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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2016

Issue#	Rules Due Date	Date of Issue
1	December 21, 2015	January 4, 2016
2	December 28, 2015	January 8, 2016
3	January 4, 2016	January 15, 2016
4	January 11, 2016	January 22, 2016
5	January 19, 2016	January 29, 2016
6	January 25, 2016	February 5, 2016
7	February 1, 2016	February 16, 2016
8	February 8, 2016	February 19, 2016
9	February 16, 2016	February 26, 2016
10	February 22, 2016	March 4, 2016
11	February 29, 2016	March 11, 2016
12	March 7, 2016	March 18, 2016
13	March 14, 2016	March 25, 2016
14	March 21, 2016	April 1, 2016
15	March 28, 2016	April 8, 2016
16	April 4, 2016	April 15, 2016
17	April 11, 2016	April 22, 2016
18	April 18, 2016	April 29, 2016
19	April 25, 2016	May 6, 2016
20	May 2, 2016	May 13, 2016
21	May 9, 2016	May 20, 2016
22	May 16, 2016	May 27, 2016

23	May 23, 2016	June 3, 2016
24	May 31, 2016	June 10, 2016
25	June 6, 2016	June 17, 2016
26	June 13, 2016	June 24, 2016
27	June 20, 2016	July 1, 2016
28	June 27, 2016	July 8, 2016
29	July 5, 2016	July 15, 2016
30	July 11, 2016	July 22, 2016
31	July 18, 2016	July 29, 2016
32	July 25, 2016	August 5, 2016
33	August 1, 2016	August 12, 2016
34	August 8, 2016	August 19, 2016
35	August 15, 2016	August 26, 2016
36	August 22, 2016	September 2, 2016
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38	September 6, 2016	September 16, 2016
39	September 12, 2016	September 23, 2016
40	September 19, 2016	September 30, 2016
41	September 26, 2016	October 7, 2016
42	October 3, 2016	October 14, 2016
43	October 11, 2016	October 21, 2016
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45	October 24, 2016	November 4, 2016
46	October 31, 2016	November 14, 2016
47	November 7, 2016	November 18, 2016
48	November 14, 2016	November 28, 2016
49	November 21, 2016	December 2, 2016
50	November 28, 2016	December 9, 2016
51	December 5, 2016	December 16, 2016
52	December 12, 2016	December 27, 2016
53	December 19, 2016	December 30, 2016

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Permanent Supportive Housing & Bridge Subsidy Model for Persons with Mental Illnesses
- 2) Code Citation: 59 Ill. Adm. Code 145
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
145.10	New Section
145.20	New Section
145.30	New Section
145.40	New Section
145.50	New Section
145.60	New Section
145.70	New Section
145.100	New Section
145.110	New Section
145.120	New Section
145.130	New Section
145.140	New Section
145.150	New Section
145.160	New Section
145.170	New Section
145.180	New Section
145.190	New Section
145.200	New Section
145.210	New Section
145.220	New Section
145.230	New Section
145.240	New Section
145.250	New Section
145.260	New Section
145.300	New Section
145.310	New Section
145.320	New Section
145.330	New Section
145.340	New Section
- 4) Statutory Authority: Implementing and authorized by Section 73 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/73]

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- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 9704; July 17, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? Yes
- 11) Differences between Proposal and Final Version: In the Table of Contents, Section 145.200, "Provided Under PSH/Bridge Subsidy Model" was added after "Funds".

In Section 145.20 after the definition of "Adult", the following definition was added: "Agency – The local DHS-DMH contracted Community Mental Health Center."

In Section 145.20 in the definition of "HIPAA", "2003" was changed to "2013".

In Section 145.20 in the definition of "Homelessness", "program" was changed to "model".

In Section 145.20 after the definition of "Housing Assistance Payment Contract or HAP Contract", the following definition was added: "Housing Dwelling – A house rented according to the same Fair Market Rate as an apartment located in the same geographical area. This type of PSH is applicable in rural areas."

In Section 145.20 in the definition of "Transition Assistance Funds or TAF", "through a designated process" was changed to "(see Section 145.200)".

Subsection 145.60(a) was replaced with:

- a) Under the DHS-DMH PSH model, Permanent Supportive Housing is made possible only with the availability of a Bridge Subsidy. The DHS-DMH PSH model assures that needed services and supports are available to the tenant living in a PSH/Bridge Subsidy unit."

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Subsection 145.60(a)(2) was replaced with:

- "2) Services shall be elective and support the tenant's clinical/therapeutic or treatment needs to function and live independently in the community, and must be based on medical necessity. All services shall be provided in mutual agreement with the person receiving the services."

In Subsection 145.70(b)(5), "reconciliation of" was replaced with "reconcile".

Subsection 145.110(a) was changed to the following:

- "1) Have a clinical diagnosis of serious mental illnesses (SMI), including functional duration, history and severity, for one or more of the following diagnoses:
- A) Schizophrenia;
 - B) Schizophreniform Disorder;
 - C) Schizo-Affective Disorder;
 - D) Delusional Disorder;
 - E) Psychotic Disorder;
 - F) Bipolar Disorders;
 - G) Cyclothymic Disorder;
 - H) Major Depression;
 - I) Obsessive-Compulsive Disorder;
 - J) Post-Traumatic Stress Disorder;"

Subsection 145.110(g)(3) was changed to:

- "C) A patient of an Illinois State-operated psychiatric hospital for eight months or longer;"

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In Subsection 145.130(a)(8), "/Public Assistance" was deleted.

In Subsection 145.130(b)(5), "Armed Forces Hostile Fire Pay;" was changed to "Special pay to a family member serving in the Armed Forces who is exposed to hostile fire;"

In the heading to Section 145.200, "Provided Under PSH/Bridge Subsidy Model" was added after "Funds".

In Subsection 145.220(g), "PSH" was changed to "this Part".

In Subsection 145.310(c), "(Lead Poisoning Prevention Act [410 ILCS 45])" was added after "State law".

- 12) Have all changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The State settled a class action lawsuit, Williams vs. Quinn, requiring residents of the 24 nursing homes designated as Institutes for Mental Disease to transition from these nursing homes into the community. The most integrated community option is Permanent Supportive Housing. This rulemaking is necessary to set standards for environmental safety and management of the DHS/DMH Permanent Supportive Housing & Bridge Subsidy model to ensure that housing is appropriate and safe for tenants.
- 16) Information and questions regarding these adopted rules shall be directed to:

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

217/785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED RULES

TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF HUMAN SERVICESPART 145
PERMANENT SUPPORTIVE HOUSING & BRIDGE SUBSIDY MODEL
FOR PERSONS WITH MENTAL ILLNESSES

SUBPART A: GENERAL PROVISIONS

Section

145.10	Purpose
145.20	Definitions
145.30	Compliance with Federal and State Laws
145.40	Nondiscrimination
145.50	Permanent Supportive Housing Models
145.60	Permanent Supportive Housing Service Bridge Subsidy Linkage
145.70	Subsidy Administration Requirements

SUBPART B: REQUIREMENTS FOR PERMANENT SUPPORTIVE HOUSING

Section

145.100	Tenant Rights and Choices
145.110	Eligibility Criteria for the DHS-DMH Permanent Supportive Housing Bridge Subsidy Model
145.120	Housing Search Criteria
145.130	Tenant Income and Documentation
145.140	Tenant Rent Payments
145.150	Amount of Rental Assistance
145.160	Rent Redeterminations
145.170	Tenants with Income Exceeding 30% AMI (Over-Income)
145.180	Rent Increases
145.190	Housing Inspections
145.200	Transition Assistance Funds Provided Under PSH/Bridge Subsidy Model
145.210	Leases
145.220	Contracts with Landlords or Property Management Entities
145.230	Subsequent Tenant Unit Relocations
145.240	Temporary Tenant Absences
145.250	Program Terminations and Appeals
145.260	Forms and Procedures for Permanent Supportive Housing

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SUBPART C: LANDLORD AND PROPERTY MANAGEMENT RESPONSIBILITIES

Section

145.300	Record Submission and Retention
145.310	Lead-Based Paint
145.320	Housing Quality Standards
145.330	Compliance with State and Local Laws
145.340	Eviction

AUTHORITY: Implementing and authorized by Section 73 of the Mental Health and Development Disabilities Administrative Act [20 ILCS 1705].

SOURCE: Adopted at 40 Ill. Reg. 7866, effective May 20, 2016.

SUBPART A: GENERAL PROVISIONS

Section 145.10 Purpose

The goal of the Department of Human Services-Division of Mental Health (DHS-DMH) Permanent Supportive Housing (PSH) and Bridge Subsidy model is to provide persons who have serious mental illnesses access to housing that is safe, decent and affordable and within the resources that the tenant has available and that the living environments meet standards of safety. The purpose of this Part is to:

- a) Assure that PSH that is paid for by the DHS-DMH rental subsidy meets all applicable standards for environmental safety and management of the property;
- b) Detail the processes and conditions under which DHS-DMH will provide funding for PSH and transitional assistance into that housing;
- c) Assure that access to a PSH unit is not contingent on the tenant receiving any specific services or support;
- d) Assure that PSH permits the tenant to receive appropriate available services or supports requested in a flexible manner;

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- e) Assure that monthly case management wellness visits to tenants occur by the designated DHS-DMH contracted Community Mental Health Center (CMHC) or agency; and
- f) Define the roles and responsibilities of the DHS-DMH contracted Subsidy Administrator (SA).

Section 145.20 Definitions

Adult – An individual who is 18 years of age or older or a person who is emancipated pursuant to the Emancipation of Mature Minors Act [750 ILCS 30].

Agency – The local DHS-DMH contracted Community Mental Health Center.

Annual Income Re-examination Review – The annual review of the tenant's annual income to determine continued eligibility for subsidized rent under the Bridge Subsidy model. The annual re-examination is completed to determine the Housing Assistance Payment Contract by calculating applicant's rent share/30% of income toward their rent.

Area Median Income or AMI – The federal Department of Housing and Urban Development's (HUD) calculation of income limits for eligibility in a variety of housing programs.

Bridge Subsidy – Payment by DHS-DMH of a portion of the rent for a PSH unit until the tenant is able to secure a permanent housing subsidy through a local, State or federal program.

Case Management Services – Assessment, planning, coordination and advocacy services for clients who need multiple services and require assistance in gaining access to and in using mental health, social, vocational, educational, housing, public income entitlements and other community services to assist the client in the community. Case management activities may also include identifying and investigating available resources, explaining options to the client and linking the client with necessary resources.

Code – The Mental Health and Developmental Disabilities Code [405 ILCS 5].

CMHC – Community Mental Health Center.

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CMHC Care Manager – A staff member of a DHS-DMH contracted CMHC or agency that is assigned to monitor and/or provide support services to a tenant residing in a DHS-DMH Permanent Supportive Housing and Bridge Subsidized unit.

Community Vendor – A DHS-DMH contracted entity.

Confidentiality Act – The Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110].

Consumer – An adult with a diagnosis of mental illness as defined in 59 Ill. Adm. Code 132. For the purpose of this Part, all consumers who are living in a unit supported in whole or in part with DHS-DMH funding are referenced as "tenants".

DCFS – The Illinois Department of Children and Family Services.

Department or IDHS or DHS – The Illinois Department of Human Services.

DHS-DMH or DMH – The Illinois Department of Human Services-Division of Mental Health.

Employee – Any person who provides direct services or supports to a tenant of mental health services at the direction of a DHS-DMH contracted vendor of mental health services. This includes staff on the agency payroll, contractors, interns and volunteers, regardless of number of hours or schedules worked or volunteered.

Fair Market Rent or FMR – Maximum rental amounts payable in specific geographical areas established by HUD.

HIPAA – The Health Insurance Portability and Accountability Act (42 USC 1320 et seq.) (45 CFR 160 and 164 (2013)).

Homelessness – The state of a homeless individual or family that has either been continuously homeless for a year or more or has had at least 4 episodes of homelessness in the past 3 years. An episode is a separate, distinct and sustained stay on the streets and/or in an emergency homeless shelter. In rural communities

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that utilize hotel/motel vouchers in lieu of emergency shelter, individuals making use of those vouchers are considered eligible under this model only if the hotel/motel stay is time limited and funded by a third party.

Housing Assistance Payment Contract or HAP Contract – A contract executed between the Subsidy Administration and the leasing agent (landlord or property management entity).

Housing Dwelling – A house rented according to the same Fair Market Rate as an apartment located in the same geographical area. This type of PSH is applicable in rural areas.

Housing Quality Standards or HQS – HUD's specifications and guidance that outline inspection standards for all PSH units that fall under this Part.

HUD – The U.S. Department of Housing and Urban Development.

Individual Care Grant-Mental Illness or ICG-MI – The ICG-MI provides funding to severely mentally ill children less than 17.5 years of age who may require mental health treatment in a 24-hour residential setting or who, with the support of intensive in-home mental health treatment services, may continue to live with their families.

Landlord Property Management Entity – The owner of one or more units/apartments receiving or approved to receive rental assistance from DHS-DMH, inclusive of private market and not-for-profit housing providers.

Long Term Care Facility or LTC Facility – A facility designated as a nursing home under the Nursing Home Care Act [210 ILCS 45].

Open Round – The point in time when DHS-DMH allows applications to be submitted for consideration of a Bridge Subsidy, excluding a court order, lawsuit or settlement.

Permanent Supportive Housing or PSH – A self-contained (inclusive of kitchen and bathroom facilities) unit (studio, one bedroom or multiple bedrooms) that is decent, safe and affordable community-based housing. The tenant has rights of privacy and access, holds a lease, and has full rights of tenancy under State and

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local landlord and tenant laws. Any services or supports received are voluntary, flexible and designed to meet the tenants' needs and preferences.

Provider – An entity certified by DHS-DMH to provide Medicaid community mental health services in accordance with 59 Ill. Adm. Code 132.

Rental Assistance – The DHS-DMH subsidized rental amount paid to a landlord for a unit occupied by a tenant eligible and approved for a DHS-DMH PSH Bridge Subsidy.

Site – Any building, under one continuous roof, in which a tenant receiving DHS-DMH Bridge rental assistance lives. This includes houses, apartment buildings, duplexes and other living arrangements owned, leased or managed by a rental agent, management company, property owner, landlord or development entity.

Subsidy Administrator or Subsidy Administration or SA – The DHS-DMH contracted entities responsible for conducting income verifications, unit inspections, development of HAP contracts with the landlord, payment of security deposits, utility connection fees and ongoing subsidized rental payments in accordance with Section 145.70.

Tenant – For the purpose of this Part, the words "tenant" and "consumer" are interchangeable. The tenant must be a consumer of a DHS-DMH contracted mental health vendor and be in one of the seven priority populations defined in Section 145.110(g).

Transition Assistance Funds or TAF – A one-time allocation, as determined by DHS-DMH, for the specific purpose of paying security deposits and utility connections (but not for arrearages) and to assist the tenant in purchasing basic allowable household needs. Transition Assistance Funds allocated for security deposits and utility connections are managed by the SA. Transition Assistance Funds used for the purchase of obtaining allowable household goods are handled by the CMHC Care Manager (see Section 145.200).

Unit – A rental apartment (efficiency, studio, one bedroom or multiple bedroom apartments) or housing dwelling that receives DHS-DMH subsidized rental assistance. Housing intended as transitional or temporary housing does not qualify as a PSH Bridge unit.

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Section 145.30 Compliance with Federal and State Laws

Notwithstanding anything to the contrary, this Part shall be construed in conformity and compliance with applicable federal and State law.

Section 145.40 Nondiscrimination

Landlords and property management entities shall comply with the applicable provisions of the Illinois Human Rights Act [775 ILCS 5] and the regulations under that Act (see 38 Ill. Adm. Code 800; 44 Ill. Adm. Code 750; 56 Ill. Adm. Code 2500, 2510, 2530 and 2540; and 71 Ill. Adm. Code 2300), the Fair Housing Act (42 USC 3601), section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Illinois Accessibility Code (71 Ill. Adm. Code 400), and all other State, federal and local statutes and regulation concerning discrimination and fair housing.

Section 145.50 Permanent Supportive Housing Models

The DMH PSH Bridge Subsidy model provides rental assistance for the following:

- a) **Scattered Sites**
Dwellings that exist in the private and public rental market for which the tenant holds the lease and rental assistance agreements are made directly with the property owner. Units are not concentrated in any one building. Living arrangements in scattered-site housing include:
 - 1) Single room occupancy (SRO) or studio/efficiency apartments that have self-contained kitchen and bathroom;
 - 2) One bedroom apartments;
 - 3) Two bedroom shared apartments (with no more than two individuals per unit and the arrangement agreed to by both individuals); or
 - 4) Single family homes.
- b) **Project Based Developments**
Multifamily dwellings that were developed and financed as a project for the purpose of providing supportive or affordable housing. The tenant holds the lease and rental assistance agreements are made directly with the landlord or property

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owner. If the project development receives public financing, in addition to funding from DHS-DMH, the funding regulations and tenant selection plans of the public funding entity (e.g., HUD) supersedes this Part. Living arrangements in project-based developments include:

- 1) SRO or studio/efficiency apartments that have a self-contained kitchen and bathroom; or
 - 2) One bedroom apartments or two person two bedroom shared apartments.
- c) **Master Leasing**
Master leasing is a flexible resource that creates a variety of housing options in terms of housing type, density and location. This model is based on mutually beneficial relationships with private landlords or property management entities for which long-term agreements are made with guaranteed payment in exchange for discounted rental rates. The master leasing approach shall be focused primarily on existing rental housing to secure a targeted number of rental units as outlined in Section 145.210. DHS-DMH will utilize the SA entity to conduct all activities in accordance with Section 145.70.

