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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 repeaters of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register. The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings. The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2010

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**Editor's Note:** The Regulatory Agenda submission period will end July 1, 2010. The Division will no longer accept Regulatory Agendas after that time. The filing period for January 2011 will start October 1, 2010 with the last day to file being January 3, 2011.
DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT

1) **Heading of Part:** Illinois Pesticide Act

2) **Code Citation:** 8 Ill. Adm. Code 250

3) **Section Numbers:** Proposed Action:
   - 250.220 New Section

4) **Statutory Authority:** Illinois Pesticide Act [450 ILCS 60]

5) **A Complete Description of the Subjects and Issues Involved:** Some public institutions charged with the maintenance and upkeep of publicly-owned lands such as park districts and forest preserve districts routinely rely on citizen volunteers to make very limited herbicide applications for the control of certain non-native plant species and noxious weeds on their lands. Under the current provisions of the Illinois Pesticide Act and rules, these individuals are required to successfully complete the current licensing process that includes passing one or more written examinations and submitting a license application to the state. The proposed amendment would create a streamlined certification process whereby individuals volunteering for such activities would annually receive specific training from a properly licensed employee of the public institution regarding specific herbicide applications to be performed and, as a result, would be authorized to make them without further licensing requirements. The proposed certification process is very similar to the existing process for the special application of solid mosquito larvicides used by many counties, cities and villages and can be found at 8 Illinois Administrative Code 250.210.

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

7) **Will this rulemaking replace any emergency rulemaking in effect?** No

8) **Does this rulemaking contain an automatic repeal date?** No

9) **Does this rulemaking contain incorporations by reference?** No

10) **Are there any other proposed rulemakings pending on this Part?** No

11) **Statement of Statewide Policy Objectives:** This rulemaking could affect units of local government such as park districts and forest preserve districts if and only if they chose to participate.
DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: A 45-day written comment period will begin on the day this Notice of rulemaking appears in the Illinois Register. Please mail written comments on the proposed rulemaking to the attention of:

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

217/785-5713
217/785-4505 (fax)

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking could affect units of local government such as park districts and forest preserve districts if they chose to participate in the certification program rather than the traditional pesticide licensing program.

B) Reporting, bookkeeping or other procedures required for compliance: A participant roster and copies of herbicide product labels associated with products included in the required training session are required to be forwarded to the Department as proof of training and to allow for the generation of certificates.

C) Types of professional skills necessary for compliance: The skills required are not beyond the current requirements. Participants must have the ability to follow directions and safely and effectively apply herbicides at predetermined locations on specifically identified publicly-owned lands under the guidance of a properly licensed employee of public entity.

14) Regulatory agenda on which this rulemaking was summarized: January 2010

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

NOTICE OF PROPOSED AMENDMENT

TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: DEPARTMENT OF AGRICULTURE
SUBCHAPTER i: PESTICIDE CONTROL

PART 250
ILLINOIS PESTICIDE ACT

Section
250.10  Definitions
250.20  Registration of Pesticide Dealers Selling Restricted Use Pesticides or Certain Non-Restricted Use Pesticides
250.30  Registration of Pesticides
250.40  Registration of Experimental Use Pesticides
250.50  Registration of Special Local Need Pesticides
250.60  Emergency Exemption Registration
250.70  Method of Becoming Certified Applicators
250.80  Private Pesticide Applicators: Certification, Licensing, Testing and Training
250.90  Commercial Applicator, Commercial Not For Hire Applicator and Public Applicator: Certification, Testing and Licensing
250.100 Licensed Operator (Commercial Operator, Commercial Not For Hire Operator and Public Operator): Testing and Licensing
250.110 General Competency Standards to be Covered on the Tests
250.120 Technical Category Areas of Pesticide Use
250.130 Surety Bond or Liability Insurance
250.140 Interagency Committee on Pesticides
250.150 Record Keeping
250.160 Permits
250.170 Administrative Hearing
250.180 Administrative Penalties
250.190 Formulation Violations of Label Claim
250.200 Reporting of Pesticide Incidents or Misuse Complaints
250.210 Special Application of Solid Mosquito Larvicides
250.220 Special Application of Herbicides to Control Invasive Plants on Public Lands

AUTHORITY: Implementing and authorized by the Illinois Pesticide Act [450 ILCS 60]

DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT


Section 250.220 Special Application of Herbicides to Control Invasive Plants on Public Lands

a) Any person who receives training, pursuant to subsection (b) of this Section from an individual possessing a current Category 6 Right-of-Way Pest Control applicator license issued by the Department, after receipt of a certificate issued by the Department, may apply a herbicide product for the control of invasive plants on public lands without further compliance with the licensing provisions of this Part if all of the following are met:

1) The individual providing training pursuant to subsection (b) must be a compensated employee of the organization that has direct control of the public lands upon which the herbicide product applications are to be made;

2) The individual making herbicide product applications under the provisions of this Section shall not receive compensation for the herbicide product applications;

3) The signal word contained on the herbicide product is "CAUTION";

4) The herbicide product to be applied shall not be classified as a "restricted use" pesticide;

5) The herbicide product application method is limited to the method or methods included in the training provided pursuant to subsection (b) of this Section;

6) A review of the specific herbicide product's label must have been included in the training program described in subsection (b);

7) The herbicide product application site or sites are limited to the public lands identified during the training provided pursuant to subsection (b)
and the public lands must be under the direct control of the trainer who provided the training or the trainer's organization;

8) All mixing of the herbicide product and loading of the herbicide product into any required application device or devices shall be conducted by the trainer who provided the training or other certified applicator possessing a current Category 6 Right-of-Way Pest Control applicator license issued by the Department; and

9) Each individual making herbicide product applications under the provisions of this Section shall utilize the personal protective equipment specified on the herbicide product label for handlers during the application activity.

b) The training shall be not less than one hour in duration and shall include a review of the herbicide product labels, use restrictions, application rates, application methods, first aid, potential environmental hazards, personal protective equipment, and any other information deemed appropriate by the trainer for the safe and effective use of the herbicide products identified in subsection (a) of this Section.

c) Upon completion of the training, the trainer shall immediately provide to the Department a complete legible listing, including name, address, telephone number, birth date, and sponsoring organization for whom the herbicide product applications are to be made, of all individuals who received the training and are thus eligible to apply only the specific herbicide product or products set forth in this Section.

d) The trainer shall also provide to the Department the date and location of the training, the trainer's name, address, telephone number, pesticide applicator license number, pesticide applicator license expiration date, trainer's organization, and a legible copy of the specific herbicide product label or labels utilized in the training session.

e) An individual trained to apply a herbicide product under the provisions of this Section, and only after receiving the certificate issued by the Department, may only:
DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT

1) apply the specific herbicide products included in the training described in this Section;

2) make such applications on the public lands identified in the training; and

3) make applications during the calendar year in which the training was received.

f) For the purpose of this Section, a person shall mean any individual over 18 years of age.

