Reg. 10380, effective June 21, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16361, effective November 18, 1994; amended at 19 Ill. Reg. 10981, effective July 14, 1995; amended at 21 Ill. Reg. 7164, effective June 3, 1997; emergency amendment at 22 Ill. Reg. 988, effective December 22, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 8422, effective April 28, 1998; amended at 22 Ill. Reg. 8845, effective April 28, 1998; amended at 22 Ill. Reg. 22314, effective December 14, 1998; amended at 25 Ill. Reg. 9045, effective July 9, 2001; amended at 35 Ill. Reg. 13281, effective July 26, 2011; amended at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

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Section 240.131 Unitization Hearings

- a) Commencement of Action
Where separately owned tracts of land are underlain by all or a portion of a common pool of oil or gas or both, an interested person may petition the Department for an order unitizing those tracts, that is to combine those tracts within a unified operation, pursuant to Section 23.3 of the Act. The petition for a unitization order shall contain the following:
- 1) *A legal description of the land and geologic description of the reservoirs within the proposed unit area;*
 - 2) *The names of all persons owning or having an interest in the oil and gas rights in the proposed unit area as of the date of filing the petition, as disclosed by the records in the office of the recorder for the county or counties in which the unit area is situated, and their addresses, if known. If the address of any person or the name of any owner is unknown, the petition shall so indicate and shall state whether due diligence was used in locating the unknown address or unknown owner;*
 - 3) *A statement of the type of operations contemplated for the unit area;*
 - 4) *A copy of a proposed plan of unitization signed by persons owning not less than 51% of the working interest underlying the surface within the area proposed to be unitized, which the petitioner considers fair, reasonable and equitable; said plan of unitization shall include (or provide in a separate unit operating agreement, if there be more than one working interest owner, a copy of which shall accompany the petition) the following:*
 - A) *A plan for allocating to each separately owned tract in the unit area its share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost; the plan shall include the participation factors for each tract and a detailed description of the methodology and supporting data used to calculate the participation factors.*

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- B) *A provision indicating how unit expense shall be determined and charged to the several owners, including a provision for carrying or otherwise financing any working interest owner who has not executed the proposed plan of unitization and who elects to be carried or otherwise financed, and allowing the unit operator, for the benefit of those working interest owners who have paid the development and operating costs, the recovery of not more than 150% of such person's actual share of development costs of the unit plus operating costs, with interest. Recovery of the money advanced to owners wishing to be financed, for development and operating costs of the unit, together with such other sums provided for herein, shall only be recoverable from such owner's share of unit production from the unit area.*
- C) *A procedure and basis upon which wells, equipment, and other properties of the several working interest owners within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor.*
- D) *A plan for maintaining effective supervision and conduct of unit operations, in respect to which each working interest owner shall have a vote with a value corresponding to the percentage of unit expense chargeable against the interest of such owner.*
- E) A summary of the total cumulative production to date, the estimated additional total recoverable reserves from the proposed unit and the estimated total development cost and operating cost of the unit;
- 5) The name and addresses of the proposed operator or operators of the unit;
- 6) A map showing the tracts or group of leases included within the proposed unit area, the location of the proposed injection well or wells and the name, permit number, and location of all oil and gas wells, including abandoned wells, active wells and dry holes and the reservoirs in which all such wells are currently completed, and the names of all operators offsetting the proposed unit area and the name, description and depth of the producing zones in those areas;

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- 7) A map showing the structure of the geologic horizon that best represents the structure of the proposed reservoirs to be unitized;
- 8) A listing of the reservoirs to be unitized and a map showing the productive portion, thickness, and extent of each reservoir;
- 9) An induction or electric log of a representative well completed in the proposed unitized reservoirs;
- 10) A description of the injection medium to be used, its source and the estimated amounts to be injected daily;
- 11) A description of the proposed plan of development of the area included within the unit;
- 12) An allegation of the facts required to be found by the Department under Section 23.5 of the Act. The required facts are as follows:
 - A) *That the unitized management and operation is economically feasible and reasonably necessary to increase the ultimate recovery of oil and gas, to prevent waste, and to protect correlative rights;*
 - B) *That the value of the estimated ultimate additional recovery of oil and gas will exceed the estimated additional cost, if any, incident to conducting the unit operation;*
 - C) *That the areal extent of the pool or pools, or parts thereof, has been reasonably defined and determined by drilling operations, and the unitization and operation of such will have no substantially adverse effect upon the remainder of the pool or pools, or parts thereof;*
 - D) That the allocation of unit production to each separately owned tract is fair, reasonable and equitable to all owners of oil and gas rights in the unit area;
 - E) That the determination and allocation of unit expense is fair, reasonable and equitable to the working interest owners; and

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- F) That the compensation or adjustment for wells, equipment and other properties of the working interest owners is fair, reasonable and equitable.
- b) Execution and Filing
- 1) The petition for an order creating a unit pursuant to Section 23.3 of the Act shall be sent to the Department at One Natural Resources Way, Springfield IL 62702.
 - 2) Every petition shall be signed by the petitioner or his or her representative and the petitioner's address shall be stated on the petition. The signature of the petitioner or his or her representative constitutes a certificate that he or she has read the petition and that, to the best of his or her knowledge, information and belief, there is good ground to support the petition. The petition shall be accompanied by a non-refundable application fee in the amount of \$2,500.
 - 3) If the Department finds the petition deficient relative to the requirements of subsection (a), subsection (b)(2) or Section 240.250(b), the petition shall not be accepted and the Department shall return the petition to the applicant with a statement as to the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. A returned petition shall not be considered filed until the deficiencies have been cured.
- c) Notice of Hearing
- 1) *Upon the receipt of an accepted petition for unitization, the Department shall fix the time and place for a public hearing, which shall be no less than 30 days nor more than 60 days after the date of the filing of said petition. The Department shall prepare a notice of hearing, which shall issue in the name of the State of Illinois and shall be signed by the Director. Such notice shall specify the number and style of the proceedings, the time and place of the hearing, the purpose of the hearing, the name of the petitioner, and a legal description of the lands contained within the proposed unit area. (Section 23.4 of the Act) The notice shall also state that any interested person may file an entry of appearance in the*

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hearing by submitting an entry of appearance in writing to the Department and that person shall be deemed a party of record in the proceeding.

- 2) The Department shall mail the notice to the petitioner who shall then serve notice in the following manner:
 - A) By mailing the notice by U.S. Postal Service certified mail, return receipt requested, *directed to the persons named in the petition at their last known addresses* at least 20 days prior to the hearing; and
 - B) *By publication of such notice for service on those persons whose addresses are unknown or whose names are unknown, once each week for 2 consecutive weeks, with the first notice appearing at least 20 days prior to the hearing, in a newspaper of general circulation published in each county containing some portion of the proposed unit area. (Section 23.4 of the Act)*
 - 3) Whenever the Department determines that a notice of hearing should be served upon a person because the granting or denying of the relief requested in the petition would materially affect that person's rights or property, the Department shall cause notice to be sent to the person, as provided in this subsection (c).
- d) Pre-Hearing Conferences
- 1) Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:
 - A) Simplify the factual and legal issues presented by the hearing request;
 - B) Receive stipulations and admissions of fact and of the contents and authenticity of documents;
 - C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and
 - D) Discuss and resolve such other matters as may tend to expedite the

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disposition of the hearing request and to assure a just conclusion.

- 2) Pre-hearing conferences may be held by telephone conference if that procedure is acceptable to all parties.
- e) Hearing
- 1) Conduct of Hearing: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the following:
 - A) To administer oaths and affirmations;
 - B) To receive relevant evidence;
 - C) To regulate the course of the hearing and the conduct of the parties and their counsel;
 - D) To consider and rule upon procedural requests;
 - E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify; and
 - F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record. The Hearing Officer may require that relevant documents be produced to any party of record on his or her own motion or for good cause shown on motion of any party of record.
 - 2) Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person shall be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used

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to determine parties in the Circuit Court.

- 3) All participants in the hearing shall have the right to be represented by counsel.
 - 4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.
 - 5) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.
 - 6) Preliminary Matters: When applicable, the following shall be addressed prior to receiving evidence:
 - A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of service of the notice of hearing, proof of publication and orders previously entered in the cause.
 - B) Ruling may be made on any pending motions.
 - C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.
- f) Evidence
- 1) Admissibility: A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received but the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by statute, if it is of a type commonly relied upon by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the

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interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.

- 2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.
 - 3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.
 - 4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.
- g) Record of Proceedings; Testimony
The Department shall provide at its expense a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.
- h) Postponement or Continuance of Hearing
A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing at least 3 business days prior to the scheduled hearing date. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.