Section 145.60 Permanent Supportive Housing Service Bridge Subsidy Linkage

- a) Under the DHS-DMH PSH model, Permanent Supportive Housing is made possible only with the availability of a Bridge Subsidy. The DHS-DMH PSH model assures that needed services and supports are available to the tenant living in a PSH/Bridge Subsidy unit.
 - 1) The tenant should have access to a flexible and comprehensive array of recovery-oriented services and supports to assist the tenant in achieving a successful community adjustment.
 - 2) Services shall be elective and support the tenant's clinical/therapeutic or treatment needs to function and live independently in the community, and must be based on medical necessity. All services shall be provided in mutual agreement with the person receiving the services.
- b) As part of the application process for PSH Bridge Subsidy, the tenant will be required to consent to case management visits conducted by the DMH contracted vendor at the tenant's residence to help DMH determine the wellness of the

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tenant. Case management services shall be delivered and billed in accordance with the Medicaid Community Mental Health Services Program (59 Ill. Adm. Code 132).

- c) CMHCs are encouraged to proactively seek to engage tenants in on-site and community-based services and supports. In addition, CMHC Care Managers are encouraged to work with landlords, as appropriate, to develop and execute coordinated strategies for addressing issues that may threaten housing stability for the tenant, such as mental health crisis, substance use and relapse.

Section 145.70 Subsidy Administration Requirements

As determined by DMH, the SA shall:

- a) Serve as the authorized entity for the administration of rental assistance (subsidized rental portions) payments to landlords and property management entities.
- b) Fulfill the roles outlined in Subpart B, including income certification and annual income recertification, unit inspections, rent reasonableness determinations, lease review and transition fund administration and disbursement. Specifically, the SA shall:
 - 1) Conduct initial and annual income verification;
 - 2) Conduct an inspection of the unit in consideration for leasing, using HUD HQS and annual reinspection upon lease renewal. The HQS can be found at 24 CFR 982.401;
 - 3) Initiate a HAP contract with the leasing agent, landlord or property management entity, as a commitment to pay the remaining rental balance;
 - 4) Pay security deposit and utility connections fees, excluding arrearages;
 - 5) Disburse Transition Assistance Funds and reconcile receipts;
 - 6) Disburse and ensure that rental payments are received by the landlord and property management entities by the established rent due date;

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- 7) Maintain a database and analyze data on the number of PSH housing units utilized by tenants; and
- 8) Report to DMH, as requested, all fiscal and tenant information and participate in all audits referred by DMH.

SUBPART B: REQUIREMENTS FOR PERMANENT SUPPORTIVE HOUSING

Section 145.100 Tenant Rights and Choices

- a) To assure that tenant rights are protected and that owners/landlords who establish leases for PSH Bridge subsidized units comply with written law, providers and rental agents (landlords or property management entities) shall ensure that:
 - 1) The tenant's rights are protected in accordance with Chapter 2 of the Mental Health and Developmental Disabilities Code;
 - 2) The tenant's right to confidentiality is governed by the Mental Health and Developmental Disabilities Confidentiality Act and HIPAA;
 - 3) The tenant has full rights to make choices concerning the level of any services received;
 - 4) The tenant has full rights to select a service provider from which services are delivered;
 - 5) The tenant has full rights to identify the geographic or community areas where he/she wants to establish residency;
 - 6) The tenant has rights to be free from abuse, neglect and exploitation; and
 - 7) The tenant has rights to contact DMH or its designee and to be informed of DMH policy or protocol for filing complaints or grievances.
- b) The information in this Section shall be explained by the CMHC responsible for conducting the case management wellness visits, using language or a method of communication that the tenant understands. Documentation of the explanations shall be placed in the tenant's record maintained by the CMHC.

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Section 145.110 Eligibility Criteria for the PSH Bridge Subsidy Model

- a) Individuals eligible for the PSH Bridge Subsidy model shall meet the following criteria:
 - 1) Have a clinical diagnosis of serious mental illnesses (SMI), including functional duration, history and severity, for one or more of the following diagnoses:
 - A) Schizophrenia;
 - B) Schizophreniform Disorder;
 - C) Schizo-Affective Disorder;
 - D) Delusional Disorder;
 - E) Psychotic Disorder;
 - F) Bipolar Disorders;
 - G) Cyclothymic Disorder;
 - H) Major Depression;
 - I) Obsessive-Compulsive Disorder;
 - J) Post-Traumatic Stress Disorder;
 - 2) Be an adult;
 - 3) Have a current household income at or below 30% of Area Median Income (AMI) as defined by HUD;
 - 4) Be a current Medicaid recipient;
 - 5) Be on a current Public Housing Authority waiting list for a Housing Choice Voucher (HCV) or agree to register or apply for an HCV or

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comparable permanent rental subsidy when registration or application opportunity becomes available;

- 6) Currently not receiving rental assistance under a local, State or federal housing program; and
- 7) Meet one of the following criteria:
 - A) A resident of an LTC facility as described under the Nursing Home Care Act;
 - B) At risk of placement in an LTC facility described under the Nursing Home Care Act;
 - C) A patient of an Illinois State-operated psychiatric hospital for eight months or longer;
 - D) An aging-out adolescent or young adult transitioning from the DMH Individual Care Grant (ICG) programs;
 - E) A DCFS ward aging out of guardianship (89 Ill. Adm. Code 306);
 - F) A resident of a DHS-DMH contracted 24-hour Supervised Transitional Residential or Supported Residential setting including Mental Health Community Integrated Living Arrangement (59 Ill. Adm. Code 115).
 - G) Experiencing homelessness as defined in this Part.
- b) Potential tenants with criminal justice histories may be eligible for the PSH Bridge Subsidy model contingent on clinical documentation supporting his or her appropriateness to live independently in the community without 24-hour supervision, as determined by DMH.

Section 145.120 Housing Search Criteria

- a) Potential tenants may choose the geographic location where they would like to reside.

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- b) Housing location assistance will be provided by a DMH contracted vendor.
- c) Within 60 days after approval to locate and lease a PSH Bridge Subsidy model unit, the potential tenant must select and identify a unit that passes established HQS inspection standards and rent reasonableness criteria.
- d) Extensions beyond the 60 days will be granted by DMH on a case-by-case basis if the potential tenant has actively sought housing during the 60-day period and can reasonably be expected to complete a successful search for a suitable housing unit during the extended period.

Section 145.130 Tenant Income and Documentation

Income is any money earned or benefits payment received by the tenant. Adjusted gross income is the amount of income earned after any deductions are made. A tenant rent payment amount shall be calculated based on adjusted gross income over the most recent three-month period.

- a) Income that is to be considered when calculating a tenant's household gross income includes:
 - 1) Social Security Supplemental Income;
 - 2) Social Security Disability Income;
 - 3) Earned income;
 - 4) Self-employment/business income;
 - 5) Interest and dividend income or income from other assets or family sources;
 - 6) Pension/retirement income;
 - 7) Unemployment income;
 - 8) Temporary Assistance for Needy Families (TANF); and
 - 9) Armed Forces income.

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- b) Income that shall not be considered when calculating tenant's household gross income includes:
 - 1) Medical expense reimbursements;
 - 2) Deferred and lump sum Social Security and SSI payments;
 - 3) Self-Sufficiency Program income;
 - 4) Student financial aid;
 - 5) Special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
 - 6) Income of full-time students;
 - 7) Income tax and property tax refunds; and
 - 8) Other temporary, nonrecurring or sporadic income.
- c) The household must provide the SA with written documentation of the specific sources of income included in the gross income calculation.
- d) The SA shall gather, maintain and determine the validity of the documentation provided and used to calculate the tenant's rental contribution.

Section 145.140 Tenant Rent Payments

- a) Tenants shall pay no more than 30% of their adjusted household gross income for rent, including an allowance for any consumer paid utilities.
- b) The rental payment amount shall be determined by the SA and communicated and documented to both the tenant and the landlord or property management entity, and reflected on the HAP contract.

Section 145.150 Amount of Rental Assistance

- a) The amount of rental assistance for each unit shall be the difference between the amount of the rent for the unit and the tenant's rent payments.

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- b) When identifying the appropriateness of the amount of rent to be paid for a unit, the SA shall complete a rent reasonableness determination. Prior to approval and signing of a lease, data shall be gathered by the SA on a variety of units and used to make a comparability determination on the affordability and suitability of the unit. The unit must pass the rent reasonableness determination to be deemed appropriate for a PSH rental subsidy.
- c) Rents shall not exceed the Fair Market Rent (FMR) established for the geographical area, as determined annually by HUD. An exception exists if rents throughout the local community are above FMR and it is highly unlikely that there will be units available for inclusion in PSH. In these situations, if a tenant seeks to utilize a housing unit with a rent level greater than the FMR, the SA must document the circumstances and obtain the approval of DMH.

Section 145.160 Rent Redeterminations

- a) The tenant shall notify the SA within 30 days if tenant income increases by 75% or more. Increases of less than 75% shall be reported during the Annual Income Re-examination Review process.
- b) If a decrease in income occurs, the tenant should contact the SA immediately. The SA shall then recalculate the tenant's portion of the rent for the next rent payment based on the decreased income amount.

Section 145.170 Tenants with Incomes Exceeding 30% AMI (Over-Income)

The SA shall annually recertify the income of each tenant's household for the most recent three months prior to the renewal of the lease. If the annual household income exceeds 30% of AMI, the tenant is no longer eligible for PSH Bridge Subsidy, and a transition plan shall be developed among the SA, the community vendor and the tenant.

Section 145.180 Rent Increases

Upon request of the landlord or property management entity, DMH may allow an annual increase in the rent for the respective unit.

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- a) The rent increase must not exceed the existing rent multiplied by the most recent HUD Annual Adjustment Factor that can be found at <http://www.huduser.org/portal/datasets/aaf.html>.
- b) Landlords must address any proposed increases to leases via requests to the SA in accordance with leases and HAP contracting.

Section 145.190 Housing Inspections

Before the tenant signs a lease, and annually thereafter, it shall be the responsibility of the SA to conduct housing inspections of the unit to determine compliance with HUD's HQS. In addition to any violations of compliance with a local code enforcement bureau, the HQS consists of the following performance requirements:

- a) Sanitary bathroom facilities;
- b) Food preparation and refuse disposal;
- c) Space and security;
- d) Thermal environment;
- e) Illumination and electricity;
- f) Structure and materials;
- g) Interior air quality;
- h) Water supply;
- i) Lead-based paint;
- j) Private access;
- k) Site and neighborhood;
- l) Sanitary conditions (the unit must be free of vermin); and
- m) Smoke detectors.

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Section 145.200 Transition Assistance Funds Provided Under PSH/Bridge Subsidy Model

- a) DMH may provide one-time Transition Assistance Funds (TAF), identified as a set amount to be used solely for the purpose of assisting individuals who are in the process of moving into a PSH unit that has a secured lease. These funds are to obtain basic household items, pre-approved by DMH, in addition to the payment of security deposit and utility connection fees, excluding arrearages.
- b) TAF are processed by the designated SA and released to the CMHC Care Manager upon receipt of supporting documentation approved by the respective DMH Region Office. TAF are restricted in use and may only be applied for the purpose of assisting the tenant in transitioning and moving into a PSH unit. Responsibility for appropriate expenditure of TAF rests with the CMHC Care Manager. The tenant, family members and guardians shall have no access to these funds.
- c) TAF shall be reconciled no later than 60 days after receipt by the CMHC Care Manager with the SA. Any unspent funds will be returned to the SA. TAF shall be accessed through an established DMH process. TAF cannot be used to pay arrearages.
- d) TAF may be utilized for items including, but not limited to:
 - 1) Security deposits;
 - 2) Unit application fees;
 - 3) Utility activation deposits;
 - 4) Furniture;
 - 5) Bedding;
 - 6) Small appliances; and
 - 7) Cleaning equipment and supplies.

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- e) All necessary forms and the checklist of allowable purchases with TAF are included in the approval packet for a PSH Bridge Subsidy sent to the CMHC Care Manager through the established application process.

Section 145.210 Leases

Under the PHS Bridge Subsidy model, the lease for the housing unit is held by the tenant. There are three options to obtain leases in a PSH Bridge Subsidy model:

- a) Under Tenant Executed Leases:
 - 1) The landlord or property management entity shall enter into a direct written lease with each tenant.
 - 2) The lease shall have a term of no less than 12 months (unless reviewed and approved by DMH on a case-by-case basis) and shall contain a HAP contract.
 - 3) The SA shall review each lease to certify to DMH that the lease does not violate any provisions of State or local law or this Part.
 - 4) The landlord or property management entity shall provide each tenant and the SA with a copy of the lease and execute the HAP contract with the SA.
 - 5) The tenant is responsible for his/her portion of the rent up to 30% of his/her income (based on the SA's income verification process) paid directly to the landlord. The SA will pay the remaining amount of the rental balance.
 - 6) Lease responsibilities for the unit will rest with the tenant.
- b) Under an Executed Master Lease Agreement:
 - 1) The SA under authorization of DMH, will execute a HAP contract with the landlord or property management entity for a select number of rental units that will be held available until a lease is signed with a prospective tenant.

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- 2) The landlord or property management entities shall enter into a lease with the tenant that shall have a term of no less than 12 months (unless other lease terms are approved by DMH).
 - 3) The SA shall review each lease to certify to DMH that the lease does not violate any provisions of State or local law or this Part.
 - 4) The tenant is responsible for his/her portion of the rent up to 30% of his/her income (based on the SA's income verification process) paid directly to the landlord. The SA will pay the remaining amount of the rental balance.
 - 5) Lease responsibilities for the unit will rest with the tenant.
- c) Under Project Based Leases:
- 1) DMH can partner with developers, property managers or landlords to identify apartment unit resources that are either scattered site or within a designated project.
 - 2) This partnership would be facilitated under all PSH Bridge Subsidy processes in order to set up a leasing arrangement for an identified number of unit resources.
 - 3) The landlord or property management entities shall enter into a lease with the tenant that shall have a term of no less than 12 months (unless other lease terms are approved by DMH).
 - 4) The contracted SA will monitor this arrangement for either scattered site or project based units.
 - 5) The tenant is responsible for his/her portion of the rent up to 30% of his/her income (based on the SA income verification process) paid directly to the landlord. The SA will pay the remaining amount of the rental balance.
 - 6) The SA shall review each lease to certify to DMH that the lease does not violate any provisions of State or local law or this Part.

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- 7) Lease responsibilities for the unit will rest with the tenant.

Section 145.220 Contracts with Landlords or Property Management Entities

- a) The SA shall enter into a HAP contract with each landlord or property management entity for all units that the landlord has negotiated to receive a Bridge Subsidy.
- b) The HAP contract shall provide that the SA will make rental assistance payments to the landlords as instructed by DMH.
- c) The HAP contract shall identify the landlord and SA.
- d) The term of the HAP contract shall not be less than 12 months (unless pre-approved).
- e) The units to receive rental assistance must be identified by address and unit designation.
- f) The rent amount to be charged is to be set forth for each unit and will identify the tenant's portion of rent (all contracts shall not be greater than the FMR approved by DMH).
- g) The landlord shall abide by the requirements of this Part as detailed in the HAP contract.

Section 145.230 Subsequent Tenant Unit Relocations

- a) As the end of the lease agreement approaches, and with the consent of the landlord, the tenant shall have a choice to remain in the current unit if the tenant wishes to do so.
- b) If the tenant chooses to move, the tenant shall notify the landlord, SA and CMHC Care Manager no later than 60 days before the lease end date to facilitate a new housing search.
- c) If the tenant elects to move, he/she will be responsible for paying any newly incurred security deposit and utility connections, unless there is an extenuating circumstance. Extenuating circumstances will be reviewed by DMH on a case-

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by-case basis. The Department reserves the right to determine the parameters of extenuating circumstances.

- d) To receive a Bridge Subsidy, all units must pass HQS inspection and the rent reasonableness determination by the SA before a lease can be signed and Bridge Subsidy payment approved.

Section 145.240 Temporary Tenant Absences

- a) A tenant shall continue to maintain eligibility for PSH Bridge Subsidy during brief absences lasting no longer than 90 days.
- b) Tenants shall continue to maintain eligibility for PSH Bridge Subsidy up to 90 days in cases of required psychiatric or medical hospitalization or temporary absences from the unit, as reviewed and approved by DMH.
- c) Extensions beyond 90 days may be granted by DMH when there is a demonstrated likelihood that the tenant will return to the unit within an additional 30 day period.

Section 145.250 Program Terminations and Appeals

- a) A tenant may be terminated from the PSH Bridge Subsidy model under any one or more of the following circumstances:
 - 1) Missing his/her portion of the rent payment three times or more within an existing current lease period (late payments are not an immediate factor);
 - 2) Refusing to pay his/her portion of the rent as stipulated in the lease agreement;
 - 3) Refusing to allow case management wellness visits as deemed appropriate by the contracted CMHC;
 - 4) Serious and repeated lease violations that pose a threat or serious hazard to other residents of the rental property;
 - 5) Convictions by a court of law for a felony offense;

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- 6) Failure to accept an offer for a permanent rental subsidy when one is made available;
 - 7) Receiving a Bridge Subsidy while residing in a unit owned by any family member of the tenant (unless DMH has determined and approved the rental of the unit as providing reasonable accommodations for a person with a disability);
 - 8) Subleasing the unit, assignment of the lease or transfer of the unit;
 - 9) Excessive and continuous damage to the unit or premises by the tenant or any guest to the unit or premises;
 - 10) Engaging in or allowing a guest to engage in any behavior that disturbs the peaceful and quiet enjoyment by others of the premises and the neighborhood;
 - 11) Engaging in or allowing a guest to engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises;
 - 12) Illegal possession or use of a firearm or aggravated assault weapon in violation of federal, State or local criminal or civil laws;
 - 13) Failure to complete an Annual Income Re-examination Review with the SA entity; and
 - 14) Fraud, including falsifying income, unauthorized occupants in the housing unit, or deliberate failure to report changes in household composition that would affect program eligibility.
- b) If a termination occurs from the PSH Bridge Subsidy:
- 1) The tenant shall be responsible for 100% of the total rent amount as of the date that the final termination determination notice is released by the SA and as authorized by DMH; and

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- 2) The SA shall inform the landlord in writing directly of the tenant's exit from the PSH Bridge Subsidy and the termination of rental assistance.
- c) A tenant has the right to appeal a termination decision. The tenant or his/her representative must submit a written notice for an appeal to DMH. This notice is to be received by DMH within 15 calendar days from receipt of the Bridge Subsidy termination letter. The notice must contain a clear statement disputing the reasons for termination. The notice is to be mailed to:

Housing Coordinator
Department of Human Services-Division of Mental Health
401 S. Clinton St.
Chicago IL 60607
- d) DMH will convene an appeal hearing within 15 days after receipt of the appeal notice. The appeal hearing committee members shall be composed of the DMH Housing Coordinator, Associate Deputy Director of Transition Coordination, Associate Deputy Director of Assessments and the assigned SA.
- e) The tenant and/or his/her representative will be notified of the hearing by phone and mail. The tenant or representative may be present to provide written or verbal objections to the termination at the time of the hearing.
- f) DMH will issue its written determination decision to the tenant and/or representative within two work days after the appeal hearing.
- g) Depending on the circumstances of termination, a former PSH tenant may reapply for a Bridge Subsidy, when an open round becomes available, by submitting a formal letter of request to the DMH Housing Coordinator, accompanied with a letter of support from a DMH contracted CMHC.