(Source: Added at 34 Ill. Reg. _____, effective ____________ )
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) **Heading of the Part:** Reports of Child Abuse and Neglect

2) **Code Citation:** 89 Ill. Adm. Code 300

3) **Section Numbers: Proposed Action:**
   - 300.20 Amended
   - 300.45 New

4) **Statutory Authority:** 325 ILCS 2

5) **A Complete Description of the Subjects and Issues Involved:** Section 300.45 implements Public Act 096-0760 that established a five year demonstration of the Differential Response Program. Differential Response allows child protective services to respond to accepted reports of specific allegations of child neglect with either an investigation or family assessment response. Cases assigned to the family assessment pathway require an initial assessment to confirm that the case is appropriate for family assessment services. Family assessment services are provided without a formal substantiation of alleged maltreatment and a record of the case is not entered in the State Central Register. Cases opened for family assessment services are short term, and may not exceed 120 days. A family may refuse to accept family assessment services, and if no child safety and/or risk issues are identified the case is closed. If it is determined after review of assessment and safety information that a child's safety is compromised by the refusal, the case may be reassigned to an investigation pathway. If at anytime during the service delivery period a family's caseworker has reasonable cause to believe that a child in the family has been or is being abused or neglected and at risk of harm he or she will contact the State Central Register without delay to make a report of abuse or neglect.

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

7) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

8) **Does this rulemaking contain an automatic repeal date?** No

9) **Does this rulemaking contain incorporations by reference?** No

10) **Are there any proposed rulemakings to this Part pending?** Yes
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

11) Statement of Statewide Policy Objectives: These proposed amendments do not expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 East Monroe Street, Station #65
Springfield, Illinois 62701-1498

Telephone: 217/524-1983
TDD: 217/524-3715
FAX: 217/557-0692
E-Mail address: cfpolicy@idcfs.state.il.us

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

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporation affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking did not appear in either of the 2 most recent Regulatory Agendas because: the need for the rulemaking was not anticipated at that time.

The full text of the Proposed Amendments begins on the next page:
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: SERVICE DELIVERY

PART 300
REPORTS OF CHILD ABUSE AND NEGLECT

Section
300.10 Purpose
300.20 Definitions
300.30 Reporting Child Abuse or Neglect to the Department
300.40 Content of Child Abuse or Neglect Reports
300.45 *Five Year Demonstration of the Differential Response Program*
300.50 Transmittal of Child Abuse or Neglect Reports
300.60 Special Types of Reports (Recodified)
300.70 Referrals to the Local Law Enforcement Agency and State's Attorney
300.80 Delegation of the Investigation
300.90 Time Frames for the Investigation
300.100 Initial Investigation
300.110 The Formal Investigative Process
300.120 Taking Children into Temporary Protective Custody
300.130 Notices Whether Child Abuse or Neglect Occurred
300.140 Transmittal of Information to the Illinois Department of Professional Regulation and to School Superintendents
300.150 Referral for Other Services
300.160 Special Types of Reports
300.170 Child Death Review Teams
300.180 Abandoned Newborn Infants
300.APPENDIX A Acknowledgement of Mandated Reporter Status
300.APPENDIX B Child Abuse and Neglect Allegations

AUTHORITY: Implementing and authorized by the Abused and Neglected Child Reporting Act [325 ILCS 5], the Abandoned Newborn Infants Protection Act [325 ILCS 2] and Section 3 of the Consent by Minors to Medical Procedures Act [410 ILCS 210/3].

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS


Section 300.20 Definitions

"Abandonment" means parental conduct that demonstrates the purpose of relinquishing all parental rights and claims to the child. Abandonment is also defined as any parental conduct that evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.

"Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

inflicts, causes to be inflicted, or allows to be inflicted upon such child physical or mental injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

or impairment of any bodily function;

creates a substantial risk of physical or mental injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss of or impairment of any bodily function;

commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 1961, as amended, and extending those definitions of sex offenses to include children under 18 years of age;

commits or allows to be committed an act or acts of torture upon such child;

inflicts excessive corporal punishment; or

commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 1961, against the child. [325 ILCS 5/3]

"Act" means the Abused and Neglected Child Reporting Act [325 ILCS 5].

"CANTS/SACWIS 8" or "C/S8" means the Department's document titled Notification of a Report of Suspected Child Abuse and/or Neglect. This document explains the Department's child abuse/neglect allegation investigation process.

"CANTS/SACWIS 9" or "C/S9" means the Department's document titled Notification of Intent to Indicate Child Care Worker for Report of Child Abuse and/or Neglect. This document is used to notify a person that the Department plans to indicate that person as a perpetrator of child abuse/neglect.

"CANTS/SACWIS 10" or "C/S10" means the Department's document titled Notice of Intent to Indicate a Child Care Worker for Report of Child Abuse and/or Neglect-Questions and Answers. This is an informational document explaining the impact of a determination of indicated child abuse/neglect and the appeal process.

"CANTS/SACWIS 11" or "C/S11" means the Department's document titled
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

Notification of Indicated Decision in an Employment Related Report of Suspected Child Abuse and/or Neglect. This is the document by which the Department notifies a person that the Department has determined that there is credible evidence that he or she is responsible for the child abuse or neglect described in that document.

"Caregiver" means the child's parents, guardian, custodian or relative with whom the child lives and who has primary responsibility for the care and supervision of the child.

"Child" means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services. [325 ILCS 5/3]

"Child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in the Child Care Act of 1969, established and maintained for the care of children. Child care facility includes a relative who is licensed as a foster family home under Section 4 of the Child Care Act of 1969. [225 ILCS 10/2.05]

"Child care worker" means any person who is employed to work directly with children and any person who is an owner/operator of a child care facility, regardless of whether the facility is licensed by the Department. Child care facilities, for purposes of this definition, include child care institutions; child welfare agencies; day care/night care centers; day care/night care homes; day care/night care group day care homes; group homes; hospitals or health care facilities; schools, including school teachers and administrators, but not tenured school teachers or administrators who have other disciplinary processes available to them; and before and after school programs, recreational programs and summer camps. "Child care worker" also means persons employed as full-time nannies. A child care worker may, at his or her discretion, be subject to this Part if alleged to be responsible for child abuse or neglect outside of his or her employment. "Child care worker" includes a person: currently employed as a child care worker; currently enrolled in an academic program that leads to a position as a child care worker; or who has applied for a license required for a child care worker position. A person will be considered to be "employed as a child care worker" under this
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Part if, at the time of the notice of the investigation, he or she: has applied for, or will apply within 180 days for, a position as a child care worker; is enrolled in, or will commence within 180 days, an academic program that leads to a position as a child care worker; or has applied for a license as a child care worker.

"Child-placing agency" means a licensed public or private agency that receives a child for the purpose of placing or arranging for the placement of the child in a foster family home or other facility for child care, apart from the custody of the child's parents. [325 ILCS 2/10]

"Child Protective Service Unit" or "CPS" means certain specialized State employees of the Department assigned by the Director or his or her designee to perform the duties and responsibilities described under this Part. CPS staff is also referred to as investigative staff. [325 ILCS 5/3]

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"CPSW" means a Child Protective Service Worker.

"Collateral contact" means obtaining information concerning a child, parent, or other person responsible for the child from a person who has knowledge of the family situation but was not directly involved in referring the child or family to the Department for services.

"Credible evidence of child abuse or neglect" means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected.

"Delegation of an investigation" means the investigation of a report of child abuse or neglect has been deferred to another authority. The Department maintains responsibility for determining whether the report is indicated or unfounded, entering information about the report in the State Central Register and notifying the subjects of the report and mandated reporters of the results of the investigation.

"Department" or "DCFS" means the Department of Children and Family Services.
"Determination" means a final Department decision about whether there is credible evidence that child abuse or neglect occurred. A determination must be either "indicated" or "unfounded".

"DR Specialist" means a Differential Response Specialist as described in Section 300.45(e)(1).

"Disfigurement" means a serious or protracted blemish, scar, or deformity that spoils a person's appearance or limits bodily functions.