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- i) **Default**
If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party. If the failure to appear at a pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.131(h). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.
- j) **Order**
- 1) Upon the conclusion of any hearing held under this Section, the Hearing Officer, after consultation with the Department representatives, shall prepare an order disposing of the petition, which shall be presented to the Director for entry. The Department shall render a decision within 30 days after the hearing unless all parties that have appeared agree to waive this requirement.
 - 2) The order shall grant the petition for unitization if based on the record the Hearing Officer finds all of the following:
 - A) *That the unitized management and operation is economically feasible and reasonably necessary to increase the ultimate recovery of oil and gas, to prevent waste, and to protect correlative rights;*
 - B) *That the value of the estimated ultimate additional recovery of oil and gas will exceed the estimated additional cost, if any, incident to conducting the unit operation;*
 - C) *That the areal extent of the pool or pools, or parts thereof, has been reasonably defined and determined by drilling operations, and the unitization and operation of such will have no substantially adverse effect upon the remainder of the pool or pools, or parts thereof;*

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- D) *That the allocation of unit production to each separately owned tract is fair, reasonable and equitable to all owners of oil and gas rights in the unit area;*
- E) *That the determination and allocation of unit expense is fair, reasonable and equitable to the working interest owners; and*
- F) *That the compensation or adjustment for wells, equipment and other properties of the working interest owners is fair, reasonable and equitable. (Section 23.5 of the Act)*
- 3) If the petition is granted the order shall provide for the authorization of the unit and unitized operation, as proposed by the petitioner, upon such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and that are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners, and for the protection of correlative rights and the prevention of waste. The order shall state the time the unit operation shall become effective and the manner in which and the circumstances under which the unit operation shall terminate.
- 4) Except as provided in subsection (j)(5), the order shall deny and dismiss the petition for unitization if, based on the record, the Hearing Officer finds that the petitioner has failed to establish the requirements for formation of a unit set forth in subsection (j)(2). An order denying and dismissing a petition for unitization shall be entered within 30 days after the hearing. *Such order shall set forth the reasons for dismissal, and the same shall be promptly filed by the petitioner, if notice was filed under Section 23.3(2) of the Act, in the recorder's office of the county or counties wherein the land is situated. (Section 23.6 of the Act)*
- 5) As an alternative to denying the petition for unitization, the Department may issue an interim order outlining the substantive deficiencies that must be cured by the petitioner in order to avoid dismissal. If the petitioner supplies the information requested by the Department, a new hearing shall be scheduled in order to examine the documents. If the petitioner fails to comply with the interim order, the petition shall be denied. The Department shall send notice of the hearing to all parties of record.

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- k) *Approval of Plan of Utilization – Effective Date of Order*
No order of the Department providing for unit operations shall become effective unless and until the plan of unitization has been approved in writing by those persons who, under the order, will be required to pay at least 51% of the unit expense, and also by the persons owning at least 51% of the unit production or proceeds thereof that will be credited to interests which are free of unit expense, including but not limited to, royalties, overriding royalties, carried interests, net profit interests, and production payments, and the Director has made such a finding, either in the order providing for unit operations or in a supplemental order, that the plan of unitization has been so approved; provided, however, that if any person is obligated to pay 51% or more, but less than 100% of the unit expense, the approval of that person and at least one other such person shall be required; and if one person entitled to production or proceeds thereof will be credited to interests which are free of unit expense, owns 51% or more, but less than 100%, the approval of that person and at least one other such person shall be required. If the plan of unitization has not been so approved at the time the order providing for unit operations is issued, the Department shall, upon petition and notice, hold such supplemental hearings as may be required to determine if and when the plan of unitization has been so approved and shall issue a supplemental order evidencing such approval. If the requisite number of persons and the requisite percentage of interests in the unit area do not approve the plan of unitization within a period of 6 months from the date on which the order providing for unit operations is made, such order shall be revoked by the Department unless for good cause shown the Department extends said time for an additional period of time not to exceed one year. (Section 23.8 of the Act)
- l) *Notice of Order – Recordation*
Within 10 days after an order has been issued, a copy of the order shall be mailed by the Department to each person or his or her attorney of record who has entered an appearance in the matter pursuant to which the order is issued. The petitioner shall cause to be recorded in the office of the county clerk of the county or counties in which the unit is situated a copy of the order providing for unit operations.
- m) *Order – Final Administrative Decision*
The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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Section 240.132 Integration Hearings

- a) Commencement of Action
- When the oil or gas rights within a drilling unit are separately owned and the owners of those rights have not voluntarily agreed to integrate or pool those rights to develop the oil or gas, an owner may petition the Department for an order integrating those rights, pursuant to Section 22.2 of the Act. The petition for an order integrating interests shall contain the following:
- 1) The name and address of the petitioner;
 - 2) The petitioner's reasons for desiring to integrate the separately owned interests;
 - 3) A legal land description of the drilling unit sought to be established;
 - 4) A geologic report of the area where the proposed drilling unit is to be located, indicating the potential presence of reservoirs;
 - 5) A description of the interest owned by the petitioner and each person named in the petition;
 - 6) The names of all persons who have not agreed to integrate their interests owning or having an interest in the oil and gas rights in the proposed drilling unit as of the date of filing the petition, as disclosed by the records in the office of the recorder for the county or counties in which the drilling unit is situated, and their addresses, if known. If the address of any person is unknown, the petition shall so indicate;
 - 7) A statement that the owners have not agreed to integrate their interests;
 - 8) A statement that the petitioner has exercised due diligence to locate each owner and that a bona fide effort was made to reach an agreement with each owner as to how the unit would be developed;
 - 9) A statement that no action has been commenced by the owners seeking permission to drill pursuant to the provisions of the Oil and Gas Rights Act [765 ILCS 520];

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- 10) Any other information relevant to protect correlative rights of the parties sought to be affected by the order.
- b) Execution and Filing
 - 1) The petition for an order requiring integration pursuant to Section 22.2 of the Act shall be sent to the Department at One Natural Resources Way, Springfield IL 62702.
 - 2) Every petition shall be signed by the petitioner or his or her representative and the petitioner's address shall be stated on the petition. The signature of the petitioner or the petitioner's representative constitutes a certificate that he or she has read the petition and that, to the best of his or her knowledge, information and belief, there is good ground to support the petition. The petition shall be accompanied by a non-refundable application fee in the amount of \$1,500.
 - 3) If the Department finds the petition deficient relative to the requirements of subsection (a), subsection (b)(2) or Section 240.250(b), the petition shall not be accepted and the Department shall return the petition to the applicant with a statement as to the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. A returned petition shall not be considered filed until the deficiencies have been cured.
 - c) Notice of Hearing
 - 1) Upon the receipt of an accepted petition for integration, the Department will fix the time and place for a hearing.
 - 2) The Department shall prepare a notice of hearing that shall issue in the name of the State of Illinois and shall be signed by the Director. The notice shall specify the number and style of the proceeding, the time and place of the hearing, the purpose of the hearing, the name of the petitioner, and a legal description of the lands embraced within the proposed drilling unit. The notice shall also state that any interested person may file an entry of appearance in the hearing by submitting an entry of appearance in writing to the Department and that person shall be deemed a party of

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record in the proceeding.

3) The Department shall mail the notice to the petitioner who shall then serve notice in the following manner:

A) By mailing the notice by U.S. Postal Service certified mail, return receipt requested, directed to the persons named in the petition at their last known addresses at least 20 days prior to the hearing; and

B) By publication of the notice for service on those persons whose addresses are unknown or whose names are unknown, once each week for 2 consecutive weeks, with the first notice appearing at least 20 days prior to the hearing in a newspaper of general circulation published in each county containing some portion of the proposed integrated unit.

4) Whenever the Department shall determines that a notice of hearing should be served upon a person because the granting or denying of the relief requested in the petition would materially affect that person's rights or property, the Department shall cause notice to be sent to the person, as provided in this subsection (c).

d) Pre-Hearing Conferences

1) Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:

A) Simplify the factual and legal issues presented by the hearing request;

B) Receive stipulations, admissions of fact and the contents and authenticity of documents;

C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and

D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion.

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- 2) Pre-hearing conferences may be held by telephone conference if that procedure is acceptable to all parties.
- e) Hearing
- 1) Conduct of Hearing: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the following:
 - A) To administer oaths and affirmations;
 - B) To receive relevant evidence;
 - C) To regulate the course of the hearing and the conduct of the parties and their counsel;
 - D) To consider and rule upon procedural requests;
 - E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify; and
 - F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record. The Hearing Officer may require that relevant documents be produced to any party of record on his or her own motion or for good cause shown on motion of any party of record.
 - 2) Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person shall be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in the Circuit Court.

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- 3) All participants in the hearing shall have the right to be represented by counsel.
 - 4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.
 - 5) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.
 - 6) Preliminary Matters: When applicable, the following shall be addressed prior to receiving evidence:
 - A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.
 - B) Ruling may be made on any pending motions.
 - C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.
- f) Evidence
- 1) Admissibility: A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received but the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by statute, if it is of a type commonly relied upon by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.

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- 2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.
 - 3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.
 - 4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.
- g) Record of Proceedings; Testimony
The Department shall provide at its expense a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.
- h) Postponement or Continuance of Hearing
A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of any emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing at least 3 business days prior to the scheduled hearing date. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.
- i) Default
If a party, after proper service of notice, fails to appear at the pre-hearing

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conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party. If the failure to appear at a pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.132(h). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.

- j) Order
- 1) Upon the conclusion of any hearing held under this Section, the Hearing Officer, after consultation with the Department representatives, shall prepare an order disposing of the petition, which shall be presented to the Director for entry.
 - 2) *In making the determination of integrating separately owned interests, and determining to whom the permit should be issued, the Department may consider:*
 - A) *The reasons requiring the integration of separate interests;*
 - B) *The respective interests of the parties in the drilling unit sought to be established, and the pool or pools in the field where the proposed drilling unit is located;*
 - C) *Any parties' prior or present compliance with the Act and the Department's rules; and*
 - D) *Any other information relevant to protect the correlative rights of the parties sought to be affected by the integration order.*
 - 3) Each order integrating separately owned interests *shall authorize the drilling, testing, completing, equipping, and operation of a well on the drilling unit; provide who may drill and operate the well; prescribe the time and manner in which all the owners in the drilling unit may elect to participate therein; and make provision for the payment by all those who elect to participate therein of the reasonable actual cost thereof, plus a*

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reasonable charge for supervision and interest. Should an owner not elect to voluntarily participate in the risk and costs of the drilling, testing, completing and operation of a well as determined by the Department, the integration order shall provide either that:

- A) *The nonparticipating owner shall surrender a leasehold interest to the participating owners on a basis and for such terms and consideration the Department finds fair and reasonable; or*
 - B) *The nonparticipating owner shall share in a proportionate part of the production of oil and gas from the drilling unit determined by the Department, and pay a proportionate part of operation cost after the participating owners have recovered from the production of oil or gas from a well all actual costs in the drilling, testing, completing and operation of the well plus a penalty to be determined by the Department of not less than 100% nor more than 300% of such actual costs.*
- 4) *For the purpose of this Section, the owner or owners of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a 7/8 interest in and to said rights and a lessor to the extent of the remaining 1/8 interest therein.*
- 5) *In the event of any dispute relative to costs and expenses of drilling, testing, equipping, completing and operating a well, the Department shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the integration order of the Department, shall have a lien on the mineral leasehold estate or rights owned by the other owners therein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are a charge against such interest by order of the Department or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the integration order. (Section 22.2 of the Act)*
- 6) *As an alternative to denying the petition for integration, the Department may issue an interim order outlining the substantive deficiencies that must*

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be cured by the petitioner in order to avoid dismissal. If the petitioner supplies the information requested by the Department, a new hearing shall be scheduled in order to examine the documents. If the petitioner fails to comply with the interim order, the petition shall be denied. The Department shall send notice of the hearing to all parties of record.