Section 145.260 Forms and Procedures for Permanent Supportive Housing

DMH may prepare, use, supplement and amend forms, agreements, documents and procedures as may be necessary to implement the PSH Bridge Subsidy model. Except as otherwise permitted by this Part or by DMH, all providers must use the forms prepared by DMH.

SUBPART C: LANDLORD AND PROPERTY MANAGEMENT RESPONSIBILITIES

DEPARTMENT OF HUMAN SERVICES

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Section 145.300 Record Submission and Retention

Landlords shall maintain monthly records of tenant's rental assistance payments received for each unit, including unit vacancies under Master Leasing Agreements, for the term of the lease. Landlords shall notify the SA by phone or mail within seven days after the rent due date if the tenant's portion of the rent has not been received.

Section 145.310 Lead-Based Paint

- a) All units eligible for PSH must be free of lead-based paint hazards.
- b) Before the execution of the lease, the responsible landlord or property management entity shall certify to the SA that the housing unit contains no lead-based paint hazards.
- c) For units in buildings constructed prior to January 1, 1978, this certification must include assurance that the landlord or property management entity has visually inspected the unit for lead-based paint hazards and, if lead hazards have been found, has performed remediation, abatement or encapsulation in conformance with federal and State law (Lead Poisoning Prevention Act [410 ILCS 45]).

Section 145.320 Housing Quality Standards

Landlords must maintain each unit in compliance with the HQS that can be found at 24 CFR 982.401.

Section 145.330 Compliance with State and Local Laws

Landlords must certify to the SA that the lease for each unit receiving rental assistance does not violate State or local laws or this Part.

Section 145.340 Eviction

Landlords shall have the right to evict a tenant from a unit for good cause, as permitted through the lease agreement in accordance with State and local laws.

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Disposal and Destruction of Records
- 2) Code Citation: 50 Ill. Adm. Code 901
- 3) Section Number: 901.20 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing Section 133 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/133 and 401]
- 5) Effective Date of Rule: May 23, 2016
- 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 principal office of the Department of Insurance and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 14218; November 6, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Section 901.20(b), third line, changed "at least 7" to "the current year plus 5"; Section 901.20(c), fourth line, changed "7" to "the current year plus 5".
- 12) Have all changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Section 133 of the Insurance Code concerning record retention requires that all books, records, documents, accounts and vouchers related to the financial condition, affairs and operations of a domestic company or of any principal U.S. office of a foreign/alien company located in this State, be preserved until

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the Director authorizes the disposal and/or destruction of such records. Title 50, Section 901.20 of the Illinois Administrative Code concerns the process by which an insurer can request permission to dispose of and/or destroy records pursuant to Section 133 of the Code. The Department recognized that the process outlined by this rule was outdated, unnecessary, and not in line with other states' requirements. The amendment to Section 901.20 grants the authority to companies to destroy/dispose of records that are no longer needed in the transaction of current business, for the final disposition of an insurance claim or to determine the financial condition of the company for the period since the last examination report, or after a period of five years, whichever is later, for items related to the final disposition of an insurance claim or the financial condition of the company.

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

Marcy Savage, Assistant Deputy Director
Corporate Regulation Section
Department of Insurance
320 West Washington Street
Springfield IL 62767-0001

217/524-0016

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

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENT

TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER I: PROVISIONS APPLICABLE TO ALL COMPANIESPART 901
DISPOSAL AND DESTRUCTION OF RECORDS

Section

901.5	Introduction
901.10	Definitions
901.20	<u>Disposal and Destruction Procedures for Compiling and Submitting Lists and Schedules of Records for Destruction</u>

AUTHORITY: Implementing Section 133 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/133 and 401].

SOURCE: Filed and effective November 25, 1968; codified at 7 Ill. Reg. 4213; amended at 40 Ill. Reg. 7895, effective May 23, 2016.

Section 901.20 Disposal and Destruction Procedures for Compiling and Submitting Lists and Schedules of Records for Destruction

~~a) The company is authorized to dispose of or destroy~~ shall submit to the Director lists or schedules of records in its custody; that do not have sufficient administrative, legal or fiscal value to warrant their further preservation and are not needed:

- a) in the transaction of current business;
- b) ~~or~~ for the final settlement or disposition of any claim arising out of a policy of insurance issued by the company, except that these records must be maintained for the current year plus 5 years; or
- c) ~~and are not required~~ to determine the financial condition of the company for the period since the date of the last examination report of the company officially filed with the Department of Insurance, except that these records must be maintained for at least the current year plus 5 years, and that do not have sufficient administrative legal or fiscal value to warrant their further preservation, or that the retention of the records is an unnecessary expense to the company and such records serve no useful purpose.

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~~knowledge that the Statute of Limitations has not run against all matters to which listed records may pertain and that no scheduled records will be destroyed if prior to the time scheduled for destruction the Company receives notice that the Statute of Limitations has not run against matters to which the records may pertain; that no listed records are required to be retained in order to determine the financial condition of the Company or to verify the condition of the Company as stated in any annual statement filed subsequent to the date of the last examination report officially filed by the Department of Insurance; that other records exist as to any item which may become material in the future for the determination of the financial condition of the Company.~~

~~This Affidavit is signed for the purpose of obtaining the approval of the Director of Insurance for the destruction of records, to save unnecessary expense of unwarranted preservation, and for no other purpose.~~

President

Secretary

~~Subscribed and sworn to before me this _____ day of _____, 20 _____ :~~

Notary

~~The destruction of records described as listed or scheduled in the foregoing Affidavit is hereby authorized this _____ day of _____, 20 _____ :~~

Director of Insurance

(Source: Amended at 40 Ill. Reg. 7895, effective May 23, 2016)

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Hospital Financial Assistance under the Fair Patient Billing Act
- 2) Code Citation: 77 Ill. Adm. Code 4500
- 3) Section Number: 4500.APPENDIX A Adopted Action: Amendment
- 4) Statutory Authority: Implementing and authorized by Section 27 of the Fair Patient Billing Act [210 ILCS 88/27]
- 5) Effective Date of Rule: May 18, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rule contain incorporations by reference? No
- 8) Statement of Availability: A copy of the adopted rule is on file and is available for public inspection in the Attorney General's principal office in Chicago (12th Floor, James R. Thompson Center).
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 3425; March 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: There are no differences between the proposal and the final version.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The amendment updates Appendix A to reflect the 2016 poverty guidelines published by the United States Department of Health and Human Services (DHHS) in the Federal Register on January 25, 2016.
- 16) Information and questions regarding this adopted rule shall be directed to:

OFFICE OF THE ATTORNEY GENERAL

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David Buysse
Deputy Chief, Public Interest Division
Office of the Attorney General
100 West Randolph Street, 12th Floor
Chicago IL 60601

312/814-7236

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

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF ADOPTED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER XVIII: OFFICE OF THE ATTORNEY GENERAL

PART 4500
HOSPITAL FINANCIAL ASSISTANCE
UNDER THE FAIR PATIENT BILLING ACT

Section

- 4500.10 Definitions
- 4500.20 Referenced Materials
- 4500.30 Hospital Financial Assistance Application Requirements
- 4500.40 Presumptive Eligibility Criteria
- 4500.50 Hospital Financial Assistance Electronic and Information Technology
- 4500.60 Hospital Financial Assistance Reporting Requirements

4500.APPENDIX A [20162015](#) Poverty Income Guidelines

AUTHORITY: Implementing and authorized by Section 27 of the Fair Patient Billing Act [210 ILCS 88/27].

SOURCE: Adopted at 37 Ill. Reg. 12536, effective July 22, 2013; amended at 38 Ill. Reg. 20263, effective October 10, 2014; amended at 39 Ill. Reg. 10751, effective July 27, 2015; amended at 40 Ill. Reg. 7900, effective May 18, 2016.

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF ADOPTED AMENDMENT

Section 4500.APPENDIX A ~~2016~~2015 Poverty Income Guidelines2016~~2015~~ HEALTH AND HUMAN SERVICES POVERTY GUIDELINES

Persons in Family	Poverty Guideline
1	\$ 11,880 <u>11,770</u>
2	\$ 16,020 <u>15,930</u>
3	\$ 20,160 <u>20,090</u>
4	\$ 24,300 <u>24,250</u>
5	\$ 28,440 <u>28,410</u>
6	\$ 32,580 <u>32,570</u>
7	\$36,730
8	\$40,890
For additional persons, add	\$ 4,160

NOTE: See ~~8180~~ Fed. Reg. ~~4036 through 4037 (January 25, 2016)~~3236 through 3237 (January 22, 2015).

(Source: Amended at 40 Ill. Reg. 7900, effective May 18, 2016)

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: School Inspections
- 2) Code Citation: 41 Ill. Adm. Code 111
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
111.10	Amendment
111.20	Amendment
111.30	Amendment
111.50	Amendment
111.60	Amendment
111.80	Amendment
111.90	Amendment
111.100	New Section
111.110	New Section
- 4) Statutory Authority: Implementing and authorized by Sections 2-3.12 and 3-14.21 of the School Code [105 ILCS 5/2-3.12 and 3-14.21]
- 5) Effective Date of Rules: May 20, 2015
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any matter incorporated by reference, is on file in the Office of the State Fire Marshal, 1035 Stevenson Drive, Springfield IL, and is available for public inspection at that location.
- 9) Notice of Proposed published in the *Illinois Register*: 40 Ill. Reg. 3165; February 19, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: A typographical error in Section 111.10 was corrected by deleting the extra word "that".

In Section 111.30(c), "or a Tier 1 Qualified Fire Official" was added after "Fire Prevention Division Inspector" and "or the Tier 1 Qualified Fire Official supervising the inspections" was inserted after "OSFM" in the last sentence.

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED AMENDMENTS

At the end of Section 111.50(c), the phrase "and verification by the Tier 1 Qualified Fire Official supervising the inspections, if applicable, that the applicant completed the supervised school inspections required by Section 111.30(c)" was added.

In Section 111.60, "public" was added before "school" in the fourth sentence.

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending to this part? No
- 15) Summary and Purpose of Rulemaking: The amendments add a second tier of individuals qualified to complete training and become approved to perform annual fire inspections in public schools and report violations to the Regional Superintendent of schools, pursuant to a delegation of authority from the Office of the State Fire Marshal, and to provide for additional oversight and quality assurance measures by the Office. This rulemaking is intended to expand the number of public school inspections conducted while simultaneously saving State resources.
- 16) Information and questions regarding these adopted rules shall be directed to:

Deborah J. Williams
Division of Legal Counsel
Office of the State Fire Marshal
1035 Stevenson Drive
Springfield IL 62703

217/785-0978
fax: 217/524-5487

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

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED AMENDMENTS

TITLE 41: FIRE PROTECTION
CHAPTER I: OFFICE OF THE STATE FIRE MARSHALPART 111
SCHOOL INSPECTIONS

Section

111.10	Scope
111.20	Definitions
111.30	General Requirements for a Qualified Fire Official
111.40	Inspection Standards
111.50	Application for Delegation of Authority
111.60	Delegation of Authority
111.70	Identification of Delegated Authority
111.80	Notification of Change
111.90	Inspections and Reporting Violations
111.100	Quality Assurance
111.110	Severability

AUTHORITY: Implementing and authorized by Sections 2-3.12 and 3-14.21 of the School Code [105 ILCS 5/2-3.12 and 3-14.21].

SOURCE: Adopted at 31 Ill. Reg. 14596, effective October 11, 2007; amended at 40 Ill. Reg. 7904, effective May 20, 2015.

Section 111.10 Scope

This Part implements the portions of [Section 3-14.21 of the School Code \[105 ILCS 5\]](#)~~Public Act 94-0225~~ and the School Plan Review and Inspections Task Force Report that require the State Fire Marshal's office to adopt rules that set out the ~~requirements~~[qualifications](#) of [Qualified Fire Officials](#) ~~who Fire Prevention Inspectors that~~ are authorized to conduct annual fire safety inspections in public schools and report violations to the ~~Regional Superintendent~~[regional superintendent](#).

(Source: Amended at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.20 Definitions

For purposes of this Part, the term:

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED AMENDMENTS

"Fire Officer" means an individual appointed as a fire officer by a unit of local government.

"Fire Prevention Inspector" means an individual employed by a unit of local government as a fire inspector or a building inspector.

"ICC" means the International Code Counsel.

"ISBE" means the Illinois State Board of Education.

"NFPA" means the National Fire Protection Association.

"OSFM" means the Office of the State Fire Marshal.

"Public School Checklist" means the checklist prepared by OSFM and ISBE in accordance with the Health/Life Safety Code (23 Ill. Adm. Code 180) adopted by ISBE and used to conduct the annual public school fire safety inspections (see 105 ILCS 5/3-14.21(c)).

"Qualified Fire Official" means an individual who meets the requirements of this Part, in cooperation with ISBE, to administer annual public school fire safety inspections (see 105 ILCS 5/2-3.12(k)).

"Tier 1 Qualified Fire Official" means an individual who meets any one of the requirements of Section 111.30(a)(1) through (4) and (b).

"Tier 2 Qualified Fire Official" means an individual who meets the requirements of Section 111.30(a)(5) and (c).

(Source: Amended at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.30 General Requirements for a Qualified Fire Official

- a) The following qualifications are necessary for OSFM to delegate its authority to inspect public school buildings to a Qualified Fire Official~~qualified fire official~~:
 - 1) Any Fire Prevention Division inspector~~Inspectors~~ employed by OSFM;

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- 2) Any ~~individual Fire Prevention Inspector~~ employed by a unit of local government who is certified by OSFM as a Fire Officer I, ~~or a Fire Prevention Officer, or Fire Inspector I~~, or certified by OSFM in a successor title established by OSFM to one of the titles in this subsection (a)(2);
 - 3) Any ~~individual Fire Prevention Inspector~~ employed by a unit of local government who possesses a current certification as a Fire Inspector I or Fire Inspector II issued by the ICC;
 - 4) Any ~~individual Fire Prevention Inspector~~ employed by a unit of local government who possesses a current certification as a Fire Inspector I or Fire Inspector II issued by the NFPA; ~~or~~;
 - 5) Any Fire Prevention Inspector or Fire Officer employed by a unit of local government.
- b) The Tier 1 Qualified Fire Official candidate~~qualified fire official~~ must attend Tier 1 training~~a course~~ conducted by OSFM that includes~~on~~ the process and application of this Part and of the Public School Checklist~~public school checklist~~.
 - c) The Tier 2 Qualified Fire Official candidate must attend Tier 2 training conducted by OSFM that includes the process and application of this Part and of the Public School Checklist. Training shall also include attending school inspections supervised by an OSFM Fire Prevention Division inspector or a Tier 1 Qualified Fire Official. These supervised inspections shall include an inspection of a grade school and an inspection of a high school. These supervised school inspections shall continue until OSFM or the Tier 1 Qualified Fire Official supervising the inspections is satisfied that the Tier 2 Qualified Fire Official candidate has demonstrated proficiency.

(Source: Amended at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.50 Application for Delegation of Authority

For purposes of this Part, all applications submitted to OSFM requesting delegation as a Qualified Fire Official~~Fire Prevention Inspector~~ shall be signed by the Fire Chief, shall be~~and~~ submitted on letterhead provided by the unit of local government, and shall include the following information:

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- a) The name and address of the unit of local government. The address shall be an actual street address and shall include the city, state and zip code. A post office box number is not acceptable as an address.
- b) For a Tier 1 Qualified Fire Official, a copy of the current qualifying certification held by the person requesting delegation from the OSFM (as required by Section 111.30).
- c) For a Tier 2 Qualified Fire Official, verification by the Fire Chief that the applicant is assigned as either a Fire Prevention Inspector or a Fire Officer and verification by the Tier 1 Qualified Fire Official supervising the inspections, if applicable, that the applicant completed the supervised school inspections required by Section 111.30(c).

(Source: Amended at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.60 Delegation of Authority

OSFM will issue a notice delegating authority to inspect public school buildings to candidates that meet the requirements of Section 111.30 and submit an application meeting the requirements of Section 111.50. The OSFM Delegation of Authority issued pursuant to this Section 111.30 is valid until there is a change in status of the individual approved as a Qualified Fire Official certified by OSFM or OSFM withdraws the Delegation of Authority. Although OSFM may delegate school inspection authority to a Qualified Fire Official, nothing shall be construed to limit, condition or impair the exercise of OSFM's powers to administer fire safety inspections of public schools. OSFM reserves the right to act on its own initiative in all matters pertaining to public school fire safety inspections. The issuance of a Delegation of Authority to a Qualified Fire Official shall not be construed as a contract with that individual, and OSFM reserves the right to withdraw that Delegation of Authority.