"Ecomap" means a pictorial representation of family connections to different systems and community and other resources to identify significant people and/or systems around the family to illustrate the strengths, impact and quality of each connection. (Hartman, A. Diagrammatic assessment of family relationships. Social Casework, 59, 465-476. (1978))

"Emergency medical facility" means a freestanding emergency center or trauma center, as defined in the Emergency Medical Services (EMS) Systems Act. [325 ILCS 2/10]

"Emergency medical professional" includes licensed physicians, and any emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, trauma nurse specialist, and pre-hospital RN, as defined in the Emergency Medical Services (EMS) Systems Act. [325 ILCS 2/10]

"Fire station" means a fire station within the State with at least one staff person. [325 ILCS 2/10]

"Formal investigation" means those activities conducted by Department investigative staff necessary to make a determination as to whether a report of suspected child abuse or neglect is indicated or unfounded. Those activities shall include: an evaluation of the environment of the child named in the report and any other children in the same environment; a determination of the risk to such children if they continue to remain in the existing environments, as well as a determination of the nature, extent and cause of any condition enumerated in such report, the name, age and condition of other children in the environment; and an evaluation as to whether there would be an immediate and urgent necessity to
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remove the child from the environment if appropriate family preservation services were provided. After seeing to the safety of the child or children, the Department shall forthwith notify the subjects of the report, in writing, of the existence of the report and their rights existing under the Act in regard to amendment or expungement. [325 ILCS 5/3]

"Genogram" means a pictorial representation of an individual's family relationships.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising a child if the parent cannot raise the child. The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 must be met.

"Hospital" has the same meaning as in the Hospital Licensing Act [210 ILCS 85].

"Indicated report" means any report of child abuse or neglect made to the Department for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists.

"Initial investigation" means those activities conducted by Department investigative staff to determine whether a report of suspected child abuse or neglect is a good faith indication of abuse or neglect and, therefore, requires a formal investigation. Good faith in this context means that the report was made with the honest intention to identify actual child abuse or neglect.

"Initial oral report" means a report alleging child abuse or neglect for which the State Central Register has no prior records on the family.

"Involved subject" means a child who is the alleged victim of child abuse or neglect or a person who is the alleged perpetrator of the child abuse or neglect.
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"Legal custody" means the relationship created by a court order in the best interest of a newborn infant that imposes on the infant's custodian the responsibility of physical possession of the infant, the duty to protect, train, and discipline the infant, and the duty to provide the infant with food, shelter, education, and medical care, except as these are limited by parental rights and responsibilities. [312 ILCS 2/10]

"Local law enforcement agency" means the police of a city, town, village or other incorporated area or the sheriff of an unincorporated area or any sworn officer of the Illinois Department of State Police.

"Mandated reporters" means those individuals required to report suspected child abuse or neglect to the Department. A list of these persons and their associated responsibilities is provided in Section 300.30 of this Part.

"Member of the clergy" means a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs. [325 ILCS 5/3]

"Neglected child" means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support, or medical or other remedial care recognized under State law as necessary for a child's well-being (including where there is harm or substantial risk of harm to the child's health or welfare), or other care necessary for a child's well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who is a newborn infant whose blood, urine or meconium contains any amount of controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or newborn infant. A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the
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treatment or cure of disease or remedial care under Section 4 of the Abused and Neglected Child Reporting Act. Where the circumstances indicate harm or substantial risk of harm to the child's health or welfare and necessary medical care is not being provided to treat or prevent that harm or risk of harm because the parent or other person responsible for the child's welfare depends upon spiritual means alone for treatment or cure, the child is subject to the requirements of this Act for the reporting of, investigation of, and provision of protective services with respect to the child and his or her health needs, and in such cases spiritual means through prayer alone for the treatment or cure of disease or for remedial care will not be recognized as a substitute for necessary medical care, if the Department or, as necessary, a juvenile court determines that medical care is necessary. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code. [325 ILCS 5/3]

"Newborn infant" means a child who a licensed physician reasonably believes is 30 days old or less at the time the child is initially relinquished to a hospital, police station, fire station, or emergency medical facility, and who is not an abused or a neglected child. [325 ILCS 2/10]

"Perpetrator" means a person who, as a result of investigation, has been determined by the Department to have caused child abuse or neglect.

"Person responsible for the child's welfare" means the child's parent, guardian, foster parent, relative caregiver, an operator, supervisor, or employee of a public or private residential agency or institution or public or private profit or not-for-profit child care facility; or any other person responsible for the child's welfare at the time of the alleged abuse or neglect, or any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy and volunteers or support personnel in any setting where children may be subject to abuse or neglect. [325 ILCS 5/3]

"Police station" means a municipal police station or a county sheriff's office. [315 ILCS 2/10]

"Private guardianship" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the
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"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

- is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt, or
- is the spouse of such a relative, or
- is the child's step-father, step-mother, or adult step-brother or step-sister.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. [20 ILCS 505/7(b)]

"Relinquish" means to bring a newborn infant, who a licensed physician reasonably believes is 30 days old or less, to a hospital, police station, fire station, or emergency medical facility and to leave the infant with personnel of the facility, if the person leaving the infant does not express an intent to return for the infant or states that he or she will not return for the infant. In the case of a mother who gives birth to an infant in a hospital, the mother's act of leaving the new born infant at the hospital without expressing an intent to return for the infant or stating that she will not return for the infant is not a "relinquishment" under the Act. [325 ILCS 2/10]

"Strengthening and Supporting Families service period" means a level of service intervention that will average 90 days, but no more than 120 days.

"State Central Register" is the record of child abuse and/or neglect reports maintained by the Department pursuant to the Act.

"Subject of a report" means any child reported to the child abuse/neglect State Central Register, and his or her parent, personal guardian or other person...
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responsible for the child's welfare who is named in the report.

"SSF worker" means a Strengthening and Supporting Families worker.

"Temporary protective custody" means custody within a hospital or other medical facility or a place previously designated by the Department, subject to review by the Court. Temporary protective custody cannot exceed 48 hours, excluding Saturdays, Sundays and holidays.

"Undetermined report" means any report of child abuse or neglect made to the Department in which it was not possible to complete an investigation within 60 days on the basis of information provided to the Department.

"Unfounded report" means any report of child abuse or neglect for which it is determined, after an investigation, that no credible evidence of the alleged abuse or neglect exists.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

Section 300.45  Five Year Demonstration of the Differential Response Program

a) Differential response recognizes that there are variations in the severity of reported maltreatment and allows for an investigation or family assessment response to reports of child neglect. Both responses focus on the safety and well-being of the child; promote permanency within the family whenever possible; and recognize the authority of child protection to make decisions about protective custody and court involvement when necessary. An investigation response involves gathering forensic evidence and requires a formal determination regarding whether there is credible evidence that child maltreatment has occurred. A family assessment response involves assessing the family's strengths and needs and offering services to meet the family's needs and support positive parenting.

b) Differential Response Criteria

During the demonstration period, reports of neglect that meet all the following criteria may be assigned to an assessment pathway:

1) Identifying information for the family members and their current address, if known at the time of the report:
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2) The alleged perpetrators are birth or adoptive parents, legal guardians or responsible relatives;

3) The family has no prior indicated reports of abuse and/or neglect or prior indicated reports have been expunged within the timeframe or timeframes established by the Department for the indicated allegation or allegations;

4) The alleged victims, or other siblings or household members, are not currently in the care and custody of the Department or wards of the court;

5) Protective custody of the children has not been taken or required in the current or any previous case; and