- 7) An integration order establishing a drilling unit shall terminate one year from the effective date of the order unless a well has been drilled on the unit within that time. If a well has been drilled on the unit within that time, the integration order shall terminate when the well is plugged.
- k) Notice of Order – Recordation
Within 10 days after an order has been issued, a copy of the order shall be mailed by the Department to each person or his or her attorney of record who has entered an appearance in the matter pursuant to which the order is issued and to each working interest owner who has not agreed to an integration. The petitioner shall cause to be recorded in the office of the county clerk of the county or counties in which the drilling unit is situated a copy of the order providing for integration of the separate interests.
- l) Order – Final Administrative Decision
The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 240.133 Hearings to Establish Pool-Wide Drilling Units

- a) Commencement of Action
 - 1) Any interested person may petition the Department for a hearing to *establish a drilling unit or units for the production of oil and gas or either of them for each pool* to which the interested person owns some portion of the oil and gas. (Section 21.1 of the Act)
 - 2) The petition for hearing to establish a drilling unit or units shall contain the following:
 - A) The name and address of the petitioner;

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- B) A legal description of the size of the drilling unit sought to be established;
 - C) A legal description of the extent of the reservoir to which the drilling unit or units are sought to be established;
 - D) A list of the names and addresses of all permittees of oil or gas interests in the reservoir;
 - E) A geologic description of the pool and an isopach and structure map of the reservoir, for which the drilling unit is sought showing the productive limits of the reservoir;
 - F) A plat showing all oil and gas or water injection or storage wells completed within the pool (reservoir);
 - G) Geologic and engineering reports outlining the reasons for and data supporting the proposed size of the drilling unit or units.
- 3) If the establishment of a drilling unit or units would require the integration of separately owned interests in the drilling unit or units, the petitioner may contemporaneously file a petition under Section 240.132 and the matters shall then be consolidated and heard together.
- b) Execution and Filing
- 1) The petition to establish drilling units shall be sent to the Department at One Natural Resources Way, Springfield IL 62702.
 - 2) Every petition shall be signed by the petitioner or his or her representative and the petitioner's address shall be stated on the petition. The signature of the petitioner or his or her representative constitutes a certificate that he or she has read the petition and that, to the best of his or her knowledge, information and belief, there is good ground to support the petition. The petition shall be accompanied by a non-refundable application fee in the amount of \$2,500.
 - 3) If the Department finds the petition deficient relative to the requirements

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of subsection (a), **subsection (b)(2)** or Section 240.250(b), the petition shall not be accepted and the Department shall return the petition to the applicant with a statement as to the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. A returned petition shall not be considered filed until the deficiencies have been cured.

- c) Notice of Hearing
- 1) Upon the receipt of an accepted petition to establish drilling units, the Department shall fix the time and place for a hearing.
 - 2) The Department shall prepare a notice of hearing, which shall issue in the name of the State of Illinois and shall be signed by the Director. The notice shall specify the number and style of the proceeding, the time and place of the hearing, the purpose of the hearing, the name of the petitioner, and a legal description of the affected lands. The notice shall also state that any interested person may file an entry of appearance in the hearing by submitting an entry of appearance in writing to the Department and that person shall be deemed a party of record in the proceeding.
 - 3) The Department shall mail the notice to the petitioner who shall then serve notice in the following manner:
 - A) By mailing the notice by U.S. Postal Service certified mail with return receipt, directed to the persons named in the petition pursuant to subsection (a)(2)(D) at their last known addresses at least 20 days prior to the hearing; and
 - B) By publication of the notice for service on those persons whose addresses are unknown or whose names are unknown and for those owners of unleased mineral rights, once each week for 2 consecutive weeks, with the first notice appearing at least 20 days prior to the hearing in a newspaper of general circulation published in each county containing some portion of the proposed integrated unit.
 - 4) Whenever the Department determines that a notice of hearing should be served upon a person because the granting or denying of the relief

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requested in the petition would materially affect that person's rights or property, the Department shall cause notice to be sent to the person, as provided in this subsection (c).

- d) Pre-Hearing Conferences
 - 1) Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:
 - A) Simplify the factual and legal issues presented by the hearing request;
 - B) Receive stipulations, admissions of fact and of the contents and authenticity of documents;
 - C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and
 - D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion.
 - 2) Pre-hearing conferences may be held by telephone conference if that procedure is acceptable to all parties.
- e) Hearing
 - 1) Conduct of Hearing: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the following:
 - A) To administer oaths and affirmations;
 - B) To receive relevant evidence;
 - C) To regulate the course of the hearing and the conduct of the parties

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and their counsel;

- D) To consider and rule upon procedural requests;
 - E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify;
 - F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.
- 2) Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person shall be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in the Circuit Court.
 - 3) All participants in the hearing shall have the right to be represented by counsel.
 - 4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.
 - 5) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.
 - 6) When applicable, the following shall be addressed prior to receiving evidence:
 - A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.
 - B) Ruling may be made on any pending motions.

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- C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.
- f) Evidence
- 1) Admissibility: A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received but the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by statute, if it is of a type commonly relied upon by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.
 - 2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.
 - 3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.
 - 4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.
- g) Record of Proceedings; Testimony
The Department shall provide at its expense a certified shorthand reporter to take

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down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.

- h) **Postponement or Continuance of Hearing**
A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing at least 3 business days prior to the scheduled hearing date. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.
- i) **Default**
If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party. If the failure to appear at a pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing date, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.133(h). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.
- j) **Order**
 - 1) Upon the conclusion of any hearing held under this Section, the Hearing Officer, after consultation with the Department representatives, shall prepare an order disposing of the petition, which shall be presented to the Director for entry.
 - 2) The order shall grant the petition based on the record if the Hearing Officer finds that establishing the drilling unit will prevent waste, protect the correlative rights of the owners in the pools, and prevent the unnecessary drilling of wells.

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- 3) No drilling unit shall be established *which requires the allocation of more than 40 acres of surface area nor less than 10 acres of surface area to an individual well for production of oil from a pool the top of which lies less than 4000 feet beneath the surface (as determined by the original or discovery well in the pool) provided, however, that the Department may permit the allocation of greater acreage to an individual well and provided further that the spacing of wells in any pool the top of which lies less than 4000 feet beneath the surface (as determined by the original or discovery well in the pool) shall not include the fixing of a pattern except with respect to the 2 nearest external boundary lines of each drilling unit.* (Section 21.1 of the Act)
- 4) The drilling units established by an order under this Section *shall be of approximately uniform size and shape for each entire pool, except that where circumstances reasonably require, the Department may grant exceptions to the size or shape of any drilling unit or units, in which case the order shall state the particular circumstances that require the exception.*
- 5) *Each order establishing drilling units shall specify the size and shape of the unit, which shall be such as will result in the efficient and economical development of the pool as a whole, and subject to the provisions of subsection (j)(3), the size of no drilling unit shall be smaller than the maximum area that can be efficiently and economically drained by one well.*
- 6) *Each order establishing drilling units for a pool shall cover all lands determined or believed to be underlain by such pool. Each order establishing drilling units may be modified by the Department to change the size thereof, or to permit the drilling of additional wells.*
- 7) *Each order establishing drilling units shall prohibit the drilling of more than one well on any drilling unit for the production of oil or gas from the particular pool with respect to which the drilling unit is established and subject to the provisions of subsection (j)(3) shall specify the location for the drilling of such well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the application. If the Department finds, after notice and hearing, notice being made as provided in this Section to all parties of*

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record in the proceeding, *that surface conditions would substantially add to the burden or hazard of drilling such well at the specified location, or for some other reason it would be inequitable or unreasonable to require a well to be drilled at the specified location, the Department may issue an order permitting the well to be drilled at a location other than that specified in the order establishing drilling units.*

- 8) *After the date of the notice for a hearing called to establish drilling units, no additional well shall be commenced for production from the pool until the order establishing drilling units has been issued unless the commencement of the well is authorized by order of the Department.*
- 9) *After an order establishing a drilling unit or units has been issued by the Department, the commencement of drilling of any well or wells into the pool with regard to which such unit was established for the purpose of producing oil or gas therefrom, at a location other than that authorized by the order, or by order granting exception to the original spacing order is hereby prohibited. (Section 21.1 of the Act)*
- 10) As an alternative to denying the petition for a drilling unit, the Department may issue an interim order outlining the substantive deficiencies that must be cured by the petitioner in order to avoid dismissal. If the petitioner supplies the information requested by the Department, a new hearing shall be scheduled in order to examine the documents. If the petitioner fails to comply with the interim order, the petition shall be denied. The Department shall send notice of the hearing to all parties of record.