(Source: Amended at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.80 Notification of Change

- a) Any change in the status of the certification under which an individual qualifies for a Delegation of Authority under Section 111.30 or in the employment status of the individual Qualified Fire Official~~Fire Prevention Inspector~~ shall be reported to the OSFM within 5 days.

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- b) If there is any change in the certification or employment status of the Qualified Fire Official~~inspector~~ that results in the Qualified Fire Official~~inspector~~ losing the Delegation of Authority under Section 111.60~~111.30~~, OSFM shall withdraw the Delegation of Authority and the local fire official will be required to reapply for a new Delegation of Authority under Section 111.50.

(Source: Amended at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.90 Inspections and Reporting Violations

- a) The Qualified Fire Official~~qualified fire official~~ conducting the inspection shall contact the Regional Superintendent~~regional superintendent~~ to determine the region's procedure to be used to schedule an agreeable date for the inspection.
- b) The Qualified Fire Official~~qualified fire official~~ shall use a Public School Checklist~~the public school checklist~~ and, within 15 days after completing the inspection, shall send a copy of the checklist identifying any violation to the person identified by the Regional Superintendent~~regional superintendent~~ as the party to receive the report. This report shall also be submitted to the OSFM Fire Prevention Division. The Regional Superintendent~~regional superintendent~~ shall correct the violations in accordance with Section 3-14.21(b) of the School Code.
- c) The Qualified Fire Official~~qualified fire official~~ shall notify OSFM of violations that present imminent harm to occupants of the school and any violations that are not corrected by the next annual fire inspection.
- d) OSFM and ISBE shall resolve any disputes regarding the annual inspection that arise between the Qualified Fire Official~~qualified fire official~~ and the Regional Superintendent~~regional superintendent~~.

(Source: Amended at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.100 Quality Assurance

OSFM may perform a quality assurance evaluation of the schools being inspected by Qualified Fire Officials to determine whether a change is needed, such as, but not limited to, additional training or OSFM's withdrawal of the Delegation of Authority.

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(Source: Added at 40 Ill. Reg. 7904, effective May 20, 2015)

Section 111.110 Severability

If any Section, subsection, sentence or clause of this Part shall be held by a court of competent jurisdiction to be invalid, that holding shall not affect the remaining portions of this Part.

(Source: Added at 40 Ill. Reg. 7904, effective May 20, 2015)

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- 1) Heading of the Part: General Rules
- 2) Code Citation: 35 Ill. Adm. Code 101
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
101.202	Amendment
101.300	Amendment
101.302	Amendment
101.518	Amendment
101.600	Amendment
101.602	Amendment
101.906	Amendment
101.1000	Amendment
101.1050	Amendment
101.1060	Amendment
101.1070	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 52; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Section 101.300(d) was amended to clarify how to calculate the 35-day period during which the Board's final orders may be appealed to the appellate court; Section 101.300(d)(4) was deleted as unnecessary; Section 101.302(h)(2) was amended to require that electronic filings be in text-searchable Adobe PDF format "to the extent technically feasible"; Section 101.302(h)(2)(D) was amended to allow for paper filing of a petition for variance or adjusted standard where

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the petition states that electronic filing is not reasonably practical; Section 101.302(h)(4)(B) was amended to change the term "electronic seat license" to "license" and stating that such license must allow the Board to access a copyrighted document "on only one computer at the Board's Chicago office"; Section 101.600(a) was amended to make explicit that hearings will be held at locations that "to the extent feasible, promote the attendance of interested members of the public, the convenience of the parties, and the conservation of the Board's resources"; Section 101.600(b) was amended, where the Board lists factors that it will consider in determining whether to hold a hearing by videoconference, to include two additional factors (the parties' preferences, and the proceedings' complexity and contentiousness); and Section 101.1070(a)(2)-(4) was amended to require that parties "designate" an e-mail address for purposes of electronic service.

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? None were made.
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.
- 16) Information and questions regarding these adopted rules shall be directed to:

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 101
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation
101.111	Informal Recordings of Board Meetings
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

Section	
101.200	Definitions Contained in the Act
101.202	Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents from Another Proceeding
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
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- 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings
- 101.402 Intervention of Parties
- 101.403 Joinder of Parties
- 101.404 Agency as a Party in Interest
- 101.406 Consolidation of Claims
- 101.408 Severance of Claims

SUBPART E: MOTIONS

- Section
- 101.500 Filing of Motions and Responses
- 101.502 Motions Directed to the Hearing Officer
- 101.504 Contents of Motions and Responses
- 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
- 101.508 Motions to Board Preliminary to Hearing
- 101.510 Motions to Cancel Hearing
- 101.512 Motions for Expedited Review
- 101.514 Motions to Stay Proceedings
- 101.516 Motions for Summary Judgment
- 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders
- 101.520 Motions for Reconsideration
- 101.522 Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

- Section
- 101.600 Hearings
- 101.602 Notice of Board Hearings
- 101.604 Formal Board Transcript
- 101.606 Informal Recordings of the Proceedings
- 101.608 Default
- 101.610 Duties and Authority of the Hearing Officer
- 101.612 Schedule to Complete the Record
- 101.614 Production of Information
- 101.616 Discovery
- 101.618 Admissions
- 101.620 Interrogatories
- 101.622 Subpoenas and Depositions

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- 101.624 Examination of Adverse, Hostile or Unwilling Witnesses
- 101.626 Information Produced at Hearing
- 101.628 Statements from Participants
- 101.630 Official Notice
- 101.632 Viewing of Premises

SUBPART G: ORAL ARGUMENT

- Section
- 101.700 Oral Argument

SUBPART H: SANCTIONS

- Section
- 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders
- 101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

- Section
- 101.902 Motions for Reconsideration
- 101.904 Relief from Final Opinions and Orders
- 101.906 Judicial Review of Board Orders
- 101.908 Interlocutory Appeal

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

- Section
- 101.1000 Electronic Filing and E-Mail Service
- 101.1010 Electronic Filing Authorization and Signatures
- 101.1020 Filing Electronic Documents
- 101.1030 Form of Electronic Documents for Filing
- 101.1040 Filing Fees
- 101.1050 Documents Required in Paper or Excluded from Electronic Filing
- 101.1060 E-Mail Service
- 101.1070 Consenting to Receipt of E-Mail Service

- 101.APPENDIX A Captions

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101.ILLUSTRATION A	Enforcement Case
101.ILLUSTRATION B	Citizen's Enforcement Case
101.ILLUSTRATION C	Variance
101.ILLUSTRATION D	Adjusted Standard Petition
101.ILLUSTRATION E	Joint Petition for an Adjusted Standard
101.ILLUSTRATION F	Permit Appeal
101.ILLUSTRATION G	Underground Storage Tank Appeal
101.ILLUSTRATION H	Pollution Control Facility Siting Appeal
101.ILLUSTRATION I	Administrative Citation
101.ILLUSTRATION J	Administrative Citation Under Section 23.1 of the Public Water Supply Operations Act
101.ILLUSTRATION K	General Rulemaking
101.ILLUSTRATION L	Site-specific Rulemaking
101.APPENDIX B	Appearance Form
101.APPENDIX C	Withdrawal of Appearance Form
101.APPENDIX D	Notice of Filing
101.APPENDIX E	Affidavit or Certificate of Service
101.ILLUSTRATION A	Service by Non-Attorney
101.ILLUSTRATION B	Service by Attorney
101.APPENDIX F	Notice of Withdrawal (Repealed)
101.APPENDIX G	Comparison of Former and Current Rules (Repealed)
101.APPENDIX H	Affidavit or Certificate of E-Mail Service
101.ILLUSTRATION A	E-Mail Service by Non-Attorney
101.ILLUSTRATION B	E-Mail Service by Attorney
101.APPENDIX I	Consent to Receipt of E-Mail Service

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566,

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effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill. Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7912, effective May 20, 2016.

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act [415 ILCS 5].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Agency" means the Illinois Environmental Protection Agency as established by

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Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map* [415 ILCS 5/7.1].

"Attorney General" means the Attorney General of the State of Illinois or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board pursuant to Section

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5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the federal Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq. [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory and regulatory proceedings. COOL is located on the Board's website at <http://www.ipcb.state.il.us/COOL/external/>.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

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"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" means *paper that has been processed to remove inks, clays, coatings, binders and other contaminants* [415 ILCS 20/2.1].

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

"Digital signature" means *a type of electronic signature created by transforming*

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an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic document has been altered since the transformation was made. A digital signature is a security device. [5 ILCS 175/5-105]

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies* [5 ILCS 175/5-105].

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means *a signature in electronic form attached to or logically associated with an electronic document* [5 ILCS 175/5-105].

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

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"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"EPRR Act" means the Electronic Products Recycling and Reuse Act [415 ILCS 150].

"Ex parte communication" means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. "Ex parte communication" does not include the following:*

statements by a person publicly made in a public forum, including pleadings, transcripts, public comments, and public remarks made part of the proceeding's record [5 ILCS 430/5-50(b)(i)];

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 [5 ILCS 430/5-50(b)(ii)]; and

statements made by a State employee of the Board to Board members or other employees of the Board [5 ILCS 430/5-50(b)(iii)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

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"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review. (See Subpart I of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Identical-in-substance rules" or "identical-in-substance regulations" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois* [415 ILCS 5/7.2].

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

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"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

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"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act [415 ILCS 5/7(a)].*

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, testifying at hearing, or making public remarks at a Board meeting.

"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom an adjudicatory proceeding is

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brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" is defined at Section 3.330(a) of the Act for purposes of this Part and 35 Ill. Adm. Code 107. ~~means any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:~~

~~waste storage sites regulated under 40 CFR 761.42;~~

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~~sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;~~

~~sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;~~

~~abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;~~

~~sites or facilities used by any person to specifically conduct a landscape composting operation;~~

~~regional facilities as defined in the Central Midwest Interstate Low Level Radioactive Waste Compact;~~

~~the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;~~

~~the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;~~

~~the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;~~

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~~the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;~~

~~processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are:~~

~~located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and~~

~~in compliance with all applicable zoning requirements;~~

~~the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;~~

~~the portion of a site or facility that accepts exclusively general construction or demolition debris, is located in a county with a population over 3,000,000 as of January 1, 2000 or in a county that is contiguous to such a county, and is operated and located in accordance with Section 22.38 of the Act;~~

~~the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding~~

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~~metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products;~~

~~the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station;~~

~~effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents;~~

~~the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;~~

~~a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received;~~

~~the portion of a site or facility that is used for the composting of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste, including, but not limited to, corrugated paper or cardboard, and meets all of the following requirements:~~

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~~there must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time;~~

~~all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:~~

~~the portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well;~~

~~the portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed;~~

~~except in municipalities with more than 1,000,000 inhabitants, the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility;~~

~~the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:~~

~~facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;~~

~~primary and secondary schools and adjacent areas that the schools use for recreation;~~

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~~any facility for child care licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation;~~

~~by the end of each operating day, all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must be processed into windrows or other piles and covered in a manner that prevents scavenging by birds and animals and that prevents other nuisances;~~

~~food scrap, livestock waste, crop residue, uncontaminated wood waste, paper waste, and compost must not be placed within 5 feet of the water table;~~

~~the site or facility must meet all of the requirements of the Wild and Scenic Rivers Act (16 USC 1271 et seq.);~~

~~the site or facility must not restrict the flow of a 100-year flood, result in washout of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste from a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as by providing lagoons, holding tanks, or drainage around structures at the facility;~~

~~the site or facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:~~

~~an irreplaceable historic or archaeological site has been listed under the National Historic Preservation Act (16 USC 470 et seq.) or the Illinois Historic Preservation Act [20 ILCS 3410];~~

~~a natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or~~

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~~a natural area has been designated as a Dedicated Illinois Nature Preserve under the Illinois Natural Areas Preservation Act [525 ILCS 30];~~

~~the site or facility must not be located in an area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [520 ILCS 10];~~

~~the portion of a site or facility that is located entirely within a home rule unit having a population no less than 120,000 and no more than 135,000, according to the 2000 federal census, and that meets all of the following requirements:~~

~~the portion of the site or facility is used exclusively to perform testing of a thermochemical conversion technology using only woody biomass, collected as landscape waste within the boundaries of the home rule unit, as the hydrocarbon feedstock for the production of synthetic gas in accordance with Section 39.9 of the Act;~~

~~the portion of the site or facility is in compliance with all applicable zoning requirements; and~~

~~a complete application for a demonstration permit at the portion of the site or facility has been submitted to the Agency in accordance with Section 39.9 of the Act within one year after July 27, 2010 (the effective date of Public Act 96-1314);~~

~~the portion of a site or facility used to perform limited testing of a gasification conversion technology in accordance with Section 39.8 of the Act and for which a complete permit application has been submitted to the Agency prior to one year from April 9, 2010 (the effective date of Public Act 96-887);~~

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~~the portion of a site or facility that it used to incinerate only pharmaceuticals from residential sources that are collected and transported by law enforcement agencies under Section 17.9A of the Act; and~~

~~until July 1, 2017, the portion of a site or facility:~~

~~that is used exclusively for the transfer of commingled landscape waste and food scrap held at the site or facility for no longer than 24 hours after their receipt;~~

~~that is located entirely within a home rule unit having a population of either not less than 100,000 and not more than 115,000 according to the 2010 federal census or not less than 5,000 and not more than 10,000 according to the 2010 federal census;~~

~~that is permitted, by the Agency, prior to January 1, 2002, for the transfer of landscape waste; and~~

~~for which a permit application is submitted to the Agency by July 1, 2014 to modify an existing permit for the transfer of landscape waste to also include, on a demonstration basis not to exceed 18 months, the transfer of commingled landscape waste and food scrap. [415 ILCS 5/3.330]~~

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

"Postconsumer material" means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.* Additionally, it includes *all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream* [415 ILCS 20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of

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which shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing [415 ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by an applicant and issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d) of this Subpart.)

"PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a

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proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

"SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).

"Service" means delivery of a document upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

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"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom parties or participants must serve motions, prefiled questions and prefiled testimony and any other documents that the parties or participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought pursuant to Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

"Third party complaint" means a pleading that a respondent files setting forth a

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claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)].

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

"Website" means the Board's computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

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Section 101.300 Computation of Time

- a) **Computation of Time.** Computation of any period of time prescribed in the Act, other applicable law, or this Subpart will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.
- b) **Date of Filing.** Documents will be considered filed with the Clerk only if they are filed in compliance with Section 101.302 and any other filing requirements specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). Subpart J sets forth when electronic documents submitted to COOL will be considered filed.
 - 1) If a document is submitted to the Clerk for filing in person, by U.S. Mail, by e-mail or facsimile pursuant to Section 101.302(d), or by third-party commercial carrier, the document is considered filed on the date it is received by the Clerk. However, a document received by the Clerk after 4:30 p.m. is considered filed on the next business day. The Clerk will mark the filing date on each filed document.
 - 2) Notwithstanding subsection (b)(1), if the Clerk receives a document by U.S. Mail or third-party commercial carrier after a filing deadline date, the document will be deemed filed on:
 - A) The date the document was provided to the U.S. Postal Service; or
 - B) The date the document was provided to the third-party commercial carrier for delivery to the Clerk within three business days.
 - 3) For purposes of subsection (b)(2), documentation of when the document being filed was provided to the U.S. Postal Service or the third-party commercial carrier consists of the affidavit or certificate required by Section 101.304(d)(2)(A) or (d)(4) and must accompany the document being filed. In addition, for delivery by a third-party commercial carrier, the affidavit or certificate must contain the filing party's representation that the charge for delivery to the Clerk within three business days was prepaid.

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- 4) For purposes of Board decision deadlines, the decision period does not begin until the date marked by the Clerk on the initial filing.
- c) Date of Service. Documents will be considered served upon another party only if they are served in compliance with Section 101.304 and any other service requirements specified elsewhere in the Board's procedural rules. The date of service is determined as follows:
- 1) Personal Service. Personal service of a document is complete on the date the document was delivered, as specified in either the affidavit or certificate of service signed by the person who made personal delivery or the declaration of service signed by the process server who made personal delivery.
 - 2) Service by U.S. Mail or Third-Party Commercial Carrier with Recipient Signature. If a recipient's signature is recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service by U.S. Mail or a third-party commercial carrier is complete on the date the document was delivered, as specified in the delivery confirmation signed by the recipient of service.
 - 3) Service by E-Mail or Facsimile. Service of a document by e-mail or facsimile is complete on the date the document was successfully transmitted, as specified in the affidavit or certificate of service, signed by the party to the proceeding who is serving the document. However, a document successfully e-mailed or faxed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on a weekday is deemed served on the next business day.
 - 4) Service by U.S. Mail or Third-Party Commercial Carrier without Recipient Signature. If a recipient's signature is not recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service by U.S. Mail or a third-party commercial carrier is presumed complete four days after the date the document was provided to the U.S. Postal Service or the third-party commercial carrier.
 - A) The presumption applies only if an affidavit or certificate of service, signed by the party to the proceeding who is serving the

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document, states the following: the date, the time by when, and the place where the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.