6) Allegations Reports

A) The reported allegation or allegations shall only include Mental and Emotional Impairment (neglect only), Inadequate Supervision, Inadequate Food, Inadequate Shelter, Inadequate Clothing, Medical Neglect, and Environmental Neglect. The following circumstances involving the allegations of Mental and Emotional Impairment, Inadequate Supervision, and Medical Neglect prohibit the report from being assigned to a family assessment pathway.

i) Mental and Emotional Impairment reports taken as abuse (Allegation #17) will be assigned an investigation pathway.

ii) Inadequate Supervision reports involving a child or children under the age of eight, or a child older than eight years of age with a physical or mental disability that limits his or her skills in the areas of communication, self-care, self-direction and safety will be assigned an investigation pathway.

iii) Medical Neglect reports that involve a child with a severe medical condition that could become serious enough to cause long-term harm to the child if untreated will be assigned an investigation pathway.
B) All other allegations are considered to involve substantial child abuse and neglect, and are ineligible for assignment to the assessment pathway.

c) Differential Response Team (DRT) Supervisors
Prior to assigning reports to Differential Response (DR) Specialists, DRT supervisors will review all reports assigned to their teams within two hours after receipt in the team's electronic mailbox, excluding evenings, weekends and holidays, to determine their appropriateness for Differential Response. DRT supervisors will also contact reporters of medical neglect reports to confirm the information reported to the State Central Register and obtain any additional information that will enable the supervisor to determine the appropriateness of the report for Differential Response. Reports determined to be inappropriate for Differential Response will be redirected by the supervisor to the State Central Register for investigation in accordance with subsection (e).

d) Initial Contact with the Family
The initial Differential Response contact will involve the DR Specialist, Strengthening and Supporting Families (SSF) worker, and the family, in the family's home, within three business days from the time the report is received at the State Central Register, excluding weekends and holidays.

1) If a family accepts assessment pathway services, the DR Specialist must do the following:

A) Verify identifying information and legal relationships of all household members.


C) Obtain the names and addresses of any non-custodial parents.

D) Notify the family of its rights and responsibilities.

E) Complete a home safety checklist.

F) Obtain consent for release of information signed by a family member with the authority to give consent.
AGENCY NOTE: If the family will not allow the SSF worker access to the child or children, the family has declined family assessment services and the requirements of subsection (e) will be followed.

2) The SSF worker will provide intensive strength-based family-focused services during the Strengthening and Supporting Families service period, which will include the following:

   A) A comprehensive and collaborative evaluation of the family's strengths and needs that will include the family's financial status, basic educational screening for the children, and physical health, mental health and behavioral health screening for all family members. Information obtained will be used to construct a Genogram and Ecomap for use with the family;

   B) Services to meet any immediate needs of the family, including food, shelter and clothing;

   C) A minimum of twice weekly contacts with the family, which will include the children in the household;

   D) Service planning;

   E) Services to mitigate or control the causes of neglect;

   F) Child Endangerment Risk Assessment Protocol Safety Assessments completed in accordance with the requirements for intact families established by the Child Endangerment Risk Assessment Protocol;

   G) Assessment of the family's reasonable progress in resolving the issues that brought them to the attention of the Department;

   H) Advocacy services; and

   I) Discharge planning.
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AGENCY NOTE: If, at anytime during the service period, the family denies the SSF worker access to the child or children, the SSF worker will follow the requirements of subsection (e).

3) Strengthening and Supporting Families supervisors will provide management services that will include review and approval of assessments, service plans, Child Endangerment Risk Assessment Protocol Safety Assessments, cash assistance requests, appropriateness of service referrals, case file documentation, requests for assessment service extensions, and requests to close family assessment cases.

A) Supervisory review and approval of Child Endangerment Risk Assessment Protocol Safety Assessments will be in accordance with the Child Endangerment Risk Assessment Protocol.

B) Families receiving Family Assessment services are eligible for cash assistance through the Differential Response Cash Assistance Program.

C) The supervisor shall monitor service provider reports to assess service delivery and appropriateness of services.

D) Approval of service extensions shall be based on the family's needs and progress made in mitigating those conditions that contributed to its involvement with the Department.

E) The following documents must be submitted to the SSF supervisor before formalizing case closing with the family:

i) Case Closing Summary

ii) Child and Family Service Aftercare Plan

iii) Case note documentation of required child interviews and documentation

iv) Provider treatment reports

v) CFS 1441, Safety Determination Form
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vi) Completed LEADS and SACWIS/CANTS checks for all adult members of the household and all adults who are frequently in the home

e) Pathway Reassignment

1) Differential Response Specialist
   If a Differential Response Specialist determines that a child is unsafe, that there is an immediate need for intervention, or that maltreatment allegations are not within the scope of differential response, the Differential Response Specialist shall contact his or her supervisor within one hour after completion of the initial contact with the family to discuss case information and possible referral to the investigation pathway. If the supervisor determines that the report should be re-directed to an investigation pathway, he or she will contact the State Central Register Supervisor without delay to have the report transferred to investigations. The State Central Register Supervisor will enter the date and time of the contact with the supervisor as the report taken date and time and enter an appropriate response code.

2) Strengthening and Supporting Families Worker
   If the SSF supervisor and worker have reasonable cause to believe that a child has been or is being abused or neglected and at risk of harm at anytime during the service delivery period, the supervisor will contact the State Central Register Supervisor without delay to make a report of abuse or neglect. The State Central Register Supervisor will enter the date and time of the contact with the SSF supervisor as the report taken date and time and enter an appropriate response code.

AGENCY NOTE: A case assigned to the investigation pathway may not be reassigned to an assessment pathway.

f) Families May Refuse Assessment Pathway Services
   A family may refuse to accept assessment pathway services. However, if it is determined by the Differential Response supervisor after review of available assessment and safety information that the child's safety is compromised by the refusal, the DR supervisor will re-direct the report to the investigation pathway in
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accordance with subsection (e)(1). If no safety concerns are identified, the case will be closed.

   g) No Formal Determination of Maltreatment
   Family members whose case follows an assessment pathway are not labeled as perpetrators. Children in an assessment pathway case are not labeled victims. Names of children or family members involved in the assessment pathway are not entered in the State Central Register, and services are provided without a formal substantiation of alleged maltreatment.

(Source: Added at 34 Ill. Reg. _____, effective ____________)
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Licensing Standards for Group Homes

2) Code Citation: 89 Ill. Adm. Code 403

3) Section Number: Proposed Action:
   403.21    Amend

4) Statutory Authority: Children and Family Services Act [20 ILCS 505/5]

5) A Complete Description of the Subjects and Issues Involved: The Department adopted an amendment to Section 403.21 (34 Ill. Reg. 6054, effective May 1, 2010) that required that only staff of the same gender may supervise children in sleeping and bathing areas of the group home. Due to lack of qualified male applicants, numerous group homes have been unable to provide adequate male staffing to comply. This proposed amendment to Section 403.21 removes the requirement of same-sex supervision of children in the sleeping and bathing areas of group homes.

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

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

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

9) Does this rulemaking contain incorporations by reference? No

10) Are there any proposed rulemakings to this Part pending? No

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

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

   Jeff E. Osowski
   Department of Children and Family Services
   406 East Monroe, Station # 65
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

Springfield, Illinois 62701-1498

Telephone:  217/524-1983
TTY:  217/524-3715
E-mail:  CFPolicy@idcfs.state.il.us

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

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: The proposed rulemaking will have a favorable impact on group homes.