- k) Order – Final Administrative Decision
The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART B: PERMIT APPLICATION PROCEDURES FOR PRODUCTION WELLS

Section 240.210 Application for Permit to Drill, Deepen or Convert to a Production Well

- a) No person shall drill, deepen or convert any well to a production well without a permit from the Department.

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- b) Application for a permit to drill, deepen or convert to a production well shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury, and accompanied by the non-refundable fee of ~~\$300+00~~ and the required bond under Subpart O.
- c) If the application does not contain all of the required information or documents, the Department shall notify the applicant in writing. The notification shall specify the additional information or documents necessary to an evaluation of the application, and shall advise the applicant that the application will be deemed denied unless the information or documents are submitted within 60 days following the date of notification.
- d) *Any well for which a permit is required under the Act, other than a plugged well, which was drilled prior to the effective date of the Act and for which no permit has previously been issued, is required to be permitted.* Application for a permit shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury, and accompanied by the required bond under Subpart O and existing well construction information reported on Department forms. If application is made on or before August 14, 1991, no permit fee is required. An application made after that date shall be accompanied by the non-refundable fee of ~~\$300+00~~. *Spacing requirements and provisions of the Act and these rules pertaining to well construction shall not apply. After August 14, 1991, any unpermitted well to which this Subpart applies will be deemed to be operating without a permit and subject to the penalties set forth in the Act. (Section 12 of the Act)*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART C: PERMIT APPLICATION PROCEDURES FOR CLASS II UIC WELLS

Section 240.310 Application for Permit to Drill, Deepen, or Convert or Amend to a Class II UIC Well

- a) No person shall drill, deepen or convert any well for use as a Class II UIC well without a permit from the Department.
- b) No person shall inject into a freshwater aquifer or be issued a permit to inject into a freshwater aquifer unless:

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- 1) the freshwater aquifer into which injection is proposed has been excepted as specified in Section 240.312; or
 - 2) a completed application requesting an aquifer exemption was submitted to the Department prior to February 1, 1998 and USEPA Region V has completed a technical review, determined that the application meets the relevant criteria, and intends to put the application forward for final approval by the USEPA under 40 CFR 146.4; or
 - 3) a request for an aquifer exemption is submitted to the Department in accordance with Section 240.311 and approved by the USEPA under 40 CFR 146.4.
- c) Application for a permit to drill, deepen or convert to a Class II UIC well or amend existing Class II UIC well permit in accordance with Section 240.390(a) shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury and accompanied by the non-refundable fee of ~~\$300+00~~ and the required bond under Subpart L.
- d) At the time of application they must specify the type of Class II well being permitted as an injection, disposal or commercial disposal well.
- e) If the application does not contain all of the required information or documents, the Department shall notify the applicant in writing. The notification shall specify the additional information or documents necessary to an evaluation of the application and shall advise the applicant that the application will be deemed denied unless the information or documents are submitted within 60 days following the date of notification.
- f) *Any well for which a permit is required under the Act, other than a plugged well, which was drilled prior to the effective date of the Act and for which no permit has previously been issued, is required to be permitted.* Application for a permit shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury and accompanied by the required bond under Subpart O. If application is made on or before August 14, 1991, no permit fee is required, but all other requirements of this Subpart shall apply. An application made after that date shall be accompanied by the non-refundable fee of ~~\$300+00~~. *After August 14, 1991, any unpermitted well to which this Subpart applies will be*

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deemed to be operating without a permit and subject to the penalties set forth in the Act. (Section 12 of the Act)

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: SPACING OF WELLS

Section 240.460 Modified Drilling Unit

- a) Upon application of any person having an interest in oil or gas in a lease or drilling unit, the Department shall schedule a hearing to consider a petition for modification of the location of the standard drilling unit described in Section 240.410, based on geologic or engineering characteristics of the reservoir, relative to the land survey system specified in Section 240.410 and well density specified in Section 240.465.
- b) Contents of petition shall include:
 - 1) the name and address of the petitioner;
 - 2) the petitioner's geologic or engineering reason for requesting a modified drilling unit; and
 - 3) a legal land description of the drilling unit sought to be established.
- c) Execution and Filing
 - 1) The petition to modify a drilling unit in accordance with this Section or establish a special drilling unit in accordance with Section 240.465 shall be sent to the Department offices located in Springfield, Illinois.
 - 2) Every petition shall be signed by the petitioner or his or her representative and the petitioner's address shall be stated on the petition. The signature of the petitioner or his or her representative constitutes a certificate by him or her that he or she has read the petition and that to the best of his or her knowledge, information and belief there is good ground to support the petition. The petition shall be accompanied by a non-refundable application fee in the amount of \$1,500.

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- 3) If the Department finds the petition deficient relative to the requirements of subsection (a) or (b) or Section 240.250(b), the petition shall not be accepted and the Department shall return the petition to the applicant with a statement as to the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. A returned petition shall not be considered filed until the deficiencies have been cured.

- d) Notice of hearing shall be given by the applicant to all mineral owners within the boundaries set forth in the application, and to all permittees whose wells or leases are within $\frac{1}{4}$ mile of the boundaries of the lease or drilling unit, by U.S. Postal Service certified mail, return receipt requested, and by publication in a newspaper of general circulation in each county in which any portion of the proposed lease or drilling unit or units is located, at least 10 days prior to the hearing.

- e) Pre-Hearing Conferences
 - 1) Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:
 - A) Simplify the factual and legal issues presented by the hearing request;
 - B) Receive stipulations and admissions of fact and of the contents and authenticity of documents;
 - C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and
 - D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just.
 - 2) Pre-hearing conferences may be held by telephone conference if that procedure is acceptable to all parties.

- f) Hearing
 - 1) Conduct of Hearing: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all

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necessary action to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the following:

- A) To administer oaths and affirmations;
 - B) To receive relevant evidence;
 - C) To regulate the course of the hearing and the conduct of the parties and their counsel;
 - D) To consider and rule upon procedural requests;
 - E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify;
 - F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.
- 2) Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person shall be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in Circuit Court.
 - 3) All participants in the hearing shall have the right to be represented by counsel.
 - 4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.
 - 5) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.

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- 6) When applicable, the following shall be addressed prior to receiving evidence:
 - A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.
 - B) Ruling may be made on any pending motions.
 - C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.
- g) Evidence
 - 1) Admissibility: A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence received by the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.
 - 2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.
 - 3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.

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- 4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.
- h) Record of Proceedings; Testimony
The Department shall provide at its expense a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.
- i) Postponement or Continuance of Hearing
A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing.
- j) Default
If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party. If the failure to appear at such pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing date, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.460(i). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.
- k) If the Department finds, based on the reservoir's geological and engineering characteristics, that a modified drilling unit or units is necessary to prevent waste, to protect correlative rights, and to prevent the unnecessary drilling of wells, the Department shall enter an order establishing the drilling unit or units. Each order shall:

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- 1) specify the location of each drilling unit relative to the land survey system; and
 - 2) specify the set back from the drilling unit boundaries for the location of the oil or gas well on each drilling unit; and
 - 3) terminate 1 year from the effective date of the order unless a well has been drilled on the drilling unit within that time. If a well has been drilled within that time, the order shall terminate when the well is plugged.
- 1) Order – Final Administrative Decision
The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART N: ISSUANCE OR TRANSFER OF PERMIT TO OPERATE

Section 240.1440 Responsibilities of New Permittee or Proposed New Permittee

Prior to the Department effecting the transfer, the new permittee or proposed new permittee shall:

- a) pay the required non-refundable transfer fee as follows: *A fee of \$5015 per well shall be paid by the new owner for each transfer of well ownership, except that when multiple wells are acquired and transferred as a part of the same transaction, the fee shall be calculated at the rate of \$15 per well for the first 50 wells, and \$10 for each additional well in excess of 50 wells* [225 ILCS 725/14];
- b) provide the required bond, if applicable, in accordance with Subpart O;
- c) if a corporation, provide evidence that the corporation is incorporated or authorized to do business in the State of Illinois, and authorized under its charter to engage in the permitted activity;
- d) if an individual, partnership, or other unincorporated entity that is not a resident of Illinois, provide an irrevocable consent to be sued in Illinois;

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- e) if issued, submit an FEIN number;
- f) submit to the Department a copy of the instrument conveying the right to drill and produce. The document shall consist of:
 - 1) a lease assignment properly recorded in the county where the lease is located; or
 - 2) a voluntary release executed by the lessee and properly recorded in the county where the lease is located or a court order involuntarily terminating a lease; or
 - 3) any other document evidencing the assignment, transfer or sale to the new permittee of the right to drill and operate the well(s) on the land in question;
- g) if the transfer request is for a PRF well, the new permittee or proposed new permittee shall comply with Section 240.1465 of this Part.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART Q: ANNUAL WELL FEES

Section 240.1705 Amount of Assessment

Well fees shall be assessed for total permits issued to the permittee as of July 1 of each year as follows:

- a) ~~\$75 per well for the first 100 wells attributed to each permittee. For 1 permit, \$150;~~
- b) ~~\$50 per well for any wells in excess of 100 wells attributed to each permittee. For 2 through 5 permits, \$300;~~
- e) ~~For 6 through 25 permits, \$750;~~
- d) ~~For 26 through 100 permits, \$1500;~~
- e) ~~For more than 100 permits, \$1500 plus \$12.50 for each permit over 100 permits.~~

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART R: REQUIREMENTS IN UNDERGROUND GAS STORAGE FIELDS
AND FOR GAS STORAGE AND OBSERVATION WELLS