- B) The presumption can be rebutted by proper proof, which may include delivery tracking information from the website of the U.S. Postal Service or the website of the third-party commercial carrier.
- d) Date of Board Decision and Date of Service of Final Board Decision.
- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting ~~at which~~where a final ~~Board opinion and~~ order ~~of the Board~~ was adopted by the vote of at least three Board members.
 - 2) For purposes of appealing a final adjudicatory decision of the Board, the date of service of the final decision is the date on which~~of the~~ party ~~receives the Board's~~party's certified ~~mailing~~mail receipt of the ~~Board~~ decision ~~is the date of service of the final opinion and order by the Board upon the appealing party.~~ Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520, the date of service of the final decision is the date on which~~of the~~ party ~~receives the~~ Board's~~party's~~ certified ~~mailing~~mail receipt of the Board order ruling upon the motion ~~is the date of service by the Board upon the appealing party.~~
 - 3) For purposes of appealing a final rulemaking decision of the Board in which a rule is adopted, amended, or repealed, a person is deemed to have been served with the final decision on the date on which the new rule, the amendment, or the repealer becomes effective~~the date of the~~ under the IAPA~~participant's receipt of the Board decision is the date of service of the final opinion and order by the Board upon the appealing participant.~~ For purposes of appealing a final rulemaking decision in which no rule is adopted, amended, or repealed, the date of service of the final decision is the date on which the participant receives the Board's mailing of the decision. Or, in the event of a timely filed motion for reconsideration filed pursuant to the Board's procedural rules (35 Ill. Adm. Code 102.700 and 102.702), the date of service of the final decision is the date on which~~of~~

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the ~~participant receives participant's receipt of the Board's mailing of the Board order ruling upon the motion is the date of service by the Board upon the appealing participant.~~

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

Section 101.302 Filing of Documents

- a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse for filing any document that does not comply with the minimum requirements of this Section.
- b) All documents to be filed with the Board must be filed with the Clerk.
 - 1) Documents may be filed at the following address:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
 - 2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010.
 - 3) Each document being filed with the Clerk (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).
 - 4) The date on which a document is considered to have been filed is determined pursuant to Section 101.300(b).

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- 5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.
- c) Documents may be filed with the Clerk by U.S. Mail, by electronic means in accordance with Subpart J, in person, or by third-party commercial carrier.
- d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
- e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL in accordance with Section 101.1040(b)(1), but cannot be paid in cash.
 - 1) Petition for Site-Specific Regulation, \$75;
 - 2) Petition for Variance, \$75;
 - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed pursuant to Section 40 of the Act, \$75;
 - 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, \$75; and
 - 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, \$75.
- f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in accordance with Section 101.304.
- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B of this Part, and, if feasible, double sided. All pages in a document must be sequentially numbered.

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All documents created by word processing programs must be formatted as follows:

- 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and
 - 2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.
- h) Unless the Board, the hearing officer, or the procedural rules provide otherwise, all documents must be filed in paper or through COOL electronically pursuant to this subsection (h).
- 1) Except as provided in subsection (h)(2), (h)(3), ~~or (h)(4)~~, or (j):
 - A) Any type of document may be filed in paper or through COOL.
 - B) If a document is filed in paper, the original and two~~three~~ copies of the document (three~~four~~ total) are required.
 - C) If a document is filed through COOL in accordance with Subpart J, no paper original or copy of the document is required.
 - 2) ~~The original documents listed in this subsection (h)(2) must be filed in paper. In lieu of filing three paper copies with the original pursuant to subsection (h)(1)(B), a compact disk of the document in text-searchable Adobe PDF may be filed with the original. The following documents must be filed through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF in paper:~~
 - A) The ~~original~~ Agency record required by 35 Ill. Adm. Code 105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax certification) (see 35 Ill. Adm. Code 105.116);

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- B) The ~~original~~ OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility) (see 35 Ill. Adm. Code 105.116);
- C) The ~~original~~ local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting) (see 35 Ill. Adm. Code 107.304); and
- D) A petition filed under 35 Ill. Adm. Code 104 (regulatory relief mechanisms) or 106 (proceedings pursuant to specific rules or statutory provisions) (see 35 Ill. Adm. Code 104.106 and 106.106), unless the petition is for a variance or adjusted standard and the petition states that it is not reasonably practicable for petitioner to file the petition electronically, in which case the petition must be filed in paper pursuant to subsection (h)(1)(B). An original oversized exhibit (see subsection (j)).
- 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
- 4) When filing a rulemaking proposal, ~~if the proponent must file three paper originals of~~ any document ~~that is~~ protected by copyright law (17 USC 101 et seq.) ~~is and~~ proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, the copyrighted document is prohibited from being filed electronically, but the remainder of the rulemaking proposal may be filed through COOL. In addition, the rulemaking proponent must comply with subsection (h)(4)(A) or (h)(4)(B).; provided, however:
- A) File a paper original of the copyrighted document. The rulemaking proposal also must include:
- i) The copyright owner's written authorization for the Board to make, at no charge to the Board, no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court,

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or a member of the public during or after the rulemaking;
or

- ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office no more than a total of two paper originals of the copyrighted document if the Clerk's Office notifies the proponent in writing that the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking.
- B) File a license or similar documentation of access that, at no charge to the Board, gives the Board the rights, during and after the rulemaking, to do the following: electronically access the copyrighted document from the sole designated computer at the Board's Chicago office; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public.
- ~~A) One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.~~
- ~~B) The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.~~
- ~~C) Any copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.~~
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h).

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- j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.
- k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

SUBPART E: MOTIONS

Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders

Interlocutory appeals from a ruling of the hearing officer may be taken to the Board by. ~~The Board may consider an interlocutory appeal upon the filing of a written motion within 14 days after receipt of the hearing officer's written order. However, if the hearing officer's ruling is rendered on the record at hearing, any motion for interlocutory appeal must be filed within 14 days after the Board receives the hearing transcript setting forth the ruling. Filing a motion for interlocutory appeal will not postpone a scheduled hearing, stay the effect of the hearing officer's ruling, or otherwise stay the proceeding. Failure of a party to timely file a motion for interlocutory appeal constitutes a waiver of any objection to the hearing officer's ruling.~~

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.600 Hearings

- a) All hearings are open to the public and are held in compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings will be ~~generally held at locations in the county in which the source or facility is located unless otherwise~~ ordered by the hearing officer. The hearing officer will select hearing locations that comply with any geographic requirements imposed by

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applicable law and, to the extent feasible, promote the attendance of interested members of the public, the convenience of the parties, and the conservation of the Board's resources. All hearings are subject to cancellation without notice.

Interested persons may contact the Clerk's ~~Office~~ or the hearing officer for information about the hearing. Parties, participants, and members of the public must conduct themselves with decorum at the hearing.

- b) Any Board hearing may be held by videoconference. Upon its own motion or the motion of any party, the Board or the hearing officer may order that a hearing be held by videoconference. In deciding whether a hearing should be held by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

Section 101.602 Notice of Board Hearings

- a) The hearing officer will give the parties at least 21 days written notice of a hearing.
- ba) The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 et seq.) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice. Notice must be published at least 21 days ~~before~~prior to the hearing. If the proceeding involves federal rules ~~that~~which the State has been ~~given~~ delegated authority to administer, notice must be published at least 30 days ~~before~~prior to the hearing.
- cb) *Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date for the first hearing in the proceeding, give notice of the date, time, place, and purpose of the hearing by public advertisement in a newspaper of general circulation in the area of the State*

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concerned [415 ILCS 5/33(c)].

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section 101.906 Judicial Review of Board Orders

- a) Pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41] and Supreme Court Rule 335, judicial review of final Board orders is available from the appellate court. However, pursuant to Section 11-60 of the Property Tax Code [35 ILCS 200/11-60], judicial review of final Board orders in tax certification proceedings is available from the circuit court.
- b) For purposes of judicial review, a final Board order ~~orders are~~ appealable as of the date of service of the final order by the Board upon the appealing person (see Section 101.300(d)) party.
- c) The procedure for stay of any final Board order during appeal will be as provided in Rule 335 of the Rules of the Supreme Court of Illinois (Ill. S. Ct. Rule 335).

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section 101.1000 Electronic Filing and E-Mail Service

- a) The Board provides the opportunity to file and access documents electronically through its Clerk's Office On-Line (COOL). COOL is located on the Board's website (www.ipcb.state.il.us). The Board has taken steps designed to ensure the integrity and security of COOL in accordance with State policies developed under the Electronic Commerce Security Act [5 ILCS 175].
- b) To file an electronic document with the Board, a person must upload the document on COOL. Electronic filing is not accomplished by sending a document to the e-mail address of the Clerk or hearing officer.
- c) Except as provided in Section 101.302(h)(2), (h)(3), ~~and (h)(4)~~, and (j) of this Part and Section 101.1050 of this Subpart, all documents may be filed through COOL.

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If a person files an electronic document in accordance with this Subpart, the person is not required to file a paper original or copy of that document.

- d) ~~Nothing in this Subpart requires a person to file a document electronically.~~ Generally, the Clerk's Office will convert paper-filed documents into electronic documents and place them on COOL.
- e) All documents filed with the Board may be served by e-mail except for enforcement complaints, administrative citations, and EMSA statements of deficiency. (See Section 101.304(c) of this Part and Section 101.1060 of this Subpart.) ~~Nothing in this Subpart requires a person to serve a document by e-mail or to accept service of a document by e-mail.~~

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

Section 101.1050 Documents Required in Paper or Excluded from Electronic Filing

- a) ~~The following documents must be filed in paper pursuant to Section 101.302(h)(2) of this Part:~~
 - 1) ~~The original Agency record required by 35 Ill. Adm. Code 105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax certification);~~
 - 2) ~~The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility);~~
 - 3) ~~The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting); and~~
 - 4) ~~An original oversized exhibit (see Section 101.302(j) of this Part).~~
- ab) A document containing information claimed or determined to be a trade secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper pursuant to Section 101.302(h)(3) of this Part. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.

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- [be](#)) If a rulemaking proposal contains a document that is protected by copyright law (17 USC 101 et seq.) and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, that copyrighted document is prohibited from being filed electronically and must instead be filed only in paper pursuant to Section 101.302(h)(4) of this Part. The remainder of the rulemaking proposal may be filed through COOL.

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

Section 101.1060 E-Mail Service

- a) Except as provided in subsections (b) and (c), a person required to serve a document may serve the document by e-mail, in lieu of serving a paper document, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070.) To serve a document by e-mail, it is not necessary to electronically file the document or to obtain a State of Illinois digital signature certificate.
- b) Service of enforcement complaints and EMSA statements of deficiency on a respondent must be made personally, by U.S. Mail with a recipient's signature recorded, or by a third-party commercial carrier with a recipient's signature recorded. (See Section 101.304(c)(2).)
- c) Service of administrative citations must be made as required under 35 Ill. Adm. Code 108.
- d) A person required to serve a document on the hearing officer ~~must~~ may serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document upon the hearing officer if the person has the capability of serving the document by e-mail.
- e) When a document is served by e-mail, documentation of service must be filed with the Clerk and served on all persons entitled to service in that proceeding. A sample form of affidavit or certificate of e-mail service is available in Appendix H. An affidavit or certificate of e-mail service must include the following:
- 1) The e-mail address of the recipient and the person authorizing the filing;
 - 2) The number of pages in the e-mail transmission;

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- 3) A statement that the document was served by e-mail; and
- 4) The date of the e-mail transmission and the time by when it took place.
- f) If any computer malfunction precludes the e-mail service of a document, the person authorizing the filing must promptly serve the document in paper pursuant to Section 101.304(c).
- g) Except for final adjudicatory orders of the Board, which the Clerk's Office serves in paper by certified mail, the Clerk's Office ~~will~~ may serve Board orders and hearing officer orders by e-mail, in lieu of serving paper documents, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070.) The Clerk will record the date and time of e-mail service, consistent with subsection (e) of this Section.

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

Section 101.1070 Consenting to Receipt of E-Mail Service

- a) In any proceeding, a person ~~consents~~ may consent to e-mail service of documents in lieu of receiving paper documents by:
 - 1) Filing ~~filing~~ a "Consent to Receipt of E-Mail Service" ~~with the Clerk's Office. (see~~ A sample form of consent is available in Appendix D); of this Part.
 - 2) Providing the hearing officer, during a hearing or conference, with an e-mail address that is designated for receiving service;
 - 3) Filing an attorney's appearance containing an e-mail address that is designated for receiving service; or
 - 4) Appearing on a notice list or service list and providing the Clerk's Office with an e-mail address that is designated for receiving service.
- b) At any time during a proceeding, consent ~~Consent~~ to e-mail service may be provided as set forth in subsection (a) ~~filed with the Clerk's Office at any time~~

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~~during the proceeding~~. To accept e-mail service, it is not necessary to obtain a State of Illinois digital signature certificate.

- c) A person's consent to receiving e-mail service may be revoked by that person at any time during the proceeding upon the person's filing of a notice of the revocation with the Clerk's Office.
- d) Upon a change in the e-mail address of a recipient of e-mail service, the recipient must ~~notify~~file a notice of the e-mail address change with the Clerk's Office ~~of the e-mail address change~~ for each pending proceeding in which the person has consented to e-mail service.

(Source: Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

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- 1) Heading of the Part: Regulatory and Informational Hearings and Proceedings
- 2) Code Citation: 35 Ill. Adm. Code 102
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
102.114	New Section
102.304	Amendment
102.412	Amendment
102.416	Amendment
102.422	Amendment
102.424	Amendment
102.706	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 95; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In Section 102.424(e), the Board removed the first-notice amendments requiring hearing participants to bring an electronic copy of their prehearing documents to the hearing. The Board further amended language in that section to require that electronic filings be in text-searchable Adobe PDF format "to the extent technically feasible."
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will these rulemaking replace any emergency rule currently in effect? No

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- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemakings: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.
- 16) Information and questions regarding these adopted rules shall be directed to:

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887
email: richard.mcgill@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARDPART 102
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section	
102.100	Applicability
102.102	Severability
102.104	Definitions
102.106	Types of Regulatory Proposals
102.108	Public Comments
102.110	Waiver of Requirements
102.112	Other Proceedings
102.114	Hearings

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY,
RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)
AMENDMENTS, AND SITE-SPECIFIC REGULATIONS

Section	
102.200	Proposal for Regulations of General Applicability
102.202	Proposal Contents for Regulations of General Applicability
102.204	Proposal of RCRA Amendments
102.206	Notice of Site-Specific RCRA Proposals
102.208	Proposal for Site-Specific Regulations
102.210	Proposal Contents for Site-Specific Regulations
102.211	Proposal to Update Incorporations by Reference
102.212	Dismissal

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
FAST TRACK RULEMAKING

Section	
102.300	Applicability
102.302	Agency Proposal

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- 102.304 Hearings
102.306 Prefiled Testimony

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
CONFERENCES, AND HEARINGS

Section

- 102.400 Service and Filing of Documents
102.402 Motions, Production of Information, and Subpoenas
102.404 Initiation and Scheduling of Prehearing Conferences
102.406 Purpose of Prehearing Conference
102.408 Prehearing Order
102.410 Authorization of Hearing
102.412 Scheduling of Hearings
102.414 Hearings on the Economic Impact of New Proposals
102.416 Notice of Hearing
102.418 Record
102.420 Authority of the Hearing Officer
102.422 Notice and Service Lists
102.424 Prehearing [Filings](#)~~Submission~~ of Testimony, [Questions](#), [Responses](#), and Exhibits
102.426 Admissible Information
102.428 Presentation of Testimony and Order of Hearing
102.430 Questioning of Witnesses

SUBPART E: CERTIFICATION OF REQUIRED RULES

Section

- 102.500 Agency Certification
102.502 Challenge to Agency Certification
102.504 Board Determination

SUBPART F: BOARD ACTION

Section

- 102.600 Revision of Proposed Regulations
102.602 Adoption of Regulations
102.604 First Notice of Proposed Regulations
102.606 Second Notice of Proposed Regulations

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102.608	Notice of Board Final Action
102.610	Adoption of Identical-in-Substance Regulation
102.612	Adoption of Emergency Regulations
102.614	Adoption of Peremptory Regulations

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section	
102.700	Filing of Motions for Reconsideration
102.702	Disposition of Motions for Reconsideration
102.704	Correction of Publication Errors
102.706	Appeal

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section	
102.800	Applicability
102.810	Petition
102.820	Petition Contents
102.830	Board Action

102.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 27, 28, 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 34 Ill. Reg. 12193, effective August 9, 2010; amended in R14-21 at 39 Ill. Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7955, effective May 20, 2016.

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SUBPART A: GENERAL PROVISIONS

Section 102.114 Hearings

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7955, effective May 20, 2016)

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
FAST TRACK RULEMAKING**Section 102.304 Hearings**

- a) Within 14 days after the receipt of a rule, the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice ~~to the appropriate newspaper~~ of the scheduled hearing to the appropriate publication. The hearing notice will be published ~~by the newspaper~~ at least 30 days ~~before~~ prior to the date of the hearing. When the Board can cause timely publication of the hearing notice in the Illinois Register, the Board will do so in lieu of newspaper notice.
- b) The first hearing will be held within 55 days after receipt of the rule and is reserved for the Agency's testimony and questions of the Agency's witnesses.
- c) Within 7 days after the first hearing, any person may request a second hearing. The request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.
- d) A second hearing will be held to hear comments on Department of Commerce and Economic Opportunity's economic impact study of the proposed rules. *At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as part of any Board hearing considering such new rules* [415 ILCS 5/27(b)]. See also Section 102.414 ~~of this Part~~. The second hearing must also permit the *presentation of testimony, documents, and comments by affected entities and all other interested persons.* [415 ILCS 5/28.5(g)]

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- e) *The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties [415 ILCS 5/28.5(g)]. In order to cancel the third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.*
- f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants. CAAA hearings need only be held in one affected area of the State.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
CONFERENCES, AND HEARINGS

Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned.* In the case of site-specific rules, a public hearing will be held in the affected ~~area~~county. Except as otherwise provided by applicable law, *in the case of state-wide regulations, hearings shall be held in at least two areas.* [415 ILCS 5/28(a)]
- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments pursuant to Section 102.108 ~~of this Part~~, is necessary.
- e) ~~If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the Act [415 ILCS 5/7.2], the hearing may be held by videoconference.~~

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(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.416 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk will give notice ~~of the date~~ of the hearing as follows or as otherwise required by applicable law:
- 1) By notice in the Board's Environmental Register and on the Board's website;
 - 2) *At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing [415 ILCS 5/28(a)]; and*
 - 3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days ~~before~~ ~~the~~ the hearing date.
- b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice to the proponent and to all persons who are on the notice list in accordance with Section 102.422 of this Part.
- c) Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 et seq.) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice.
- d) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with ~~subsection~~ ~~subsections~~ (a), ~~and~~ (b), ~~or~~ (c) of this Section.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.422 Notice and Service Lists

- a) The ~~Clerk's Office~~ ~~hearing officer~~ will maintain a notice list for each regulatory

POLLUTION CONTROL BOARD

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proceeding. The notice list will consist of those persons who have furnished their names and addresses to ~~the hearing officer or~~ the Clerk's ~~Office~~ concerning the proposal. ~~The Clerk will serve a copy~~ Notice of all Board ~~orders~~ actions and hearing officer orders ~~upon they will be given to all~~ persons ~~appearing~~ included on the notice list.

- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. ~~Unless ordered otherwise by the~~ The hearing officer, ~~may direct~~ participants ~~must~~ serve copies of all ~~their respective filings~~ documents upon the persons ~~appearing~~ listed on the service list. In deciding whether to establish a service list, ~~factors that~~ the hearing officer will consider ~~include~~ factors including the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.
- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names ~~and addresses~~ for each proceeding in accordance with subsection (a) of this Section.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

Section 102.424 Prehearing Filings Submission of Testimony, Questions, Responses, and Exhibits

- a) The proponent must ~~file~~ submit all written testimony and any related exhibits 21 days ~~before~~ prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the prehearing ~~filings~~ submission of testimony, questions, responses, ~~answers,~~ and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that ~~the~~ such a procedure will provide for a more efficient hearing.
- c) All prehearing testimony, questions, ~~answers,~~ responses, and ~~any related~~ exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). ~~Persons filing these prehearing documents must serve them in accordance with 35 Ill. Adm. Code 101.304(c) upon the~~ The hearing officer, the Agency, ~~and, if a participant,~~ the Attorney ~~General's Office, General and DNR,~~ must each be served with all prehearing testimony, questions, answers, responses, and exhibits in

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~~accordance with 35 Ill. Adm. Code 101.304(e). All prehearing testimony, questions, answers, responses, and exhibits must also be served in accordance with 35 Ill. Adm. Code 101.304(e) upon~~ the proponent, and each participant appearing on any service list, unless otherwise specified by the hearing officer. The service must be initiated on or before the date that the prehearing documents are filed with the Clerk.

- d) All prehearing testimony, questions, ~~answers,~~ responses, and any related exhibits must be ~~served and submitted in the form required by 35 Ill. Adm. Code 101. Subpart C and~~ labeled with the docket number of the proceeding, the name of the witness corresponding to submitting the material ~~or exhibit~~, and the title of the material ~~or exhibit~~.
- e) The proponent and each participant who has filed testimony, questions, ~~answers,~~ responses, or any related exhibits before hearing must bring to the hearing the number of paper copies of the material that designated by the hearing officer designates of that material and exhibits to the hearing.
- f) Testimony, questions, ~~and answers,~~ responses that are timely filed before the, and exhibits submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material ~~or exhibit~~ read at the hearing. All persons testifying will be sworn and ~~will be~~ subject to cross-examination. Modifications to prehearing documents previously submitted material and exhibits may be allowed by the hearing officer at the hearing ~~if provided that~~ the modifications are either nonsubstantive non-substantive in nature or would not materially prejudice another person's participation at the hearing. Objections to hearing officer rulings allowing or disallowing the modifications are waived unless raised at the hearing.
- g) When prehearing filings submission of testimony, questions, ~~answers,~~ responses, ~~and any related or~~ exhibits is required pursuant to subsection (a) or (b) ~~of this Section, any material or exhibit that is not~~ timely filed ~~in a timely manner~~ will be allowed at the hearing only ~~if as~~ time permits, and the hearing officer determines that allowing the material only when its submission will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at the hearing because it was not timely filed before the hearing can be filed after the hearing as a public comment.
- h) For a videoconference hearing under Section 102.114, in addition to the other

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requirements of this Section, all written testimony, questions, responses, and any related exhibits, as well as any other document to be offered as a hearing exhibit, must be received by the Clerk's Office at least 24 hours before the scheduled start of the hearing. Any of these documents that is not filed at least 24 hours before the scheduled start of the videoconference hearing will not be allowed at the hearing, but can be filed after the hearing as a public comment.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section 102.706 Appeal

Any final Board order may be appealed to the appellate court within 35 days after the service of that order (see 35 Ill. Adm. Code 101.300(d)), pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

POLLUTION CONTROL BOARD

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- 1) Heading of the Part: Enforcement
- 2) Code Citation: 35 Ill. Adm. Code 103
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
103.108	New Section
103.410	Amendment
103.414	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 107; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: No substantive amendments were made between the proposal and final version.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.

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

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887
email: richard.mcgill@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARDPART 103
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section	
103.100	Applicability
103.102	Severability
103.104	Definitions
103.106	General
103.108	Hearings

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section	
103.200	Who May File
103.202	Parties
103.204	Notice, Complaint, and Answer
103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
103.212	Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

Section	
103.300	Request for Relief from Hearing Requirement in State Enforcement Proceeding
103.301	Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding
103.302	Contents of Proposed Stipulation and Settlement Agreement
103.304	Hearing on Proposed Stipulation and Settlement Agreement
103.306	Board Order on Proposed Stipulation and Settlement Agreement

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SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section	
103.400	Purpose, Scope, and Applicability
103.402	Interim Order
103.404	Joinder of the Agency
103.406	Draft Permit or Statement
103.408	Stipulated Draft Remedy
103.410	Contents of Public Notice
103.412	Public Comment
103.414	Hearing
103.416	Contents of Board Order

SUBPART E: IMPOSITION OF PENALTIES

Section	
103.500	Default
103.502	Civil Penalties
103.504	Civil Penalties Method of Payment

SUBPART F: ENFORCING BOARD ORDERS

Section	
103.600	Civil Action

103.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at

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39 Ill. Reg. 12898, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7966, effective May 20, 2016.

SUBPART A: GENERAL PROVISIONS

Section 103.108 Hearings

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7966, effective May 20, 2016)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.410 Contents of Public Notice

- a) In addition to servicing all parties, the Agency must serve a copy of any partial draft permit on USEPA in accordance with 35 Ill. Adm. Code 101.304(c).
- b) In addition to the requirements of the Act and Section 103.210 ~~of this Part~~, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the ~~elosest~~ population center that is closest to the facility.

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- c) ~~The~~In addition to the methods of notice by publication of Section 103.208 of this Part, the Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).
- d) A notice of a partial draft permit must include the following information:
- 1) The addresses of the Board offices and the Board website;
 - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
 - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
 - 4) A statement of the violations the Board has found or has proposed to find;
 - 5) A statement that the Agency has filed a partial draft permit;
 - 6) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
 - 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
 - 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through the Clerk's Office On-Line (COOL), located on the Board website, except those portions of the record that are claimed or determined to be trade secrets or other non-disclosable information, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
 - 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30; and
 - 10) Any additional information considered necessary or proper.

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(Source: Amended at 40 Ill. Reg. 7966, effective May 20, 2016)

Section 103.414 Hearing

- a) The hearing officer, after appropriate consultation with the parties, will set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit or stipulated remedy.
- b) The hearing will be held, whenever possible, at a location convenient to~~in the county in which the facility is located,~~ in the population center that is~~in the county~~ closest to the facility.
- c) The Clerk in consultation with the hearing officer will give notice of the hearing to the persons entitled to notice in Sections 103.210 and 103.410 ~~of this Part~~, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
- d) Notice will be mailed not less than 30 days before the hearing.

(Source: Amended at 40 Ill. Reg. 7966, effective May 20, 2016)

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- 1) Heading of the Part: Regulatory Relief Mechanisms
- 2) Code Citation: 35 Ill. Adm. Code 104
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
104.106	New Section
104.236	Amendment
104.422	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these rulemakings contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 114; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: No substantive amendments were made between the Proposal and Final Version.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace emergency rules currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.

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

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887
email: richard.mcgill@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARDPART 104
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions
104.106	Petitions and Hearings

SUBPART B: VARIANCES

Section	
104.200	General
104.202	Filing Requirements
104.204	Petition Content Requirements
104.206	Resource Conservation and Recovery Act (RCRA) Variance Petition Contents
104.208	Consistency with Federal Law
104.210	Petition for Extension of Variance
104.212	Motion for Modification of Internal Variance Compliance Dates
104.214	Notice of Petition
104.216	Agency Investigation and Recommendation
104.218	Agency Recommendation to RCRA Variance
104.220	Response to Agency Recommendation
104.222	Stipulations
104.224	Objections to Petition, Written Comments and Request for Hearing
104.226	Amended Petition and Amended Recommendation
104.228	Insufficient Petition
104.230	Dismissal of Petition
104.232	Calculation of Decision Deadline
104.234	Hearing
104.236	Hearing Procedures
104.238	Standard of Review
104.240	Certificate of Acceptance

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104.242	Term of Variance
104.244	Variance Conditions
104.246	Performance Bonds
104.248	Objection to Conditions

SUBPART C: PROVISIONAL VARIANCES

Section	
104.300	Applicability
104.302	Agency Action
104.304	Initiating a Request
104.306	Filing and Notice
104.308	Term
104.310	Simultaneous Variance Prohibition (Repealed)

SUBPART D: ADJUSTED STANDARDS

Section	
104.400	General
104.402	Initiation of Proceeding
104.404	Request to Agency to Join as Co-Petitioner
104.406	Petition Content Requirements
104.408	Petition Notice Requirements
104.410	Proof of Petition Notice Requirements
104.412	Effect of Filing a Petition: Stay
104.414	Dismissal of Petition
104.416	Agency Recommendation and Petitioner Response
104.418	Amended Petition, Amended Recommendation, and Amended Response
104.420	Request for Public Hearing
104.422	Public Hearing
104.424	Hearing Notice
104.426	Burden of Proof
104.428	Board Action

104.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5,

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14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7973, effective May 20, 2016.

SUBPART A: GENERAL PROVISIONS

Section 104.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.
- b) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7973, effective May 20, 2016)

SUBPART B: VARIANCES

Section 104.236 Hearing Procedures

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, except that:

- a) ~~All hearings are to be held in the county where the petitioner's facility or pollution source is located unless otherwise ordered by the hearing officer (see 35 Ill. Adm. Code 101.600);~~

POLLUTION CONTROL BOARD

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- ~~a)~~ Hearings may be canceled pursuant to a motion filed in accordance with 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer. ~~;~~ ~~and~~
- ~~b)~~ If all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- ~~c)~~ The hearing on a RCRA variance petition will be held, whenever possible, at a location convenient to the population center that is closest to the facility.
- d) The hearing officer ~~will~~shall give notice of RCRA hearings to the following persons:
- 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions and the State's attorney of the county;
 - 2) The Chairman of the county board of the county;
 - 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
 - 4) Federal agencies as designated by USEPA;
 - 5) Illinois Department of Transportation;
 - 6) Department of Natural Resources;
 - 7) Illinois Department of Public Health;
 - 8) The Governor of any other state adjacent to the county in which the facility or pollution source is located;
 - 9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the ~~closest~~ population center that is closest to the facility or pollution source; and

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- 10) USEPA's Region V Director of Waste, Pesticides and Toxics Division.

(Source: Amended at 40 Ill. Reg. 7973, effective May 20, 2016)

SUBPART D: ADJUSTED STANDARDS

Section 104.422 Public Hearing

- a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:
- 1) The petitioner requests a hearing be held; or
 - 2) The Board receives a hearing request by any person pursuant to Section 104.420 ~~of this Part~~, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 ~~of this Part~~; or
 - 3) The Board *in its discretion determines that a hearing would be advisable* [415 ILCS 5/28.1]; or
 - 4) The adjusted standard is sought pursuant to 35 Ill. Adm. Code 212.126 (CAA).
- b) The hearing officer will set a time and place for the hearing. The hearing officer will ~~make an attempt to consult with the petitioner and the Agency before prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed adjusted standard.~~

(Source: Amended at 40 Ill. Reg. 7973, effective May 20, 2016)

POLLUTION CONTROL BOARD

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- 1) Heading of the Part: Appeals of Final Decisions of State Agencies
- 2) Code Citation: 35 Ill. Adm. Code 105
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
105.110	Amendment
105.116	Amendment
105.510	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 121; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: The Board amended Section 105.116(a) to require that electronic filings be in text-searchable Adobe PDF format "to the extent technically feasible." The Board amended Section 105.116(b) to allow for records to be arranged in chronological sequence "or by category of material and chronologically within each category."
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No

POLLUTION CONTROL BOARD

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- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.
- 16) Information and questions regarding these adopted rules shall be directed to:

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 105

APPEALS OF FINAL DECISIONS OF STATE AGENCIES

SUBPART A: GENERAL PROVISIONS

Section	
105.100	Applicability
105.102	Severability
105.104	Definitions
105.106	Computation of Time, Filing and Service Requirements
105.108	Dismissal of Petition
105.110	Hearings Hearing Process
105.112	Burden of Proof
105.114	Calculation of Decision Deadline
105.116	Record Filing
105.118	Sanctions for Untimely Filing of the Record

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND
OTHER FINAL DECISIONS OF THE AGENCY

Section	
105.200	Applicability
105.202	Parties
105.204	Who May File a Petition for Review
105.206	Time to File the Petition or Request for Extension
105.208	Extension of Time to File a Petition for Review
105.210	Petition Content Requirements
105.212	Agency Record
105.214	Board Hearing

SUBPART C: CAAPP PERMIT APPEALS

Section	
105.300	Applicability
105.302	General Requirements

POLLUTION CONTROL BOARD

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105.304 Petition Content Requirements

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND
STORAGE TANK (LUST) DECISIONS

Section

105.400 Parties
105.402 Who May File a Petition for Review
105.404 Time for Filing the Petition
105.406 Extension of Time to File a Petition for Review
105.408 Petition Content Requirements
105.410 Agency Record
105.412 Board Hearing

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section

105.500 Applicability
105.502 General Overview
105.504 General Requirements
105.506 Petition Content Requirements
105.508 OSFM Record and Appearance
105.510 Location of Hearing

105.APPENDIX A Agency LUST Final Decisions that are Reviewable
105.APPENDIX B Comparison of Former and Current Rules (Repealed)

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7980, effective May 20, 2016.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

SUBPART A: GENERAL PROVISIONS

Section 105.110 Hearings ~~Hearing Process~~

Hearings will be conducted~~Unless this Part provides otherwise, proceedings held~~ pursuant to ~~this Part will be in accordance with the rules set forth in~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. 7980, effective May 20, 2016)

Section 105.116 Record Filing

- a) The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the~~The~~ State agency must file the ~~original~~ record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF~~in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).)~~
- b) The record must ~~contain the originals of all documents,~~ be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "R" placed before the number of each page. The record must be certified by the State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

(Source: Amended at 40 Ill. Reg. 7980, effective May 20, 2016)

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section 105.510 Location of Hearing

The hearing will be held in either Springfield or Chicago or in such other location as the hearing

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

officer or the Board may designate to prevent material prejudice or undue delay. Upon the proceeding being set for hearing, the Clerk will cause notice of the hearing to be published. Public notice will be published at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the LUST site in question is located. [Nothing in this Section precludes holding the hearing by videoconference pursuant to 35 Ill. Adm. Code 101.600\(b\).](#)

(Source: Amended at 40 Ill. Reg. 7980, effective May 20, 2016)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
106.106	New Section
106.410	Amendment
106.510	Amendment
106.710	Amendment
106.912	Amendment
106.1155	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500 and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 127; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: No substantive differences between proposal and final version.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.
- 16) Information and questions regarding these adopted rules shall be directed to:

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887
email: richard.mcgill@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 106

PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section	
106.100	Applicability
106.102	Severability
106.104	Definitions
<u>106.106</u>	<u>Petitions and Hearings</u>

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE,
AND SULFUR DIOXIDE DEMONSTRATIONS

Section	
106.200	General
106.202	Petition Requirements
106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
106.206	Notice
106.208	Recommendation and Response
106.210	Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	
106.300	General
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
106.306	Response and Reply
106.308	Hearing
106.310	Burden of Proof

SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT
PERMIT PROGRAM (CAAPP) PERMITS

POLLUTION CONTROL BOARD

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Section
106.400 General
106.402 Definitions
106.404 Initiation of Proceedings
106.406 Petition Content Requirements
106.408 Response and Reply
106.410 Hearing
106.412 Burden of Proof
106.414 Opinion and Order
106.416 USEPA Review of Proposed Determination

SUBPART E: MAXIMUM ACHIEVABLE CONTROL
TECHNOLOGY DETERMINATIONS

Section
106.500 General
106.502 Definitions
106.504 Initiation of Proceedings
106.506 Petition Content Requirements
106.508 Response and Reply
106.510 Hearing
106.512 Burden of Proof
106.514 Board Action

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER
LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

Section
106.600 General
106.602 Initiation of Proceedings
106.604 Petition Content Requirements
106.606 Response and Reply
106.608 Hearing
106.610 Burden of Proof

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL
MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

Section

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

106.700	Purpose
106.702	Applicability
106.704	Termination Under Section 52.3-4(b) or (b-5) of the Act
106.706	Who May Initiate, Parties
106.707	Notice, Statement of Deficiency, Answer
106.708	Service
106.710	Notice of Hearing
106.712	Deficient Performance
106.714	Board Decision
106.716	Burden of Proof
106.718	Motions, Responses
106.720	Intervention
106.722	Continuances
106.724	Discovery, Admissions
106.726	Subpoenas
106.728	Settlement Procedure
106.730	Authority of Hearing Officer, Board Members, and Board Assistants
106.732	Order and Conduct of Hearing
106.734	Evidentiary Matters
106.736	Post-Hearing Procedures
106.738	Motion After Entry of Final Order
106.740	Relief from Final Orders

SUBPART H: AUTHORIZATIONS UNDER THE REGULATION
OF PHOSPHORUS IN DETERGENTS ACT

Section	
106.800	General
106.802	Definitions
106.804	Initiation of Proceeding
106.806	Petition Content Requirements
106.808	Response and Reply
106.810	Hearing
106.812	Burden of Proof

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

Section	
106.900	General

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

106.902	Initiation of Proceeding
106.904	Petition Content Requirements
106.906	Petition Notice Requirements
106.908	Proof of Petition Notice Requirements
106.910	Response and Reply
106.912	Hearing
106.914	Burden of Proof

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

Section	
106.1000	General (Repealed)
106.1002	Definitions (Repealed)
106.1004	Initiation of Proceeding (Repealed)
106.1006	Petition Content Requirements (Repealed)
106.1008	Response and Reply (Repealed)
106.1010	Burden of Proof (Repealed)
106.1012	Board Decision (Repealed)

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)

Section	
106.1100	Purpose
106.1105	General
106.1110	Definitions
106.1115	Early Screening
106.1120	Detailed Plan of Study
106.1125	Initiation of Proceeding
106.1130	Contents of Petition
106.1135	Petition Notice Requirements
106.1140	Proof of Petition Notice Requirements
106.1145	Recommendation and Response
106.1150	Request for Public Hearing
106.1155	Notice and Conduct of Hearing
106.1160	Burden of Proof
106.1165	Evidentiary Matters
106.1170	Opinion and Order

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 106.1175 Post-Hearing Procedures
106.1180 Renewal of Alternative Thermal Effluent Limitations

106.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 21(q), 21.622.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7, 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 39 Ill. Reg. 2375, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12914, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7986, effective May 20, 2016.