B) Reporting, bookkeeping or other procedures required for compliance: No new requirements

C) Types of professional skills necessary for compliance: No new requirements

14) Regulatory Agenda on which this rulemaking was summarized: The proposed rulemaking was not included on either of the 2 most recent agendas because the revisions were not anticipated at the time the regulatory agenda was completed.

The full text of the Proposed Amendment begins on the next page.
Section
403.1 Purpose
403.2 Definitions
403.3 Effective Date of Standards (Repealed)
403.4 Application for License
403.5 Application for Renewal of License
403.6 Provisions Pertaining to the License
403.7 Provisions Pertaining to Permits
403.8 Child Care Services
403.9 Discipline of Children
403.10 Health and Safety
403.11 Education
403.12 Religion
403.13 Recreation and Leisure Time
403.14 Food and Nutrition
403.15 Background Checks
403.16 Professional Services
403.17 Agency Supervision of the Group Home
403.18 Child Care Staff
403.19 Professional Staff
403.20 Support Staff
403.21 Staff Coverage
403.22 Health Requirements for Staff and Volunteers
403.23 Live-in Staff (Repealed)
403.24 Night Duty Staff (Repealed)
403.25 Staff Training
403.26 Physical Facilities
403.27 Required Written Consents
403.28 Records and Reports
403.29 Severability of This Part

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10], the
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Children's Product Safety Act [430 ILCS 125], the Carbon Monoxide Alarm Detector Act [430 ILCS 135/10], and the Smoke Free Illinois Act [410 ILCS 82].


Section 403.21 Staff Coverage

a) A group home shall employ at least 2 full-time child care staff who shall meet the requirements for child care staff enumerated in Section 403.18. The ratio of child care staff to children may include other staff if they meet the qualifications of child care staff as prescribed in Section 403.18. The group home or supervising agency shall ensure that groupings and supervision of children provides for individual attention and consideration of each child. Child care staff shall provide supervision to children at all times. Children shall be under the direct supervision of staff of the same sex while in their sleeping or bathroom areas. Other staff shall perform child care staff duties only when their other assignments and time allow. The following staffing patterns shall be followed:

1) At least one child care staff shall be on duty when one or more children are present. At least 2 child care staff shall be on duty when:

A) Six or more children under age 16 are present, except that one child care staff person may care for 6 or more children when all of the children present are 16 years of age or older; are not diagnosed moderately to severely developmentally or physically disabled; can provide for their own personal needs; do not assault; and are not security risks.

B) More than 4 children are present in the home who are under the age of 6 or are diagnosed as developmentally or physically disabled to an extent requiring close supervision or assistance with their own personal care needs or mobility.
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C) When the group home or supervising agency has determined that the number of staff on duty is not sufficient to carry out the individual service plans and meet the individual needs of the children in care, additional staff shall be on duty and actively working with the children in care.

2) When an emergency arises such as injury of a child that would necessitate taking the child to the hospital, or an emergency in child care staff's personal life, or any other emergency, the child welfare agency under whose auspices the group home operates is responsible for assuring appropriate staff coverage. If staff on call are used they shall meet the requirements of child care staff and shall be able to be in the group home within 20 minutes. Children shall never be left in the care of other children.

3) In instances where the group home operates under a "shift" staffing pattern, at least one member of the night duty staff shall be awake and alert to assure protection and supervision of the children in care.

4) In instances where the group home operates under a live-in staffing pattern, the live-in staff shall be provided with their own living quarters so located as to assure that they are readily available and within hearing distance from the children.

A) The awake night staff requirement may be waived in writing by the Director of the Department or his designee.

B) A request for a waiver of the awake night staff requirement shall be in writing and it shall be the responsibility of the facility to demonstrate that the well-being of the children can be protected in accordance with the requirements of this Section above requirement in Section 403.21(a)(5).

b) During the absence of regular child care personnel for time off, vacations, sick leave or any other absence (such as attendance at conferences or meetings etc.), substitute child care personnel must be provided. These substitutes shall meet the requirements of child care staff as specified in Section 403.18.

(Source: Amended at 34 Ill. Reg. ______, effective ____________ )
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

1) **Heading of the Part:** Medical Payment

2) **Code Citation:** 89 Ill. Adm. Code 140

3) **Section Number:** Proposed Action:
   
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<tr>
<td>140.438</td>
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<td>July 30, 2010; 34 Ill. Reg.10967</td>
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4) **Statutory Authority:** Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) **Complete Description of the Subjects and Issues Involved:** This rulemaking adds Independent Diagnostic Testing Facilities (IDTFs) as eligible providers of service. The technical services provided by IDTFs, which are all covered by the State's Medical Assistance programs, were once available only at hospitals but are more frequently performed by hospital-based clinics and other off-site providers. Under current practice, an IDTF can only be reimbursed for the professional interpretation of the test by billing under the referring physician's provider number. This amendment provides a mechanism for the IDTF to receive payment for the technical component of the service. These services include, but are not limited to: diagnostic sonograms (abdominal, pelvic and small parts ultrasound); echocardiography, arterial, venous and carotid examination, with Doppler and color flow analysis; cardiac monitoring; cardiac diagnostic testing; mammography; radiological imaging; mobile imaging services; and sleep studies.

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

7) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

8) **Does this rulemaking contain an automatic repeal date?** No

9) **Does this rulemaking contain incorporations by reference?** No

10) **Are there any other proposed rulemakings pending on this Part?** Yes

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11) **Statement of Statewide Policy Objectives**: This rulemaking does not affect units of local government.

12) **Time, Place, and manner in which interested persons may comment on this proposed rulemaking**: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

   Jeanette Badrov  
   General Counsel  
   Illinois Department of Healthcare and Family Services  
   201 South Grand Avenue E., 3rd Floor  
   Springfield IL  62763-0002  

   217/782-1233

   The Department requests the submission of written comments within 30 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

13) **Initial Regulatory Flexibility Analysis**:

   A) **Types of small businesses, small municipalities and not-for-profit corporations affected**: Businesses licensed and operating as independent diagnostic testing facilities.

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

   C) **Types of professional skills necessary for compliance**: None

14) **Regulatory Agenda on which this rulemaking was summarized**: January 2010

   The full text of the Proposed Amendment begins on the next page:
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 140
MEDICAL PAYMENT

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effective November 1, 2001; emergency amendment at 25 Ill. Reg. 16127, effective November 28, 2001, for a maximum of 150 days; emergency amendment at 25 Ill. Reg. 16292, effective December 3, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 514, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 663, effective January 7, 2002; amended at 26 Ill. Reg. 4781, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 5984, effective April 15, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 7285, effective April 29, 2002; emergency amendment at 26 Ill. Reg. 8594, effective June 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 11259, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 12461, effective July 29, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16593, effective October 22, 2002; emergency amendment at 26 Ill. Reg. 12772, effective August 12, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13641, effective September 3, 2002; amended at 26 Ill. Reg. 14789, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 15076, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16303, effective October 25, 2002; amended at 26 Ill. Reg. 17751, effective November 27, 2002; amended at 27 Ill. Reg. 7823, effective May 1, 2003; amended at 27 Ill. Reg. 9157, effective June 2, 2003; emergency amendment at 27 Ill. Reg. 10813, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 13784, effective August 1, 2003; amended at 27 Ill. Reg. 14799, effective September 5, 2003; emergency amendment at 27 Ill. Reg. 15584, effective September 20, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16161, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18629, effective November 26, 2003; amended at 28 Ill. Reg. 4958, effective March 3, 2004; emergency amendment at 28 Ill. Reg. 6622, effective April 19, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7081, effective May 3, 2004; emergency amendment at 28 Ill. Reg. 8108, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9640, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10135, effective July 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11161, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12198, effective August 11, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13775, effective October 1, 2004; amended at 28 Ill. Reg. 14804, effective October 27, 2004; amended at 28 Ill. Reg. 15513, effective November 24, 2004; amended at 29 Ill. Reg. 831, effective January 1, 2005; amended at 29 Ill. Reg. 6945, effective May 1, 2005; emergency amendment at 29 Ill. Reg. 8509, effective June 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12534, effective August 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 14957, effective September 30, 2005; emergency amendment at 29 Ill. Reg. 15064, effective October 1, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 15985, effective October 5, 2005, for the remainder of the maximum 150 days; emergency
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES
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Section 140.438  Diagnostic Imaging Services

a) Payment for diagnostic and imaging services may be made to the following providers that are independent of both a physician's office and a hospital: Definitions