Section 240.1830 Application for Permit to Drill or Convert Wells

- a) No person shall drill or convert a well covered by this Subpart without a permit from the Department.
- b) Application for a permit to drill or convert an observation or gas storage well shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury, and accompanied by the nonrefundable fee of ~~\$300~~ and the bond required under Subpart O.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART S: REQUIREMENTS FOR SERVICE WELLS

Section 240.1905 Application for Permit to Drill or Convert to Other Types of Wells or Drill Holes

- a) No person shall drill or convert a well or drill a test hole covered by this Subpart without a permit from the Department.
- b) Application for a permit to drill or convert a service well shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury, and accompanied by the non-refundable fee of ~~\$300~~ and the bond required under Subpart O.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Organization, Information, Rulemaking and Hearings
- 2) Code Citation: 86 Ill. Adm. Code 5000
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
5000.10	New Section
5000.20	New Section
5000.110	New Section
5000.120	New Section
5000.210	New Section
5000.300	New Section
5000.305	New Section
5000.310	New Section
5000.315	New Section
5000.320	New Section
5000.325	New Section
5000.330	New Section
5000.335	New Section
5000.340	New Section
5000.345	New Section
5000.350	New Section
- 4) Statutory Authority: Implementing and authorized by the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010]
- 5) Effective Date of Rules: May 1, 2014
- 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 rule, 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*: 38 Ill. Reg. 2597; January 24, 2014
- 10) Has JCAR issued a Statement of Objection to the Rulemaking? No

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- 11) Differences between Proposal and Final Version. Only nonsubstantive changes were made.
- 12) Have all of the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes, all agreed upon changes have been made.
- 13) Will this rulemaking replace an emergency rule currently in effect? Yes
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rule: The Rules set forth basic provisions regarding proceedings before the Tribunal, as well as various operational requirements for the Tribunal.
- 16) Information and questions regarding this adopted rule shall be directed to:

Illinois Independent Tax Tribunal
James Conway
Chief Administrative Law Judge
160 N. LaSalle, Rm N506
Chicago, IL 60601

312/814-4291
james.conway@illinois.gov

The full text of the Adopted Rules begins on the next page.

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TITLE 86: REVENUE

CHAPTER V: ILLINOIS INDEPENDENT TAX TRIBUNAL

PART 5000

ORGANIZATION, INFORMATION, RULEMAKING AND HEARINGS

SUBPART A: ORGANIZATION

- Section
- 5000.10 Definitions
- 5000.20 Composition of the Tribunal

SUBPART B: INFORMATION

- Section
- 5000.110 Requests for Records
- 5000.120 Materials Immediately Available

SUBPART C: RULEMAKING

- Section
- 5000.210 Rulemaking Procedures

SUBPART D: PROCEDURAL RULES

- Section
- 5000.300 General
- 5000.305 Representation
- 5000.310 Pleadings
- 5000.315 Motion Practice
- 5000.320 Status Hearings
- 5000.325 Discovery
- 5000.330 Service
- 5000.335 Subpoenas
- 5000.340 Stipulations
- 5000.345 Hearings
- 5000.350 Bonds

AUTHORITY: Implementing and authorized by the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010].

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NOTICE OF ADOPTED RULES

SOURCE: Adopted by emergency rulemaking at 38 Ill. Reg. 2956, effective January 9, 2014, for a maximum of 150 days; adopted at 38 Ill. Reg. 10673, effective May 1, 2014.

SUBPART A: ORGANIZATION

Section 5000.10 Definitions

Whenever used in this Part, the following terms shall have the meanings set forth in this Section unless otherwise expressly provided.

"Act" means the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010].

"FOIA" means the Freedom of Information Act [5 ILCS 140].

"Freedom of Information Officer" or "FOI Officer" means an individual responsible for receiving and responding to requests for public records.

"Department" means the Illinois Department of Revenue.

"Tribunal" means the Illinois Independent Tax Tribunal, Chief Administrative Law Judge, or presiding administrative law judge as the context may dictate whenever it occurs in this Part.

"Statutory Notice" means any notice listed in 35 ILCS 1010/1-45.

Section 5000.20 Composition of the Tribunal

- a) The Tribunal consists of a Chief Administrative Law Judge and up to three additional Administrative Law Judges, each appointed by the Governor with the advice and consent of the Senate. The Chief Administrative Law Judge shall serve a 5-year term. The administrative law judges, other than the Chief Administrative Law Judge, shall initially be appointed to staggered terms of no greater than 4 years. After the initial terms of office, all administrative law judges, other than the Chief Administrative Law Judge, shall be appointed for terms of 4 years. Each administrative law judge is eligible for reappointment. (See 35 ILCS 1010/1-25(a).)

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- b) *The Chief Administrative Law Judge shall have sole charge of the administration of the Tax Tribunal and shall apportion among the judges all causes, matters, and proceedings coming before the Tax Tribunal. Each administrative law judge shall exercise the power of the Tax Tribunal. [35 ILCS 1010/1-25(f)]*

SUBPART B: INFORMATION

Section 5000.110 Requests for Records

- a) A request for access to records for inspection and copying shall be submitted in writing to the Freedom of Information Officer at the office of the Tribunal. Requests for public records may be submitted by mail, e-mail, hand delivery or facsimile, directed to the FOI Officer, as follows:

FOI OFFICER
Illinois Independent Tax Tribunal
160 N. LaSalle Ave.
Chicago IL 60601

- b) The request must describe the public record sought, being as specific as possible. If the description is not sufficiently clear to allow easy identification of the records sought, the requester may be asked to supply additional necessary information.

Section 5000.120 Materials Immediately Available

As required by the Freedom of Information Act, certain information about the Tribunal, including, without limitation, a description of the Tribunal's responsibilities, organizational structure, categories of public records, and process for obtaining public records, shall publicly and immediately be available on the Tribunal's website.

SUBPART C: RULEMAKING

Section 5000.210 Rulemaking Procedures

Procedures of the Tribunal must be conducted in compliance with applicable provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

SUBPART D: PROCEDURAL RULES

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Section 5000.300 General

- a) **Scope.** This Subpart shall govern all proceedings before the Tribunal.
- b) **Intent.** These standards of practice and procedure shall govern all proceedings brought before the Illinois Independent Tax Tribunal pursuant to the Illinois Tax Tribunal Act of 2012 [35 ILCS 1010]. They are intended to provide the public with a clear, uniform, rapid, inexpensive and just system of resolving controversies with the Illinois Department of Revenue.
- c) **Hours.** The principal offices of the Tribunal shall be open each day for the transaction of business and filing of documents between the hours of 9:00 a.m. and 5:00 p.m., Saturdays, Sundays and legal holidays excepted.
- d) The Illinois Supreme Court Rules and the Illinois Code of Civil Procedure [735 ILCS 5] shall apply to proceedings before the Tribunal, except to the extent they conflict or are otherwise inconsistent with the requirements specifically provided in this Part.

Section 5000.305 Representation

- a) **Representation of Petitioner in Proceedings before the Tribunal.**
 - 1) **Personal Appearance.** Appearances in proceedings conducted before the Tribunal may be by the petitioner pro se. A partnership may act through one of its general partners without filing any power of attorney.
 - 2) **Representation by Others.** All parties not acting on their own behalf shall be represented by an attorney authorized to practice before the courts of the state of Illinois.
 - 3) **Pro Hac Vice Admission.** Persons authorized to practice law in another jurisdiction may, upon certifying in writing that they have followed the Illinois Supreme Court procedures for admission to practice pro hac vice in Illinois, and upon proper application to Tribunal, be authorized to practice before the Tribunal in a particular proceeding.

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- b) Substitution or Withdrawal of Representative. A party's representative may be changed and a new representative substituted by written notice to the Tribunal and to all other parties when the proceedings will not be unreasonably delayed. The Tribunal may in such circumstances permit substitution of representatives at hearing. Representatives who wish to withdraw must immediately file a written notice of withdrawal.

Section 5000.310 Pleadings

- a) Petition. All proceedings in the Tribunal must be commenced by the filing of a petition.
- 1) Form of Petition. The petition shall contain or identify:
- A) the name, address, and telephone number of the petitioner;
 - B) the name, address, telephone number and email address of the petitioner's representatives, if any;
 - C) the taxpayer's identification number;
 - D) a copy of the Statutory Notice at issue;
 - E) the years or periods involved;
 - F) separately numbered paragraphs stating, in clear and concise terms a summary of the errors of fact or law that the petitioner alleges have been made by the Department (e.g., in issuing the Statutory Notice), together with a statement of the facts or law upon which the petitioner relies to establish the errors;
 - G) the relief sought by the petitioner;
 - H) the signature of the petitioner or the petitioner's representative, if any; and
 - I) a check or money order in the amount of \$500 made payable to Illinois Independent Tax Tribunal or application for waiver of the fee.