SUBPART A: GENERAL PROVISIONS

Section 106.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.
- b) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Added at 40 Ill. Reg. 7986, effective May 20, 2016)

SUBPART D: REVOCATION AND REOPENING OF
CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

Section 106.410 Hearing

The Board will hold at least one public hearing ~~in the county where the CAAPP source is located~~. The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding must be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

SUBPART E: MAXIMUM ACHIEVABLE CONTROL
TECHNOLOGY DETERMINATIONS

Section 106.510 Hearing

The Board will hold at least one public hearing ~~in the county where the CAAPP source is located~~. The Clerk of the Board will give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL
MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

Section 106.710 Notice of Hearing

- a) The Clerk will assign a docket number to each statement of deficiency filed. Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (c) ~~of this Section~~.
- b) The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- c) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree or there are extreme and unanticipated or uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.
- d) The hearing will be held pursuant to 35 Ill. Adm. Code 101.Subpart F ~~in the county in which the pilot project is located, or in another county that the hearing officer designates for cause.~~
- e) The hearing officer or the Clerk will give notice of the hearing, at least 30 days before the hearing, to the parties under Section 106.708(b) ~~of this Subpart~~, and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located.
- f) The Agency must give notice of each statement of deficiency and hearing under Section 106.708(b) ~~of this Part~~ at least 10 days before the hearing to:
- 1) All stakeholders named or listed in the EMSA; and
 - 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.
- g) Failure to comply with this Section is not a defense to an involuntary termination proceeding under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 106.912 Hearing

- a) Any person can request that a public hearing be held in an authorization proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.906. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628. The Board may also, in its discretion, hold a public hearing when it determines a public hearing is advisable.
- b) When all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board, in its discretion, deems it advisable.
- c) The hearing officer will set a time and place for the hearing. The hearing officer will ~~make an attempt to consult with the petitioner and the Agency before~~ ~~the scheduling of a hearing.~~ ~~Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed authorization proceeding.~~ ~~before~~ ~~prior to~~ the scheduling of a hearing.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)**Section 106.1155 Notice and Conduct of Hearing**

- a) The Board shall hold a public hearing on the petition and alternative thermal effluent limitation demonstration when one is requested in accordance with Section 106.1150, when requested by the petitioner, or if the Board, in its discretion, determines that a hearing would be advisable.
- b) The hearing officer will schedule the hearing ~~to be held in the county likely to be affected by the petitioner's activity.~~

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- c) The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be conducted in accordance with 35 Ill. Adm. Code 101. Subpart F.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Petition to Review Pollution Control Facility Siting Decisions
- 2) Code Citation: 35 Ill. Adm. Code 107
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
107.100	Amendment
107.302	Amendment
107.304	Amendment
107.400	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 138; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: The Board amended Section 107.302 to state that a record must be in text-searchable Adobe PDF "to the extent technically feasible." The Board also amended Section 107.304(b) to allow for records to be arranged in chronological sequence "or by category of material and chronologically within each category."
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.
- 16) Information and questions regarding these adopted rules shall be directed to:

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887
richard.mcgill@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER 1: POLLUTION CONTROL BOARD

PART 107

PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

SUBPART A: GENERAL PROVISIONS

Section	
107.100	Applicability
107.102	Severability
107.104	Definitions
107.106	Description

SUBPART B: PETITION FOR REVIEW

Section	
107.200	Who May File Petition
107.202	Parties
107.204	Time for Filing Petition
107.206	Filing and Service Requirements
107.208	Petition Content Requirements

SUBPART C: FILING OF LOCAL RECORD

Section	
107.300	Record
107.302	Filing of the Record
107.304	Record Contents
107.306	Preparing of the Record
107.308	Certification of Record

SUBPART D: HEARING

Section	
107.400	General
107.402	Authority and Duties of Hearing Officer
107.404	Public Participation

SUBPART E: BOARD REVIEW AND DECISION

Section	
107.500	Preliminary Board Determination/Set for Hearing

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107.502	Dismissal of Petition
107.504	Decision Deadline
107.506	Burden of Proof

107.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2 and 40.1].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2391, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7997, effective May 20, 2016.

SUBPART A: GENERAL PROVISIONS

Section 107.100 Applicability

- a) This Part applies to adjudicatory proceedings before the Board concerning petitions to review a pollution control facility siting decision made by local government pursuant to Sections 39.2 and 40.1 of the Act [\[415 ILCS 5/39.2 and 40.1\]](#). ["Pollution control facility" is defined at Section 3.330 of the Act \[415 ILCS 5/3.330\] for purposes of this Part.](#)
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

(Source: Amended at 40 Ill. Reg. 7997, effective May 20, 2016)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

SUBPART C: FILING OF LOCAL RECORD

Section 107.302 Filing of the Record

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H. Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the ~~The~~ siting authority must file the ~~original~~ record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF ~~in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).)~~

(Source: Amended at 40 Ill. Reg. 7997, effective May 20, 2016)

Section 107.304 Record Contents

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:
- 1) The siting application;
 - 2) Any and all transcripts of local hearings;
 - 3) All briefs and other arguments and statements of parties and participants;
 - 4) All exhibits relied upon by the local siting authority in making its decision;
 - 5) All written public comments relevant to the local government proceeding;
 - 6) Minutes of all relevant open meetings of the siting authority;
 - 7) Notices of hearings or all relevant meetings of the siting authority;
 - 8) The written decision of the siting authority made pursuant to Section 39.2 of the Act;

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 9) Certificate of Record as described in Section 107.308 of this Part; and
- 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*
- b) The record must ~~contain the originals of all documents,~~ be arranged in chronological sequence, or by category of material and chronologically within each category and must be sequentially numbered with the letter "C" placed before the number of each page.

(Source: Amended at 40 Ill. Reg. 7997, effective May 20, 2016)

SUBPART D: HEARING

Section 107.400 General

Hearings, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)), and discovery will be conducted pursuant to ~~in accordance with the provisions set forth in the Board's general procedural rules found at~~ 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. 7997, effective May 20, 2016)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Administrative Citations
- 2) Code Citation: 35 Ill. Adm. Code 108
- 3) Section Number: 108.300 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rule: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rule is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and is available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 144; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: No substantive differences between proposal and final version.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

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

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887
email: richard.mcgill@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 108
ADMINISTRATIVE CITATIONS

SUBPART A: GENERAL PROVISIONS

Section	
108.100	Applicability
108.102	Severability
108.104	Definitions

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section	
108.200	Administrative Citation under the Act
108.201	Administrative Citation under the PWSO Act
108.202	Administrative Citation under the EPRR Act
108.204	Filing Requirements for Petition to Contest
108.206	Petition Contents
108.208	AC Recipient's Voluntary Withdrawal

SUBPART C: HEARINGS

Section	
108.300	Authorization of Hearing

SUBPART D: BOARD DECISIONS

Section	
108.400	Burden of Proof
108.402	Dismissal
108.404	Default
108.406	Non-Contested Citations

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

Section	
108.500	Penalties and Costs
108.502	Claimed Costs of Agency or Delegated Unit
108.504	Board Costs
108.506	Response to Claimed Costs and Reply

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k) of the Act [415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k)] and Sections 1.1(b)(3) and 23.1 of the Public Water Supply Operations Act [415 ILCS 45/1.1(b)(3) and 23.1] and Sections 20 and 80 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/20 and 80].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2397, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12921, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 8003, effective May 20, 2016.

SUBPART C: HEARINGS

Section 108.300 Authorization of Hearing

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b))~~The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.~~

(Source: Amended at 40 Ill. Reg. 8003, effective May 20, 2016)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Tax Certifications
- 2) Code Citation: 35 Ill. Adm. Code 125
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
125.208	Amendment
125.210	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26]
- 5) Effective Date of Rules: May 20, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 148; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: The Board amended Section 125.208 to require that electronic filings be in text-searchable Adobe PDF format "to the extent technically feasible."
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will these rulemakings replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Generally, the Board adopts amendments to help the Board more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases.

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

Richard McGill
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6887
email: richard.mcgill@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R16-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARDPART 125
TAX CERTIFICATIONS

SUBPART A: GENERAL PROVISIONS

Section	
125.100	Applicability
125.102	Severability
125.104	Definitions

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section	
125.200	General
125.202	Tax Certification Application
125.204	Agency Recommendation
125.206	Petition to Contest
125.208	Agency Record
125.210	Public Hearing
125.212	Hearing Notice
125.214	Burden of Proof
125.216	Board Action

AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection Act (the Act) [415 ILCS 5/26 and 27].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2402, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 8007, effective May 20, 2016.

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 125.208 Agency Record

The Agency must file with the Board the entire record on which it based its recommendation within 30 days after the applicant files a petition to contest under Section 125.206 ~~of this Subpart~~ or as the Board or hearing officer orders. If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the ~~The~~ Agency must file the ~~original~~ record ~~in~~ through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). ~~(See 35 Ill. Adm. Code 101.1050(a).)~~ The record must comply with 35 Ill. Adm. Code 105.116(b).

(Source: Amended at 40 Ill. Reg. 8007, effective May 20, 2016)

Section 125.210 Public Hearing

- a) The Board will hold a public hearing in a tax certification proceeding if:
 - 1) The applicant files a petition to contest in accordance with Section 125.206 ~~of this Subpart~~, unless the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516;
 - 2) The applicant or holder timely requests a hearing after the Board provides notice pursuant to Section 125.216(c) ~~of this Subpart~~; or
 - 3) The Board, in its discretion, determines that a hearing would be advisable.
- b) If a hearing is to be held, the hearing officer will set a time and place for the hearing. The hearing officer will ~~make an~~ attempt to consult with the applicant and the Agency before scheduling a hearing. Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)) ~~Hearings will be held in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located, unless the hearing officer orders otherwise.~~

(Source: Amended at 40 Ill. Reg. 8007, effective May 20, 2016)

SECRETARY OF STATE

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Departmental Duties
- 2) Code Citation: 2 Ill. Adm. Code 552
- 3) Section Number: 552.30 Adopted Action:
Amendment
- 4) Statutory Authority: Sections 10, 11 and 13 of the Securities Law of 1953 [815 ILCS 5/10, 11 and 13], Section 1.05 of the Business Corporation Act of 1983 [805 ILCS 5/1.05], Sections 2-104(b) and 2-118 of the Illinois Vehicle Code [625 ILCS 5/2-104(b) and 2-118], Section 14 of the Secretary of State Act [15 ILCS 305/14], Section 11 of the Lobbyist Registration Act [25 ILCS 170/11], and Section 20-20 of the State Officials and Employees Ethics Act [5 ILCS 430/20-20].
- 5) Effective Date of Rule: May 18, 2016
- 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 is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposed published in the *Illinois Register*: As this is an internal rulemaking, public notice was not required. These organizational rules were adopted under Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and may become effective immediately upon filing as required of this agency under the cited statute for public informational purposes.
- 10) Has JCAR issued a Statement of Objection to this Rulemaking? No. As this is an internal rulemaking, public notice was not required. JCAR has not yet reviewed the amendment.
- 11) Differences between Proposal and Final Version: : As this is an internal rulemaking, public notice was not required.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? As this is an internal rulemaking, public notice was not required. To be addressed, as these rules are adopted under Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

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- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The intent of this amendatory rulemaking is to update the organizational information of the Inspector General's Office of the Secretary of State.
- 16) Information and questions regarding this adopted rule shall be directed to:

Paul Thompson
Illinois Secretary of State
Office of the Inspector General
324 West Monroe Street
Springfield IL 62704

217/785-2012

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

SECRETARY OF STATE

NOTICE OF ADOPTED AMENDMENT

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE C: CONSTITUTIONAL OFFICERS
CHAPTER III: SECRETARY OF STATEPART 552
DEPARTMENTAL DUTIES

Section

552.10	Service of Process Upon the Secretary of State
552.20	Filing of Miscellaneous Documents with the Secretary of State
552.30	Initiating, Conducting and Completing Investigations

AUTHORITY: Sections 10, 11 and 13 of the Securities Law of 1953 [815 ILCS 5/10, 11 and 13], Section 1.05 of the Business Corporation Act of 1983 [805 ILCS 5/1.05], Sections 2-104(b) and 2-118 of the Illinois Vehicle Code [625 ILCS 5/2-104(b) and 2-118], Section 14 of the Secretary of State Act [15 ILCS 305/14], Section 11 of the Lobbyist Registration Act [25 ILCS 170/11], and Section 20-20 of the State Officials and Employees Ethics Act [5 ILCS 430/20-20].

SOURCE: Adopted at 12 Ill. Reg. 3022, effective February 1, 1988; amended at 14 Ill. Reg. 6854, effective May 1, 1990; amended at 30 Ill. Reg. 15786, effective September 18, 2006; amended at 34 Ill. Reg. 3661, effective March 5, 2010; amended at 35 Ill. Reg. 10344, effective June 20, 2011; amended at 35 Ill. Reg. 18360, effective October 20, 2011; amended at 40 Ill. Reg. 8011, effective May 18, 2016.

Section 552.30 Initiating, Conducting and Completing Investigations

- a) The Office of Inspector General (OIG), which also includes the Executive Inspector General, will conduct all investigations in a professional and thorough manner. Investigations will be properly documented and will be submitted in written reports of findings. Proper documentation of an investigation shall include, at a minimum, a description of the alleged misconduct or offense; the events and circumstances surrounding the allegation, including the results of interviews, review of documents and records, and other material information revealed during the investigation; and a recommendation concerning the merits of the allegation.
- b) The OIG will utilize methods for investigative interviews consistent with current police practices and techniques and will observe and comply with all laws and agreements related to the questioning of employees or other individuals.

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- c) For the purposes of this Section, the following provisions shall apply when the OIG initiates investigations:
- 1) The OIG will maintain an intake procedure, under the supervision of the ~~Deputy Inspector General~~Chief of Investigations, for processing all complaints. Complaints may be received by telephone, letter, fax, e-mail or in person. Anonymous complaints will be accepted. When a complaint is received, it will be documented on a complaint form and assigned a complaint reference number.
 - 2) The ~~Deputy Inspector General~~Chief of Investigations will review each complaint to determine whether a case should be initiated and assigned to an Inspector. When necessary for this initial decision, an Inspector may be assigned to gather additional, preliminary information concerning the validity of the complaint and/or the credibility of the complainant. When the ~~Deputy Inspector General~~Chief of Investigations initiates a case, the complaint will receive a case number and be assigned to an Inspector.
 - 3) To initiate an investigation, a complaint must, at a minimum, include facts demonstrating OIG jurisdiction and:
 - A) a reasonable belief that employee misconduct may have occurred involving a violation of a law, rule or regulation; mismanagement; abuse of authority; or a substantial and specific danger to the public health and safety; or
 - B) credible evidence of a violation of the Lobbyist Registration Act [25 ILCS 170].
- d) For the purposes of this Section, the following provisions shall apply when the OIG conducts investigations:
- 1) The ~~Deputy Inspector General~~Chief of Investigations, or his/her designee, will be responsible for the supervision of all investigative activities and will ensure that Inspectors:

SECRETARY OF STATE

NOTICE OF ADOPTED AMENDMENT

- A) Properly document all investigative activities, which shall include, at a minimum, completion of a complaint form, investigative report and investigative summary;
 - B) Properly secure all physical evidence, including completion of an inventory of evidence form and securing the evidence in an evidence vault or other secure location;
 - C) Complete all reports; and
 - D) Submit case summaries to management that are accurate and complete.
- 2) Investigative activities may include, but are not limited to: interviews; requests for information, documents or other materials; taking custody of physical evidence; surveillance; and inspection of physical premises. The methods of investigation utilized in each case will be those most likely to establish the relevant facts of the case.
- e) For the purposes of this Section, the following provisions shall apply when the OIG completes investigations:
- 1) All cases will be characterized as ~~either~~ Active, Pending or Closed.
 - 2) A case is Active when the matter requires current or continued investigation.
 - 3) A case is Pending when the investigation is completed and awaiting prosecution or civil or administrative action. A case may be classified as Pending/Inactive if no investigative activity is anticipated for a period of 30 days or longer.
 - 4) A case is Closed when investigative action ceases due to unfounded allegations, an administrative closing of the case, the completion of adjudication of all subjects, or the referral of the case to another agency for investigation in which the OIG will not actively participate.
 - 5) A Case Summary Report will be completed at the conclusion of each investigation.