1) "Imaging Centers that are Center" means any distinct entities that operate primarily for the purpose of providing diagnostic imaging services. Services provided at an imaging center shall be reimbursed on a fee-for-service basis only and shall not include hospital based clinics that are adjacent to or on the premises of a hospital.

2) Mammography Screening Centers. "Imaging Services" include the technical services, the professional services or both the technical and professional services provided at an imaging center.

3) Portable X-ray Facilities. "Technical Component" includes services that are furnished in connection with imaging services such as the use of the equipment.

4) Independent Diagnostic Testing Facilities (IDTFs) that are a fixed location, a mobile entity, or an individual non-physician practitioner. "Professional Component" includes services that are furnished by a medical professional in reading the image provided by an imaging center. The professional must be practicing within the scope of his or her specific practice Act and professional license.

5) "Mammography Screening Centers" provide low level preventive, diagnostic, or maintenance screening mammography services, and must be Illinois Department of Nuclear Safety certified screening mammography centers see (32 Ill. Adm. Code 370) that are registered with the Medicare program.

6) "Portable X-ray Services" are imaging services limited to x-ray and certain other diagnostic procedures, certified by Medicare, that are performed at the client's place of residence and that are ordered by a referring physician.

b) Participation Requirements for Imaging Centers
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1) To participate in the Illinois Medical Assistance program, an Imaging Center must, in addition to any other Department requirements, be licensed or certified:

   A) for participation in the Medicare program; or

   B) by the Joint Commission on Accreditation of Health Care Organizations (JCAHO); or

   C) by a state, local or public health department; or

   D) by any government agency having jurisdiction over the services provided and/or the equipment being used.

2) Portable X-ray Facilities shall be approved and certified for participation in the Medicare program. Portable x-ray services may also include diagnostic procedures other than x-rays (for example, EKGs).

3) Mammography Screening Centers shall be certified by the Illinois Department of Nuclear Safety or the certifying agency in the state where the center is located.

4) Independent Diagnostic Testing Facilities shall be approved and certified for participation in the Medicare program.

Reimbursement Services Covered by Imaging Centers

1) Diagnostic and imaging services shall be reimbursed on a fee-for-service basis only. The Department will reimburse imaging centers for the following services that are paid on a fee-for-service basis only:

   A) Magnetic Resonance Imaging (MRI);

   B) Mammograms;

   C) Fluoroscopy services;

   D) Ultrasound;
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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E) CT scans;
F) Nuclear medicine; and
G) X-rays.

2) Reimbursement may include the technical services, the professional services or both the technical and professional services.

32) Reimbursement shall be made for only those diagnostic or imaging services that have been ordered in writing by the referring practitioner as being essential to diagnosis and treatment. The practitioner must include the diagnosis or condition on the written request.

43) Reimbursement shall be made only to providers who meet all applicable license, enrollment and reimbursement conditions of the Department.

5) Reimbursement to IDTFs shall be made for only those diagnostic and imaging tests certified by Medicare.

6) Except for mammograms, reimbursement shall not be made for routine screening x-rays.

d) Services Not Covered by Imaging Centers

1) Portable x-ray services provided at a place other than the recipient's place of residence.

2) Routine screening x-rays, except for mammograms.

de) Record Requirements for Imaging Centers

1) In addition to the record requirements specified in Section 140.28, providers of diagnostic and imaging services must comply with the administrative rules of the Illinois Department of Public Health governing the maintenance of medical records (77 Ill. Adm. Code 450, Illinois Clinical Laboratories Code).
2) The basic records that must be retained include:

A) Patient identification.

B) Medical records containing the dates of service and the name of the referring physician.

C) The referring practitioner's written orders.

D) Copies of reports to referring practitioners.

E) The report of the reading by the professional practitioner if both professional and technical components are billed by the imaging center.

F) The report of the reading by the professional practitioner that must be retained in the professional practitioner's office if only the professional component is billed by the practitioner.

G) Records that verify usual and customary charges to the general public.

3) Medical records for Medical Assistance program clients must be made available to the Department or its designated representative in the performance of audits or investigations.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)
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1) **Heading of the Part**: RCRA Permit Program

2) **Code Citation**: 35 Ill. Adm. Code 703

3) **Section Number**: 703.APPENDIX
   **Proposed Action**: Amend

4) **Statutory Authority**: 415 ILCS 5/7.2, 22.4, and 27

5) **A Complete Description of the Subjects and Issues Involved**: The following briefly describes the subjects and issues involved in the docket R09-16/R10-4 (consolidated) rulemaking of which the amendment to Part 703 is a single segment. Also affected are 35 Ill. Adm. Code 720, 721, 722, 724, and 725, which are covered by separate Notices in this issue of the *Illinois Register*. A comprehensive description is contained in the Board's opinion and order of June 17, 2010, proposing amendments in docket R09-16/R10-4 (consolidated), which opinion and order is available from the address below.

This proceeding updates the Illinois Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules to correspond with amendments adopted by the United States Environmental Protection Agency (USEPA) that appeared in the *Federal Register* during a single update period. The consolidated dockets and time periods that are involved in this proceeding are the following:

<table>
<thead>
<tr>
<th>Docket</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>R09-16</td>
<td>Federal RCRA Subtitle C hazardous waste amendments that occurred during the period July 1, 2008 through December 31, 2008 and June 15, 2010.</td>
</tr>
<tr>
<td>R10-4</td>
<td>Federal RCRA Subtitle C hazardous waste amendments that occurred during the period January 1, 2009 through June 30, 2009.</td>
</tr>
</tbody>
</table>

The R09-16 docket amends rules in Parts 703, 720, 721, and 722. The amendments to the various Parts are inter-related. The following table briefly summarizes the federal actions in the update period:

<table>
<thead>
<tr>
<th>Date</th>
<th>Action Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 30, 2008 (73 Fed. Reg. 64668)</td>
<td>USEPA amended the definition of &quot;solid waste&quot; rule to exclude certain reclaimed &quot;hazardous secondary materials&quot; (HSMs) from regulation as hazardous waste.</td>
</tr>
</tbody>
</table>
POLLUTION CONTROL BOARD

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<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 1, 2008</td>
<td>USEPA adopted a set of optional alternative hazardous waste generator requirements applicable to college and university laboratories and other facilities affiliated with colleges and universities.</td>
</tr>
<tr>
<td>December 19, 2008</td>
<td>USEPA added exclusion for emission-comparable fuel (ECF) to its existing excluded fuels rule, which previously excluded only &quot;comparable fuels&quot; and &quot;synthesis gas fuels&quot; from the definition of solid waste. USEPA further amended the comparable fuels exclusion to accommodate the addition of the exclusion for ECF and to make a series of technical corrections to what was previously known &quot;syngas/comparable fuels&quot; rule, and which is now called the &quot;excluded fuels&quot; rule.</td>
</tr>
</tbody>
</table>

In addition to the federal actions that fall within the timeframe of this docket, the Board included one additional federal action that occurred later. This additional action directly impacted one of the actions that USEPA took within the timeframe that is involved.