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- 2) Filing and Service of Petition.
 - A) The petition and two copies thereof shall be filed with the Tribunal within the time limitations prescribed by the applicable statutory Sections. Petitions may be filed in person at the offices of the Tribunal in Springfield or in Chicago, by certified or registered mail, by messenger, or by private parcel delivery service. The Tribunal may permit electronic filing of petitions and other pleadings. The petitioner shall also serve a copy of the petition upon the Department simultaneously.
 - B) When the clerk of the Tribunal determines that the petition is in proper form, the clerk shall send to the petitioner a dated acknowledgment of receipt of the petition and immediately forward a copy of the acknowledgment to the Department for preparation of the answer. The time within which the Department must answer the petition shall start to run from the date of its receipt of the Tribunal's notification that the taxpayer has filed a petition in the proper form.
- 3) Protests Improperly Filed with the Office of Administrative Hearings. In the event a taxpayer files a protest within the allowable timeframe for that protest with the Office of Administrative Hearings that is dismissed due to lack of jurisdiction because it should have been filed with the Tribunal, a petition will be considered to be timely filed if the taxpayer files a petition with the Tribunal within 60 days after notice of the dismissal.
- 4) Corrected Petitions.
 - A) When the petition filed by a petitioner is not in the form required by this Section, the clerk shall promptly return it to the petitioner together with a statement indicating each requirement with which the petition does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition with the Tribunal. When the clerk determines that the corrected petition is in proper form, the clerk shall then acknowledge receipt of the corrected petition and forward the acknowledgment and the corrected petition to the Department pursuant to subsection (a)(2).

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For purposes of the time limitations for filing and service of a petition, a corrected petition is deemed to have been filed and served at the time the original petition was filed and served. However, the time within which the Department must answer the corrected petition shall start to run from the date of its receipt of the Tribunal's notification that the taxpayer has filed a corrected petition in the proper form.

- B) When the petitioner fails to file a corrected petition within the time prescribed in subsection (a)(4)(A), the clerk shall notify the Chief Administrative Law Judge, who may take such action as is deemed appropriate.
 - 5) Discretionary Late Hearings. If a Statutory Notice becomes final without a timely petition being filed as provided in subsection (a)(2), the taxpayer may request that the Department grant a discretionary late hearing as provided in Section 908(b)(2) of the Illinois Income Tax Act [35 ILCS 5/908(b)(2)] or Section 4 of the Retailers' Occupation Tax Act [35 ILCS 120/4]. Such application shall be made to the Chief Administrative Law Judge of the Department's Office of Administrative Hearings, and it shall specify each Statutory Notice at issue and the reasons why a timely petition was not filed, and any other information required by 86 Ill. Adm. Code 200.175. If such request is granted by the Department, the taxpayer shall file a petition with the Tribunal within 60 days and shall attach a copy of the letter granting a discretionary late hearing.
 - 6) Waiver of \$500 Filing Fee. In the event of financial hardship, a taxpayer may file an application for waiver of the \$500 filing fee. A form for the application will be prescribed by the Tribunal. The application shall be submitted with the petition.
- b) Answer.
- 1) Filing and Service of Answer. The Department shall file an answer and two copies with the Tribunal and serve a copy thereof on the petitioner, if appearing pro se, or the petitioner's representatives, within 30 days after receipt of the Tribunal's notification that the taxpayer has filed a petition in the proper form.

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- 2) Form of Answer. The answer as filed shall contain numbered paragraphs corresponding to the petition and shall contain:
 - A) a specific admission or denial of each material allegation of fact contained in the petition;
 - B) affirmative defenses, if any; and
 - C) the relief sought by the Department.
 - 3) Allegations Deemed Admitted. Material allegations of fact set forth in the petition that are not expressly admitted or denied in the answer shall be deemed to be admitted, unless the Department states in its Answer that it has no knowledge of the allegations sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge.
 - 4) Failure of Department to Answer. When the Department fails to answer within the prescribed time, the petitioner may make a motion, on notice to the Department, for a determination of default. The administrative law judge designated by the Chief Administrative Law Judge to review the motion shall either grant the motion and issue a default determination, or grant such other relief as is warranted.
- c) Amended Pleadings. Either party may amend a pleading without leave at any time before the period for responding to it expires. After such time, a pleading may be amended only with the written consent of the adverse party or with the permission of the Tribunal. The Tribunal shall freely grant consent to amend upon such terms as may be just. Except as otherwise ordered by the Tribunal, there shall be an answer to an amended pleading if an answer is required to the pleading being amended. Filing of the answer or, if the answer has already been filed, the amended answer shall be made no later than 30 days after the filing of the amended petition. The taxpayer may not amend a petition after expiration of the time for filing a petition, if the amendment would have the effect of conferring jurisdiction on the Tribunal over a matter that would otherwise not come within its jurisdiction. An amendment of a pleading shall relate back to the time of filing of the original pleading only as prescribed by Section 2-616 of the Code of Civil Procedure.

Section 5000.315 Motion Practice

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- a) **Form and Contents.** A motion shall be in writing and must specify the supporting papers (e.g., affidavits, admissions, etc.) upon which the motion is based, in separate numbered paragraphs, the relief requested and the grounds for the relief. Any brief shall be filed with the motion and a copy served on the adverse party.
- b) **Notice of Motion.** A Notice of Motion shall accompany each motion. The Notice of Motion shall specify whether or not the motion is agreed to by the adverse party. The Notice of Motion shall also specify whether the moving party desires an oral argument on the motion.
- c) **Response to Motions.** If a motion is not an agreed motion, the adverse party shall notify the clerk for the Tribunal within five business days after receipt of a Notice of Motion whether the adverse party desires to file a response to the motion and a proposed briefing schedule. The time for filing a response shall not exceed 28 days without the permission of the Tribunal. The time for filing a reply, if a reply is requested, shall not exceed 14 days without the permission of the Tribunal. The adverse party shall also indicate whether it desires an oral argument. Upon approval by the Tribunal, the clerk will schedule an oral argument and send notice of the date and time to the parties.
- d) **Hearings on Motions.** All motions will be decided on the moving papers and answers submitted without oral argument, unless a specific request for oral argument is made by a party and granted by the Tribunal.
- e) **Finality of Orders.** An order by an administrative law judge on any motion that does not finally determine all matters and issues contained in the petition, for purposes of review by the Appellate Court, shall not be deemed final and conclusive until the administrative law judge shall have rendered a determination on the remaining matters and issues.
- f) **Motion to Transfer.** The Tribunal may on its own motion and on notice to the parties, or either party may by filing a motion, transfer the case to the Office of Administrative Hearings if the petition has been timely but erroneously filed with the clerk of the Tribunal. If such a motion is granted, the clerk of the Tribunal shall certify and transmit all papers filed with the Tribunal to the Office of Administrative Hearings of the Department of Revenue.

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- g) Motion to Dismiss. A motion to dismiss must be filed before the answer is due or the grounds for dismissal may be raised as an affirmative defense in the answer. In no event shall a failure by a party to make such a motion be deemed a waiver of any defense. Only one such motion shall be made.
- h) Dismissal by the Administrative Law Judge on His/Her Own Motion.
- 1) The administrative law judge may, on his or her own motion and on notice to the parties, issue a determination or decision dismissing a petition on the ground that:
 - A) the Tribunal lacks jurisdiction over the subject matter of the petition;
 - B) the Tribunal lacks jurisdiction over the taxpayer; or
 - C) the petition has not been timely filed or served.
 - 2) If the basis for the administrative law judge's dismissal is that the Office of Administrative Hearings of the Department of Revenue has jurisdiction over the subject matter of the petition, the petition shall be transferred to the Office of Administrative Hearings.
- i) Motion to Recuse Administrative Law Judge.
- 1) A Tribunal administrative law judge assigned to the case may, on his or her own motion, or either party may, by motion before the Chief Administrative Law Judge, move to recuse the administrative law judge assigned to its case on the basis that the administrative law judge has a personal bias with respect to the case or that the administrative law judge is otherwise disqualified to hear and decide the case.
 - 2) The party's motion to recuse the administrative law judge must be accompanied by an affidavit setting forth the facts upon which the assertion of bias or other disqualification is based.
 - 3) The motion to recuse must be made at least 30 days prior to the scheduled hearing date and shall comply with all procedural provisions relating to form as described in subsection (a).

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- 4) The adverse party may respond to the motion to recuse by serving its response on the Chief Administrative Law Judge and the moving party not later than 10 days from the date the motion to recuse was served on such adverse party.
- 5) In response to the motion to recuse, the Chief Administrative Law Judge shall assign a different administrative law judge to the case or deny the motion by written order. The order shall be issued not later than 10 days prior to the scheduled hearing date. A party may not file an exception to an order until the administrative law judge renders a determination on the remaining matters and issues.

Section 5000.320 Status Hearings

- a) Initial Status Conference. An initial status conference shall be set within 60 days after the date of filing of the petition.
- b) Notice. The parties shall be given at least 15 days' notice of the first status hearing date, and at least seven days' notice of any other hearing date unless the parties agree to an earlier date. A request by any party for a preference in scheduling will be honored to the extent possible.
- c) Telephonic Hearings. Status conferences and hearings on motions may be conducted telephonically at the request of the parties. Any order setting a status conference or hearing date shall specify whether the parties and/or their representatives are to appear in person, by telephone or as otherwise agreed.

Section 5000.325 Discovery

- a) General. As stated in Section 1-60 of the Act, the Illinois Supreme Court Rules and the Illinois Code of Civil Procedure [735 ILCS 5] shall apply to all discovery, requests for admission, and pre-trial procedure.
- b) Interrogatories. Answers to interrogatories shall be filed with the clerk of the Tribunal.
- c) Requests for Admissions. Requests for admission of fact shall be filed with the clerk of the Tribunal. Within 28 days after service of the requests, the answering

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party shall serve upon the party requesting the admission and file with the clerk of the Tribunal either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or a written objection to each request.

- d) Other Discovery. Except as provided in subsections (b) and (c), discovery requests and answers shall not be filed with the Tribunal.

Section 5000.330 Service

- a) Date of Filing and Service. If any document required to be filed and served under this Part within a prescribed period or on or before a prescribed date is, after that period or date, delivered by United States mail or other third party commercial carrier, the date of the United States postmark stamped on the envelope or the date the document is delivered by the third party commercial carrier, messenger or private parcel delivery service will be deemed to be the date of filing or service.
- b) Saturday, Sunday or Legal Holiday. When the last day prescribed under this Part for filing or service falls on a Saturday, Sunday or legal holiday in the State of Illinois, the filing or service shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday or legal holiday.
- c) Service by Email. The parties may consent to service by email. The date of service will then be the date the email is sent.