SECRETARY OF STATE

NOTICE OF ADOPTED AMENDMENT

- A) Case Summary Reports will be submitted to the Deputy Inspector General~~Chief of Investigations~~ for approval.
- B) The approved Case Summary Reports then will be submitted to the Inspector General or, for cases involving alleged violations of the State Officials and Employees Ethics Act [5 ILCS 430/5], to the Executive Inspector General for final approval.
- C) Case Summary Reports approved by the Inspector General will be forwarded to the appropriate Director for informational purposes or for the initiation of disciplinary action. Copies of the Summaries also will be forwarded to the Director of Personnel. In cases that involve alleged violations of the State Officials and Employees Ethics Act, the Executive Inspector General will make a recommendation for discipline and forward that recommendation to the appropriate Department Director and to the Director of Personnel. The completed investigative report will then be submitted to the Executive Ethics Commission, and the Commission will have jurisdiction over disciplinary action. In addition, any hearing to contest disciplinary action for a violation of the Act shall be conducted by the Executive Ethics Commission.
- D) In the case of a violation of the Lobbyist Registration Act [25 ILCS 170], the Inspector General may submit the investigation to the appropriate State's Attorney or to the Attorney General as provided by law.
- f) The following provisions shall apply to interactions between the OIG and other law enforcement agencies:
- 1) When it appears that a case may warrant criminal investigation, the appropriate federal, state or local law enforcement agency will be contacted for possible joint investigation at the earliest practicable time. When warranted by an investigation, a case will be presented to the appropriate local or federal prosecutor for a prosecutorial decision.

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- 2) When necessary for the completion of an OIG investigation, the OIG may request information or assistance from appropriate local, state or federal law enforcement agencies.
- 3) Upon receipt of a request from a local, state or federal law enforcement agency for assistance or information, the OIG will make reasonable efforts to comply~~provide that information or assistance in compliance with applicable State and federal laws.~~

(Source: Amended at 40 Ill. Reg. 8011, effective May 18, 2016)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

- 1) Heading of the Part: The Illinois Oil and Gas Act
- 2) Code Citation: 62 Ill. Adm. Code 240
- 3) Section Number: 240.134
- 4) Date Proposal published in *Illinois Register*: 40 Ill. Reg. 2095; January 29, 2016
- 5) Date Adoption published in *Illinois Register*: 40 Ill. Reg. 7051; May 6, 2016
- 6) Summary and Purpose of Expedited Correction: At the time of adoption, some subsections were mislabeled. References in the text to subsections are also being corrected.
- 7) Information and questions regarding this request shall be directed to:

Dan Nelson, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/782-1809

The full text of the Expedited Correction begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

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)
240.125	Notice
240.130	Hearings – Notices (Repealed)
240.134	Lease Validation Petitions
240.135	Falsification or Misstatement of Information
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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

SUBPART B: PERMIT APPLICATION PROCEDURES FOR PRODUCTION WELLS

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

Section	
240.400	Definitions
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)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

- 240.670 Avoidable Waste of Gas (Repealed)
240.680 Escape of Unburned Gas Prohibited (Repealed)

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
240.760 Establishment of Internal Mechanical Integrity for Class II UIC Wells
240.770 Establishment of External Mechanical Integrity for Class II UIC Wells
240.780 Reporting Requirements for Class II UIC Wells
240.790 Confidentiality of Well Data
240.795 Commercial Saltwater Disposal Well
240.796 Operating and Reporting Requirements, Hydraulic Fracturing Operations, Seismicity

SUBPART H: LEASE OPERATING REQUIREMENTS

Section

- 240.800 Definitions
240.805 Lease and Well Identification
240.810 Tanks, Tank Batteries and Containment Dikes
240.815 Permanent Well Site Equipment Setback
240.820 Flowlines
240.830 Power Lines
240.840 Equipment Storage
240.850 Concrete Storage Structures
240.860 Pits
240.861 Existing Pit Exemption For Continued Production Use
240.862 Existing Pit Exemption For Alternative Use
240.870 Leaking Unpermitted Drill Hole
240.875 Leaking Previously Plugged Well

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

240.880	Initial Spill Notification
240.890	Crude Oil Spill Remediation Requirements
240.891	Crude Oil Spill Waste Disposal and Remediation
240.895	Produced Water Spill Remediation Requirements

SUBPART I: LIQUID OILFIELD WASTE HANDLING AND DISPOSAL

Section	
240.900	Definitions
240.905	Application for Permit to Operate a Liquid Oilfield Waste Transportation System
240.906	Application for a Liquid Oilfield Waste Transportation Vehicle Permit
240.910	Inspection of Vehicles (Tanks)
240.920	Issuance of Liquid Oilfield Waste Transportation System and Vehicle Permits
240.925	Liquid Oilfield Waste Recordkeeping Requirements
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)
240.995	Bonds – Blanket Surety Bond (Repealed)

SUBPART J: VACUUM

Section	
240.1000	Definitions
240.1005	Applicability
240.1010	Application for Vacuum Permit
240.1020	Contents of Application
240.1030	Authority of Person Signing Application
240.1040	Notice and Hearing
240.1050	Issuance of Permit
240.1060	Permit Amendments

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF REQUEST FOR EXPEDITED CORRECTION

SUBPART K: PLUGGING OF WELLS

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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

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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. 18717, effective August 29, 2014; amended at 38 Ill. Reg. 22052, effective November 14, 2014; amended at 40 Ill. Reg. 7051, effective April 22, 2016; expedited correction at 40 Ill. Reg. _____, effective April 22, 2016.

SUBPART A: GENERAL PROVISIONS

Section 240.134 Lease Validation Petitions

- a) The following definitions are applicable to this Subpart:

"Current Permittee" means the permittee of record for wells located within the prior oil and gas leases.

"New Oil and Gas Leases" means recorded operative oil and gas lease instruments or assignments of those oil and gas leases or recorded after the prior oil and gas leases, submitted by the proposed permittee in support of an application for a permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part and describing all or a portion of the lands described in the prior oil and gas leases.

"Prior Oil and Gas Leases" means recorded oil and gas lease instruments or assignments of those oil and gas leases in place when the Department granted the current permittee a permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part on the lands covered by the prior oil and gas leases.

"Proposed Permittee" means the person seeking to obtain a new permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part that is located on lands covered by prior oil and gas leases upon which a current permittee was previously granted a permit by the Department.

- b) **Petition**

A proposed permittee seeking a permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part that is located on lands subject to a prior oil and gas lease or leases under which the current permittee was previously granted a permit by the Department may submit a petition requesting the Department to determine whether the new oil and gas leases submitted by the proposed permittee in support of the permit application are operative on the basis

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that the prior oil and gas leases covering the same lands have terminated due to nondevelopment or nonproduction.

- c) Contents of the petition shall include:
- 1) the name and address of the proposed permittee;
 - 2) the proposed permittee's reason for requesting a determination from the Department;
 - 3) a copy of prior oil and gas leases at issue;
 - 4) a copy of new oil and gas leases at issue; and
 - 5) a copy of an *affidavit of nondevelopment or nonproduction* signed by the mineral owners or other *knowledgeable individuals familiar with the history of development and production of oil or gas as to the lands* (Section 6.2 of the Act) covered by the prior oil and gas leases, and properly recorded in the county where the lands subject to the new oil and gas leases are located.
- d) Execution and Filing
- 1) The petition to validate the new oil and gas leases in accordance with this Section shall be sent to the Department offices located at One Natural Resources Way, Springfield IL 62702.
 - 2) Every petition shall be signed by the proposed permittee or his or her representative and the proposed permittee's address shall be stated on the petition. The signature of the proposed permittee 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 are good grounds to support the petition. The petition shall be accompanied by a *nonrefundable application fee* in the amount of *\$1,000* (Section 6.2 of the Act).
 - 3) If the Department finds the petition deficient relative to the requirements of subsection (b) or (c), the petition shall not be accepted and the Department shall return the petition to the proposed permittee with a

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statement of the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. The proposed permittee shall have 60 days to remedy the deficiencies and resubmit the petition to the Department. If the proposed permittee does not respond to the Department within 60 days, the petition shall be dismissed.

e) Review of Petition; Rebuttable Presumption

- 1) Within 14 days after receipt of the petition, the Department shall review the petition and determine if it creates a rebuttable presumption that the prior oil and gas leases have terminated due to nondevelopment or nonproduction and are of no further force and effect and that the new oil and gas leases are operative and effective.
- 2) *To create a rebuttable presumption, affidavits of nondevelopment or nonproduction from knowledgeable individuals familiar with the history of development and production of oil or gas from those lands, together with other evidence provided to or available from the Department, shall reasonably indicate that there has been no development or production of oil and gas on the lands described in the prior oil and gas leases for at least 24 consecutive months subsequent to the expiration of the primary term or any extension of the primary term as set forth in the leases.* (Section 6.2 of the Act)
- 3) Upon a determination of a rebuttable presumption that the prior oil and gas leases are terminated, the Department shall notify the proposed permittee of the finding and send notice to the current permittee as set forth in subsection (fg).
- 4) If the Department previously denied a petition based on prior oil and gas leases that are later subject to a court order or judgment declaring that the prior oil and gas leases are terminated, the proposed permittee shall submit the judgment to the Department. Upon receipt and review of the court order or judgment, the Department will issue a final order declaring the prior oil and gas leases terminated as set forth in subsection (pq).

(fg) Service of Determination on Current Permittee

Upon the Department's determination of a rebuttable presumption that the prior oil and gas leases have terminated due to nonproduction or nondevelopment and

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are of no further force and effect and that the new oil and gas leases are operative and effective, *the Department shall serve the current permittee notice* of the determination according to the notice requirements set forth in Section 240.125. The current permittee shall have *30 days* from the receipt of notice *to request a hearing to rebut the presumption* that the prior oil and gas leases have terminated. (Section 6.2 of the Act)

- ~~gh~~) Default for Failure to Request Hearing
Failure by the current permittee to request a hearing within 30 days after receipt of the notice of the Department's determination, as set forth in subsection (~~fg~~), will result in default and issuance of a final order by the Department finding that the prior oil and gas leases have terminated and that the new oil and gas leases are operative and effective as set forth in subsection (~~pg~~).
- ~~hi~~) Scheduling and Notice of Hearing
Following a timely request for hearing by the current permittee, the Department will schedule a hearing at which the current permittee can rebut the presumption that the prior oil and gas leases have terminated. Notice of the hearing shall be served on the current permittee and the proposed permittee by the Department according to Section 240.125 at least 14 days prior to the hearing.
- ~~ij~~) Pre-Hearing Conferences
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:
- 1) Simplify the factual and legal issues presented by the hearing request;
 - 2) Receive stipulations and admissions of fact and of the contents and authenticity of documents;
 - 3) 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
 - 4) Discuss and resolve other matters that may tend to expedite the disposition of the hearing request and to assure a just conclusion.
- ~~jk~~) Hearing

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- 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 power to:

 - A) Administer oaths and affirmations;
 - B) Receive relevant evidence;
 - C) Regulate the course of the hearing and the conduct of the parties and their counsel;
 - D) Consider and rule upon procedural requests;
 - E) 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) 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) **Hearing Location**

All hearings under this Subpart shall be conducted in the Department's offices located in Springfield, Illinois. However, the Department may conduct a hearing under this Subpart at a site located closer than Springfield, Illinois to the production and injection/disposal well identified in the Notice of Hearing if facilities are available and satisfactory to the Department.
- 3) **Appearances**

Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person will 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.

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- 4) Right to Counsel
 - A) All participants in the hearing shall have the right to be represented by counsel.
 - B) An attorney appearing in a representative capacity in any proceeding under this Subpart shall file a written notice of appearance identifying his or her name, address and telephone number and identifying the party represented.
- 5) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.
- 6) 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.
- 7) When applicable, the following shall be addressed prior to receiving evidence:
 - A) The proposed permittee may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the case.
 - 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.

k4) 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

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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 it would have been 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 proposed permittee shall open the proof. Other parties of record shall be heard immediately following the proposed permittee. 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 is consistent with the Department's responsibility for an expeditious decision.

l) Testimony

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.

m) 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

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emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing.

- n) Default After Hearing Requested
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 proceed to make its decision in the absence of that party. If the failure to appear at the pre-hearing conference or hearing is due to an emergency situation beyond the party's 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 subsection (m). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the party's control.
- o) Hearing Officer Recommended Findings
After the conclusion of the hearing, the Hearing Officer shall render recommended findings of fact, recommended conclusions of law, and recommendations as to the disposition of the case. If the Hearing Officer finds that the affidavits and other evidence provided at the hearing or available to the Department reasonably indicate that there has been no development or production of oil and gas on the lands described in the prior oil and gas leases for at least 24 consecutive months subsequent to the expiration of the primary term or any extension of the primary term as set forth in the prior oil and gas leases, the Hearing Officer shall recommend whether the rebuttable presumption was not overcome and that the prior oil and gas leases have terminated and are of no further force and effect or that the new oil and gas leases are operative and effective.
- p) Order – Final Administrative Decision
- 1) The Director shall review the administrative record in conjunction with the Hearing Officer's recommended findings of fact, recommended conclusions of law, and recommendations as to the disposition of the case.
 - 2) If, after this review, the Director finds that the rebuttable presumption was overcome by the current permittee, the Department shall enter a Final Administrative Order that the prior oil and gas leases are still in force and effect and the new oil and gas leases are not operative and effective.

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- 3) If, after this review, the Director finds that the rebuttable presumption was not overcome by the current permittee, the Department shall enter a Final Administrative Order that the prior oil and gas leases have terminated and are of no further force and effect and that the new oil and gas leases are operative and effective. The Final Administrative Order shall:
- A) State that the prior oil and gas leases have terminated and are of no further force and effect and that the new oil and gas leases are operative and effective.
 - B) Order the *current permittee to properly plug all nonplugged and nontransferred wells within the lease boundaries of the prior leases.* (Section 6.2 of the Act)
 - C) Order that *if the current permittee fails to properly plug all nonplugged and nontransferred wells within 30 days after the issuance of the Order, the remaining nonplugged and nontransferred wells shall be deemed abandoned and included in the Department's Oil and Gas Well Site Plugging and Restoration Program* (see Subpart K). (Section 6.2 of the Act)
 - D) The proposed permittee shall have no obligation to acquire the permits of the current permittee as to the lands that are the subject of the petition.
- 42) In no case shall the Department issue the Order later than *90 days after receipt of a valid petition.* (Section 6.2 of the Act)
- 53) The Director's Order is a final administrative decision of the Department and is subject to judicial review under the Administrative Review Law [735 ILCS 5/Art. III].
- 64) *Department determinations under this Section shall not have res judicata or collateral estoppel effect in any judicial proceedings.* (Section 6.2 of the Act)

(Source: Added at 40 Ill. Reg. 7051, effective April 22, 2016; expedited correction at 40 Ill. Reg. _____, effective April 22, 2016)

DEPARTMENT OF HUMAN SERVICES

AGENCY RESPONSE TO JOINT COMMITTEE STATEMENT OF OBJECTION TO
PROPOSED RULEMAKING

Agency: Department of Human Services

Heading of the Part: Permanent Supportive Housing & Bridge Subsidy Model for Persons with Mental Illnesses

Code Citation: 59 Ill. Adm. Code 145

Register Citation: 39 Ill. Reg. 9704; July 17, 2015

Agency Response to Joint Committee Statement of Objection:

At its meeting on February 16, 2016, the Joint Committee on Administrative Rules considered the above-cited rulemaking and objected to the Department's failure to implement PA 97-529 in a timely manner and to the Department's implementation of policy not yet adopted as a rule. PA 97-529 required the Department promulgate rules for the Permanent Supportive Housing program no later than January 1, 2012. The Department not only waited more than 3 years to propose rules, but also instituted an application process and published policy documents for the program outside of rule, which is a violation of Section 5-10(c) of the Illinois Administrative Procedure Act [5 ILCS 100].

The Department of Human Services has reviewed the statement of objection from the Joint Committee on Administrative Rules regarding the above-cited rulemaking. The Department is committed to ensuring that any statutorily required change, such as the one required by 20 ILCS 1705/73, is completed not only as quickly as possible but is also a well-designed rule which implements a policy that is in the best interests of the citizens of Illinois. In this case, due to the complexity of the program being developed, the rule was not promulgated as quickly as the Department would like or as was required by statute. Unfortunately, the creation of this rule did span two administrations. However, when the new administration came in, it recognized that this rule was overdue and promptly edited the rule to ensure that a complete and comprehensive rule was filed as quickly as possible. In the future, the Department will strive to ensure that all rules meet established deadlines.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of May 17, 2016 through May 23, 2016. The rulemakings are scheduled for review at the Committee's June 14, 2016 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>
6/30/16	<u>Department of Natural Resources</u> , Illinois State Museum (23 Ill. Adm. Code 3210)	3/25/16 40 Ill. Reg.5161	6/14/16
7/6/16	<u>Illinois Health Facilities and Services Review Board</u> , Criteria and Procedure for Recognition of Areawide Health Planning Organizations for Health Facilities Planning (Repealer) (77 Ill. Adm. Code 1170)	3/11/16 40 Ill. Reg.3540	6/14/16
7/6/16	<u>Illinois Health Facilities and Services Review Board</u> , Appropriateness Review (Repealer) (77 Ill. Adm. Code 1250)	3/11/16 40 Ill. Reg.3549	6/14/16

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**REQUEST FOR EXPEDITED
CORRECTION**

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