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 15, 2010</td>
<td>USEPA withdrew the ECF rule from the December 19, 2008 amendments to the excluded fuels rule. The corrective and clarifying amendments of December 19, 2008 remained unaffected by this withdrawal.</td>
</tr>
</tbody>
</table>

The R10-4 docket amends rules in Parts 720, 722, 724, and 725. The amendments to the various Parts are inter-related. The following table briefly summarizes the federal actions in the update period:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 25, 2009</td>
<td>USEPA amended various segments of its regulations to reflect reorganization within its various offices. Among the amendments were revisions to hazardous waste rules. USEPA changed &quot;Office of Solid Waste&quot; to the new name, &quot;Office of Resource Conservation and Recovery.&quot;</td>
</tr>
</tbody>
</table>

Thus, the Board is acting in this consolidated R09-16/R10-4 (consolidated) docket on the following USEPA amendments:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 30, 2008</td>
<td>Amendments to the definition of &quot;solid waste&quot; rule.</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 1, 2008</td>
<td>Adoption of optional alternative hazardous waste generator requirements for college and university laboratories.</td>
</tr>
<tr>
<td>(73 Fed. Reg. 64668)</td>
<td></td>
</tr>
<tr>
<td>December 19, 2008</td>
<td>Added exclusion for emission-comparable fuel (ECF) to its existing excluded fuels rule and technical corrections to the existing comparable fuels exclusion (&quot;syngas/comparable fuels&quot; rule), which is now called the &quot;excluded fuels&quot; rule.</td>
</tr>
<tr>
<td>(73 Fed. Reg. 77954)</td>
<td></td>
</tr>
<tr>
<td>June 25, 2009</td>
<td>Changed the name &quot;Office of Solid Waste&quot; to &quot;Office of Resource Conservation and Recovery.&quot;</td>
</tr>
<tr>
<td>(74 Fed. Reg. 30228)</td>
<td></td>
</tr>
<tr>
<td>June 15, 2010</td>
<td>Withdrawal of the December 19, 2008 ECF rule amendments to the excluded fuels rule.</td>
</tr>
<tr>
<td>(75 Fed. Reg. 33712)</td>
<td></td>
</tr>
</tbody>
</table>

Specifically, the amendment to Part 703 implements segments of the federal amendments of October 30, 2008. The amendment designates operation under an exclusion from the definition of solid waste a class 1 permit modification that requires prior Agency approval.

Tables appear in the Board's opinion and order of June 17, 2010 in docket R09-16/R10-4 (consolidated) that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 opinion and order in docket R09-16/R10-4 (consolidated).

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the IAPA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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

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

8) Does this rulemaking contain an automatic repeal date? No
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9) Does this rulemaking contain incorporations by reference? No. Although the existing text of Part 703 includes incorporations by reference, the present amendment does not affect those segments of the text.

11) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

12) Time, Place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-16/R10-4 (consolidated) and be addressed to:

   John T. Therriault, Assistant Clerk
   Illinois Pollution Control Board
   State of Illinois Center, Suite 11-500
   100 W. Randolph St.
   Chicago, IL 60601

   Please direct inquiries to the following person and reference docket R09-16/R10-4 (consolidated):

   Michael J. McCambridge
   Staff Attorney
   Illinois Pollution Control Board
   100 W. Randolph 11-500
   Chicago, IL 60601

   Phone: 312/814-6924
   E-mail: mccambm@ipcb.state.il.us

   Request copies of the Board's opinion and order at 312/814-3620, or download a copy from the Board's Website at http:\www.ipcb.state.il.us.

13) Initial regulatory flexibility analysis:

   A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small
POLLUTION CONTROL BOARD

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municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendment require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendment may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

14) Regulatory agenda on which this rulemaking was summarized: July 2009 and January 2010

The full text of the Proposed Amendment begins on the next page:
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITS

PART 703
RCRA PERMIT PROGRAM

SUBPART A: GENERAL PROVISIONS

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<td>Scope and Relation to Other Parts</td>
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<tr>
<td>703.101</td>
<td>Purpose</td>
</tr>
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<td>703.102</td>
<td>Electronic Reporting</td>
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<tr>
<td>703.110</td>
<td>References</td>
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SUBPART B: PROHIBITIONS

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<td>Prohibitions in General</td>
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<td>703.121</td>
<td>RCRA Permits</td>
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<td>703.122</td>
<td>Specific Inclusions in Permit Program</td>
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<tr>
<td>703.123</td>
<td>Specific Exclusions from Permit Program</td>
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<td>Discharges of Hazardous Waste</td>
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<td>Reapplying for a Permit</td>
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<td>703.126</td>
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<td>703.127</td>
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</table>

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<th>Section</th>
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<td>703.141</td>
<td>Permits by Rule</td>
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<td>Application by Existing HWM Facilities and Interim Status Qualifications</td>
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<td>703.151</td>
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703.157 Grounds for Termination of Interim Status
703.158 Permits for Less Than an Entire Facility
703.159 Closure by Removal
703.160 Procedures for Closure Determination
703.161 Enforceable Document for Post-Closure Care

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703.184 Facility Location Information
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703.189 Additional Information Required to Assure Compliance with MACT Standards
703.191 Public Participation: Pre-Application Public Notice and Meeting
703.192 Public Participation: Public Notice of Application
703.193 Public Participation: Information Repository
703.200 Specific Part B Application Information
703.201 Containers
703.202 Tank Systems
703.203 Surface Impoundments
703.204 Waste Piles
703.205 Incinerators that Burn Hazardous Waste
703.206 Land Treatment
703.207 Landfills
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703.209 Miscellaneous Units
703.210 Process Vents
703.211 Equipment
703.212 Drip Pads
703.213 Air Emission Controls for Tanks, Surface Impoundments, and Containers
703.214 Post-Closure Care Permits
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703.221 Alternative Compliance with the Federal NESHAPS
703.222 Incinerator Conditions Prior to Trial Burn
703.223 Incinerator Conditions During Trial Burn
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703.225 Trial Burns for Existing Incinerators
703.230 Land Treatment Demonstration
703.231 Research, Development and Demonstration Permits
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703.234 Remedial Action Plans
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703.244 Notice of Planned Changes (Repealed)
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703.272 Causes for Modification or Reissuance
703.273 Facility Siting
703.280 Permit Modification at the Request of the Permittee
703.281 Class 1 Modifications
703.282 Class 2 Modifications
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703.283 Class 3 Modifications

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703.300 Special Regulatory Format
703.301 General Information
703.302 Applying for a RAP
703.303 Getting a RAP Approved
703.304 How a RAP May Be Modified, Reissued, or Terminated
703.305 Operating Under A RAP
703.306 Obtaining a RAP for an Off-Site Location

SUBPART I: INTEGRATION WITH MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY (MACT) STANDARDS

Section
703.320 Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions from Startup, Shutdown, and Malfunction Events

SUBPART J: RCRA STANDARDIZED PERMITS FOR STORAGE AND TREATMENT UNITS

Section
703.350 General Information About RCRA Standardized Permits
703.351 Applying for a RCRA Standardized Permit
703.352 Information That Must Be Kept at the Facility
703.353 Modifying a RCRA Standardized Permit

703. APPENDIX Appendix A Classification of Permit Modifications

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

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Section 703. Appendix A  Classification of Permit Modifications

Class Modifications

A. General Permit Provisions

1  1. Administrative and informational changes.