Section 5000.335 Subpoenas

- a) Upon the request of any party, the administrative law judge assigned to the case may issue subpoenas to require the attendance of witnesses at a deposition or hearing or to require the production of documentary evidence; provided, however, that when it appears to the administrative law judge requested to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the administrative law judge may, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the administrative law judge requested to issue the subpoena shall, after consideration of all the circumstances, determine that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or

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unduly burdensome, the administrative law judge may refuse to issue the subpoena, or issue it only upon the conditions the administrative law judge deems appropriate. In the event that an administrative law judge has not been assigned to the case or the administrative law judge is unavailable, the request to issue subpoenas may be made to the Chief Administrative Law Judge. Subpoenas will be delivered to the person requesting them and service of the subpoena will be the requestor's responsibility.

- b) Request to Withdraw or Modify a Subpoena. Upon issuance of a subpoena pursuant to subsection (a), any person to whom a subpoena is directed may, prior to the time specified in the subpoena for compliance, but in no event more than 14 days after the date of service of that subpoena, request that the subpoena be withdrawn or modified by filing that request with the administrative law judge assigned to the case or, if no assignment has been made, to the Chief Administrative Law Judge. The request shall be upon notice to the other party and shall otherwise conform to the procedural requirements of Section 5000.315 for motions.

Section 5000.340 Stipulations

- a) General. The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all undisputed facts not privileged that are relevant to the pending controversy. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence that fairly should not be in dispute. When the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by the adverse party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Part without regard to where the burden of proof may lie with respect to the controversies involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.
- b) Form. Stipulations shall be written and signed by the parties to the stipulation or by their representatives, if any, and shall be filed with the Tribunal. Documents or other papers that are the subject of stipulation in any respect and that the parties intend to place before the Tribunal shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be

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stated in separate paragraphs and shall be appropriately numbered. Exhibits attached to a stipulation shall be lettered serially.

- c) **Binding Effect.** A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Tribunal or agreed upon by the parties. The Tribunal shall not permit a party to a stipulation to qualify, change or contradict a stipulation, in whole or in part, except when justice requires. A stipulation and the admissions in the stipulation shall be binding and have effect only in the pending proceeding and not for any other purpose, and they shall not be used against any party to the stipulation in any other proceeding before the Tribunal, the Department or the courts.
- d) **Submission without Hearing.** The parties may consent in writing to waive oral argument on contested motions and have the controversy determined on submission without need for appearance at a hearing.

Section 5000.345 Hearings

- a) **Out-of-state Petitioners.** If the taxpayer does not have his or her place of business in this State, a hearing shall be held at the office designated by the Tribunal. If the chosen location is undesirable, upon a showing of just cause, the taxpayer may petition the Tribunal to move the hearing to another office.
- b) **Post-hearing Briefs.** At the discretion of the administrative law judge, the parties may submit post-hearing briefs, including proposed findings of fact and conclusions of law.

Section 5000.350 Bonds

- a) **General.** The Tax Tribunal may require the taxpayer to post a bond equal to 25% of the liability at issue:
 - 1) upon motion of the Department and a showing that:
 - A) the taxpayer's action is frivolous or legally insufficient; or

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- B) the taxpayer is acting primarily for the purpose of delaying the collection of tax or prejudicing the ability ultimately to collect the tax; or
- 2) if, at any time during the proceedings, it is determined by the Tax Tribunal that the taxpayer is not pursuing the resolution of the case with due diligence. If the Tax Tribunal finds in a particular case that the taxpayer cannot procure and furnish a satisfactory surety or sureties for the kind of bond required in subsection (a), the Tax Tribunal may relieve the taxpayer of the obligation of filing the bond, if, upon the timely application for a lien in lieu of a bond, with proof of the taxpayer's inability to procure the surety submitted in the application, the Tax Tribunal is satisfied that any lien imposed would operate to secure the assessment in the manner and to the degree as would a bond.
- b) Surety Bonds. If the Tax Tribunal determines that a taxpayer should post a bond, any surety bond must be obtained from a third party and filed with the Tax Tribunal.
- c) Liens. If a taxpayer is unable to procure and furnish a satisfactory surety or sureties, the Tax Tribunal may impose a lien or liens in lieu of bond against any real or personal property of the taxpayer in the amount of the required bond. A taxpayer who is required, but unable to procure a bond, must file a sworn statement of assets and liabilities, a title search of any real property to be encumbered, and a UCC search of any personal property to be encumbered with the Tax Tribunal.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

STRATTON OFFICE BUILDING
ROOM C-1
SPRINGFIELD, ILLINOIS
MAY 20, 2014
10:00 A.M.

***NOTICE:** It is the policy of the Committee to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. If members of the public wish to express their views with respect to a proposed rule, they should submit written comments to the Office of the Joint Committee on Administrative Rules at the following address:*

*Joint Committee on Administrative Rules
700 Stratton Office Building
Springfield, Illinois 62706*

RULEMAKINGS SCHEDULED FOR JCAR REVIEW

The following rulemakings are scheduled for review at this meeting. JCAR staff may be proposing action with respect to some of these rulemakings. JCAR members may have questions concerning, and may initiate action with respect to, any item scheduled for JCAR review and any other issues within the Committee's purview.

PROPOSED RULEMAKINGSAging

1. Community Care Program (89 Ill. Adm. Code 240)
 - First Notice Published: 38 Ill. Reg. 1408 – 1/17/14
 - Expiration of Second Notice: 5/11/14

Central Management Services

2. Travel (80 Ill. Adm. Code 2800)
 - First Notice Published: 38 Ill. Reg. 3273 – 1/31/14
 - Expiration of Second Notice: 5/22/14

Children and Family Services

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

3. Reports of Child Abuse and Neglect (89 Ill. Adm. Code 300)
 - First Notice Published: 38 Ill. Reg. 608 – 1/10/14
 - Expiration of Second Notice: 6/14/14

Commerce Commission

4. The Preservation of Records of Telephone Utilities (General Order 188) (83 Ill. Adm. Code 705)
 - First Notice Published: 38 Ill. Reg. 614 – 1/10/14
 - Expiration of Second Notice: 6/15/14
5. 9-1-1 Implementation Reports (General Order 208) (Repealer) (83 Ill. Adm. Code 720)
 - First Notice Published: 37 Ill. Reg. 20558 – 12/27/13
 - Expiration of Second Notice: 6/15/14
6. Customer Credits (83 Ill. Adm. Code 732)
 - First Notice Published: 37 Ill. Reg. 20567 – 12/27/13
 - Expiration of Second Notice: 6/15/14
7. Tariff Filings (83 Ill. Adm. Code 745)
 - First Notice Published: 38 Ill. Reg. 671 – 1/10/14
 - Expiration of Second Notice: 6/15/14

Elections

8. Counting of Provisional Ballots (26 Ill. Adm. Code 218)
 - First Notice Published: 38 Ill. Reg. 4328 – 2/14/14
 - Expiration of Second Notice: 6/12/14

Emergency Management Agency

9. Use of X-Rays in the Healing Arts Including Medical, Dental, Podiatry, and Veterinary Medicine (32 Ill. Adm. Code 360)
 - First Notice Published: 37 Ill. Reg. 16246 – 10/18/13
 - Expiration of Second Notice: 6/1/14
10. Access to Facilities for Treatment, Storage, or Disposal Low-Level Radioactive Waste (32 Ill. Adm. Code 609)
 - First Notice Published: 38 Ill. Reg. 4238 – 2/14/14

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

-Expiration of Second Notice: 6/1/14

Environmental Protection Agency

11. Permits (35 Ill. Adm. Code 652)
 - First Notice Published: 38 Ill. Reg. 4554 – 2/21/14
 - Expiration of Second Notice: 6/15/14

Financial and Professional Regulation

12. Illinois Dental Practice Act (68 Ill. Adm. Code 1220)
 - First Notice Published: 37 Ill. Reg. 13687 – 8/23/13
 - Expiration of Second Notice: 6/15/14
13. Nurse Practice Act (68 Ill. Adm. Code 1300)
 - First Notice Published: 38 Ill. Reg. 2523 – 1/24/14
 - Expiration of Second Notice: 6/15/14

Gaming Board

14. Video Gaming (General) (11 Ill. Adm. Code 1800)
 - First Notice Published: 37 Ill. Reg. 19812 – 12/13/13
 - Expiration of Second Notice: 5/16/14

Health Facilities and Services Review Board

15. Public Information, Rulemaking, and Organization (Repealer) (2 Ill. Adm. Code 1925)
 - First Notice Published: 38 Ill. Reg. 3424 – 2/7/14
 - Expiration of Second Notice: 5/24/14
16. Public Information Access, Rulemaking, and Organization (2 Ill. Adm. Code 1925)
 - First Notice Published: 38 Ill. Reg. 3442 – 2/7/14
 - Expiration of Second Notice: 5/24/14

Healthcare and Family Services

17. Medical Assistance Programs (89 Ill. Adm. Code 120)
 - First Notice Published: 37 Ill. Reg. 12302 – 8/2/13
 - Expiration of Second Notice: 5/28/14

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

18. Medical Payment (89 Ill. Adm. Code 140)
-First Notice Published: 38 Ill. Reg. 2529 – 1/24/14
-Expiration of Second Notice: 6/12/14

Human Services

19. Medicaid Community Mental Health Services Program (59 Ill. Adm. Code 132)
-First Notice Published: 37 Ill. Reg. 13045 – 8/16/13
-Expiration of Second Notice: 5/21/14
20. Partner Abuse Intervention (Repealer) (89 Ill. Adm. Code 501)
-First Notice Published: 37 Ill. Reg. 19437 – 12/6/13
-Expiration of Second Notice: 5/21/14
21. Partner Abuse Intervention (89 Ill. Adm. Code 501)
-First Notice Published: 37 Ill. Reg. 19457 – 12/6/13
-Expiration of Second Notice: 5/21/14

Insurance

22. The Minimum Mortality Standard for Valuation of Annuity and Pure Endowment Contracts (50 Ill. Adm. Code 935)
-First Notice Published: 37 Ill. Reg. 13094 – 8/16/13
-Expiration of Second Notice: 6/13/14

50-2904-14-00184 MR

23. Assigned Risk Procedures (50 Ill. Adm. Code 2904)
-First Notice Published: 38 Ill. Reg. 184 – 1/3/14
-Expiration of Second Notice: 6/7/14

Pollution Control Board

24. General Provisions (35 Ill. Adm. Code 501)
-First Notice Published: 37 Ill. Reg. 18974 – 12/2/13
-Expiration of Second Notice: 6/4/14
25. Permits (35 Ill. Adm. Code 502)
-First Notice Published: 37 Ill. Reg. 19005 – 12/2/13

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

-Expiration of Second Notice: 6/4/14

26. Implementation Program (Repealer) (35 Ill. Adm. Code 504)
-First Notice Published: 37 Ill. Reg. 19074 – 12/2/13
-Expiration of Second Notice: 6/4/14

Public Health

27. Hospital Licensing Requirements (77 Ill. Adm. Code 250)
-First Notice Published: 37 Ill. Reg. 11128 – 7/19/13
-Expiration of Second Notice: 5/24/14
28. Newborn Metabolic Screening and Treatment Code (77 Ill. Adm. Code 661)
-First Notice Published: 38 Ill. Reg. 5142 – 2/21/14
-Expiration of Second Notice: 6/6/14

Revenue

29. Income Tax (86 Ill. Adm. Code 100)
-First Notice Published: 38 Ill. Reg. 3482 – 2/7/14
-Expiration of Second Notice: 6/12/14
30. Income Tax (86 Ill. Adm. Code 100)
-First Notice Published: 38 Ill. Reg. 5782 – 3/7/14
-Expiration of Second Notice: 6/8/14
31. Retailers' Occupation Tax (86 Ill. Adm. Code 130)
-First Notice Published: 38 Ill. Reg. 1818 – 1/17/14
-Expiration of Second Notice: 6/12/14
32. Automobile Renting Occupation Tax (86 Ill. Adm. Code 180)
-First Notice Published: 38 Ill. Reg. 1843 – 1/17/14
-Expiration of Second Notice: 6/12/14

Secretary of State

33. Issuance of Licenses (92 Ill. Adm. Code 1030)
-First Notice Published: 38 Ill. Reg. 5163 – 2/21/14
-Expiration of Second Notice: 5/30/14

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

34. Commercial Driver Training Schools (92 Ill. Adm. Code 1060)
-First Notice Published: 38 Ill. Reg. 5214 – 2/21/14

-Expiration of Second Notice: 5/30/14
35. Online Only Adult Driver Education Course Provider Certification (92 Ill. Adm. Code 1066)
-First Notice Published: 38 Ill. Reg. 5228 – 2/21/14
-Expiration of Second Notice: 5/30/14

Student Assistance Commission

36. General Provisions (23 Ill. Adm. Code 2700)
-First Notice Published: 38 Ill. Reg. 3522 – 2/7/14
-Expiration of Second Notice: 6/8/14
37. Federal Family Education Loan Program (FFELP) (23 Ill. Adm. Code 2720)
-First Notice Published: 38 Ill. Reg. 3541 – 2/7/14
-Expiration of Second Notice: 6/8/14
38. Grant Program for Dependents of Correctional Officers (23 Ill. Adm. Code 2731)
-First Notice Published: 38 Ill. Reg. 3557 – 2/7/14
-Expiration of Second Notice: 6/8/14
39. Grant Program for Dependents of Police or Fire Officers (23 Ill. Adm. Code 2732)
-First Notice Published: 38 Ill. Reg. 3563 – 2/7/14
-Expiration of Second Notice: 6/8/14
40. Illinois Special Education Teacher Tuition Waiver (SETTW) Program (23 Ill. Adm. Code 2765)
-First Notice Published: 38 Ill. Reg. 3569 – 2/7/14
-Expiration of Second Notice: 6/8/14

EMERGENCY RULEMAKINGSCentral Management Services

41. Pay Plan (80 Ill. Adm. Code 310)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

-First Notice Published: 38 Ill. Reg. 9080 – 4/25/14

Healthcare and Family Services

42. Children's Health Insurance Program (Repealer) (89 Ill. Adm. Code 125)
-First Notice Published: 38 Ill. Reg. 8454 – 4/18/14
43. Children's Health Insurance Program (89 Ill. Adm. Code 125)
-First Notice Published: 38 Ill. Reg. 9110 – 4/25/14

Human Services

44. Supplemental Nutrition Assistance Program (SNAP) (89 Ill. Adm. Code 121)
-First Notice Published: 38 Ill. Reg. 8414 – 4/18/14

Public Health

45. AIDS Drug Assistance Program (77 Ill. Adm. Code 692)
-First Notice Published: 38 Ill. Reg. 7997 – 4/11/14

Racing Board

46. Medication (11 Ill. Adm. Code 603)
-First Notice Published: 38 Ill. Reg. 9121 – 4/25/14

Secretary of State

47. Issuance of Licenses (92 Ill. Adm. Code 1030)
-First Notice Published: 38 Ill. Reg. 8429 – 4/18/14

State Police

48. Firearm Concealed Carry Act Procedures (20 Ill. Adm. Code 1231)
-First Notice Published: 38 Ill. Reg. 9703 – 5/2/14

PEREMPTORY RULEMAKINGCentral Management Services

JOINT COMMITTEE ON ADMINISTRATIVE RULES

MAY AGENDA

49. Pay Plan (80 Ill. Adm. Code 310)
-First Notice Published: 38 Ill. Reg. 9136 – 4/25/14

Human Services

50. Schedule of Controlled Substances (77 Ill. Adm. Code 2070)
-First Notice Published: 38 Ill. Reg. 8439 – 4/18/14

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 April 29, 2014 through May 5, 2014. The rulemakings are scheduled for review at the Committee's May 20, 2014 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
6/15/14	<u>Department of Financial and Professional Regulation</u> , Nurse Practice Act (68 Ill. Adm. Code 1300)	1/24/14 38 Ill. Reg. 2523	5/20/14
6/15/14	<u>Department of Financial and Professional Regulation</u> , Illinois Dental Practice Act (68 Ill. Adm. Code 1220)	8/23/13 37 Ill. Reg. 13687	5/20/14
6/15/14	<u>Illinois Commerce Commission</u> , The Preservation of Records of Telephone Utilities (General Order 188) (83 Ill. Adm. Code 705)	1/10/14 38 Ill. Reg. 614	5/20/14
6/15/14	<u>Illinois Commerce Commission</u> , Tariff Filings (83 Ill. Adm. Code 745)	1/10/14 38 Ill. Reg. 671	5/20/14
6/15/14	<u>Illinois Commerce Commission</u> , 9-1-1 Implementation Reports (General Order 208) (Repealer) (83 Ill. Adm. Code 720)	12/27/13 37 Ill. Reg. 20558	5/20/14
6/15/14	<u>Illinois Commerce Commission</u> , Customer Credits (83 Ill. Adm. Code 732)	12/27/13 37 Ill. Reg. 20567	5/20/14
6/15/14	<u>Illinois Environmental Protection Agency</u> , Permits (35 Ill. Adm. Code 652)	2/21/14 38 Ill. Reg. 4554	5/20/14

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

6/14/14	<u>Department of Children and Family Services,</u> Reports of Child Abuse and Neglect (89 Ill. Adm. Code 300)	1/10/14 38 Ill. Reg. 608	5/20/14
6/13/14	<u>Department of Insurance,</u> The Minimum Mortality Standard for Valuation of Annuity and Pure Endowment Contracts (50 Ill. Adm. Code 935)	8/6/13 37 Ill. Reg. 13094	5/20/14
6/12/14	<u>Pollution Control Board,</u> Permits (35 Ill. Adm. Code 502)	12/2/13 37 Ill. Reg. 19005	5/20/14
6/4/14	<u>Department of Revenue,</u> Retailers' Occupation Tax (86 Ill. Adm. Code 130)	1/17/14 38 Ill. Reg. 1818	5/20/14
6/12/14	<u>Department of Revenue,</u> Automobile Renting Occupation Tax (86 Ill. Adm. Code 180)	1/17/14 38 Ill. Reg. 1843	5/20/14
6/12/14	<u>Department of Revenue,</u> Income Tax (86 Ill. Adm. Code 100)	2/7/14 38 Ill. Reg. 3482	5/20/14
6/12/14	<u>State Board of Elections,</u> Counting of Provisional Ballots (26 Ill. Adm. Code 218)	2/14/14 38 Ill. Reg. 4328	5/20/14
6/12/14	<u>Department of Healthcare and Family Services,</u> Medical Payment (89 Ill. Adm. Code 140)	1/24/14 38 Ill. Reg. 2529	5/20/14

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 38, Issue 20 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.

PROPOSED RULES

44 - 1	10327
38 - 360	10502
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68 - 1330	10534
62 - 240	10624

ADOPTED RULES

86 - 5000	5/1/2014	10673
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