1  2. Correction of typographical errors.

1  3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).

4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:

1   a. To provide for more frequent monitoring, reporting, or maintenance.

2   b. Other changes.

5. Schedule of compliance:

1*  a. Changes in interim compliance dates, with prior approval of the Agency.

3   b. Extension of final compliance date.

1*  6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Agency.

1*  7. Changes in ownership or operational control of a facility, provided the procedures of Section 703.260(b) are followed.

1*  8. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).

1*  9. Changes to remove permit conditions applicable to a unit excluded pursuant to the provisions of 35 Ill. Adm. Code 721.104.
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10. Changes in the expiration date of a permit issued to a facility at which all units are excluded pursuant to the provisions of 35 Ill. Adm. Code 721.104.

B. General Facility Standards

1. Changes to waste sampling or analysis methods:
   a. To conform with Agency guidance or Board regulations.
   b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods.
   c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.
   d. Other changes.

2. Changes to analytical quality assurance or quality control plan:
   a. To conform with agency guidance or regulations.
   b. Other changes.

3. Changes in procedures for maintaining the operating record.

4. Changes in frequency or content of inspection schedules.

5. Changes in the training plan:
   a. That affect the type or decrease the amount of training given to employees.
   b. Other changes.

6. Contingency plan:
   a. Changes in emergency procedures (i.e., spill or release response
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procedures).

1  b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.

2  c. Removal of equipment from emergency equipment list.

1  d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change must be reviewed under the same procedures as the permit modification.

7. CQA plan:

1  a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.

2  b. Other changes.

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change must be reviewed under the same procedures as a permit modification.

C. Groundwater Protection

1. Changes to wells:

2  a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system.

1  b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.
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1*  2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the Agency.

1*  3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the Agency.


5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs (Alternate Concentration Limits)):

3   a. As specified in the groundwater protection standard.

2   b. As specified in the detection monitoring program.

2  6. Changes to a detection monitoring program as required by 35 Ill. Adm. Code 724.198(h), unless otherwise specified in this Appendix.

7. Compliance monitoring program:

3   a. Addition of compliance monitoring program as required by 35 Ill. Adm. Code 724.198(g)(4) and 724.199.

2   b. Changes to a compliance monitoring program as required by 35 Ill. Adm. Code 724.199(j), unless otherwise specified in this Appendix.

8. Corrective action program:

3   a. Addition of a corrective action program as required by 35 Ill. Adm. Code 724.199(i)(2) and 724.200.

2   b. Changes to a corrective action program as required by 35 Ill. Adm. Code 724.200(h), unless otherwise specified in this Appendix.

D. Closure
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1. Changes to the closure plan:

1* a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Agency.

1* b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility or extension of the closure period, with prior approval of the Agency.

1* c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Agency.

1* d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Agency.

2 e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this Appendix.

2 f. Extension of the closure period to allow a landfill, surface impoundment, or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 35 Ill. Adm. Code 724.213(d) or (e).

3 2. Creation of a new landfill unit as part of closure.

3. Addition of the following new units to be used temporarily for closure activities:

3 a. Surface impoundments.

3 b. Incinerators.


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2. e. Tanks or containers (other than specified in paragraph D(3)(f) below).

1* f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Agency.

2. g. Staging piles.

E. Post-Closure

1. 1. Changes in name, address, or phone number of contact in post-closure plan.

2. 2. Extension of post-closure care period.

3. 3. Reduction in the post-closure care period.

1. 4. Changes to the expected year of final closure, where other permit conditions are not changed.

2. 5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.

F. Containers

1. Modification or addition of container units:

3. a. Resulting in greater than 25 percent increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a).

2. b. Resulting in up to 25 percent increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a).

1. c. Modification or addition of container units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards, with prior approval of the Agency. This modification may also involve the
addition of new waste codes or narrative description of wastes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

2. Modification of container units without an increased capacity or alteration of the system:

2   a. Modification of a container unit without increasing the capacity of the unit.

1   b. Addition of a roof to a container unit without alteration of the containment system.

3. Storage of different wastes in containers, except as provided in F(4):

3   a. That require additional or different management practices from those authorized in the permit.

2   b. That do not require additional or different management practices from those authorized in the permit.

Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

2*   a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

1*   b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).
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G. Tanks

1. Modification of a tank unit, secondary containment system, or treatment process that increases tank capacity, adds a new tank, or alters treatment, specified as follows:

3. a. Modification or addition of tank units resulting in greater than 25 percent increase in the facility's tank capacity, except as provided in paragraphs G(1)(c), G(1)(d), and G(1)(e).

2. b. Modification or addition of tank units resulting in up to 25 percent increase in the facility's tank capacity, except as provided in paragraphs G(1)(d) and G(1)(e).

2. c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.

1*. d. After prior approval of the Agency, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.

1*. e. Modification or addition of tank units or treatment processes that are necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards, with prior approval of the Agency. This modification may also involve the addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

2. 2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.

1. 3. Replacement of a tank with a tank that meets the same design standards and has a capacity within ± 10 percent of the replaced tank provided:
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1. a. The capacity difference is no more than 1500 gallons (5680 ℓ),
    b. The facility's permitted tank capacity is not increased, and
    c. The replacement tank meets the same conditions in the permit.

2. 4. Modification of a tank management practice.

5. Management of different wastes in tanks:

   a. That require additional or different management practices, tank design, different fire protection specifications or significantly different tank treatment process from that authorized in the permit, except as provided in paragraph G(5)(c).

   b. That do not require additional or different management practices or tank design, different fire protection specification, or significantly different tank treatment process than authorized in the permit, except as provided in paragraph G(5)(d).

   Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

1* c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards. The modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

1 d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.
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H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.

2. Replacement of a surface impoundment unit.

3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.


5. Treatment, storage, or disposal of different wastes in surface impoundments:

   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.

   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.

   Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

   c. That are wastes restricted from land disposal that meet the applicable treatment standards. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

   d. That are residues from wastewater treatment or incineration, provided the disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2) (Procedures for Case-by-Case Extensions to an Effective Date),
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incorporated by reference in 35 Ill. Adm. Code 720.111(b), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).


7. Changes in response action plan:

3  a. Increase in action leakage rate.

3  b. Change in a specific response reducing its frequency or effectiveness.

2  c. Other changes.

Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles, except those complying with 35 Ill. Adm. Code 724.350(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 35 Ill. Adm. Code 724.350(c).

1. Modification or addition of waste pile units:

3  a. Resulting in greater than 25 percent increase in the facility's waste pile storage or treatment capacity.

2  b. Resulting in up to 25 percent increase in the facility's waste pile storage or treatment capacity.

2  2. Modification of waste pile unit without increasing the capacity of the unit.

1  3. Replacement of a waste pile unit with another waste pile unit of the
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same design and capacity and meeting all waste pile conditions in the permit.


5. Storage or treatment of different wastes in waste piles:
   a. That require additional or different management practices or different design of the unit.
   b. That do not require additional or different management practices or different design of the unit.

Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

6. Conversion of an enclosed waste pile to a containment building unit.

Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.

2. Replacement of a landfill.

3. Addition or modification of a liner, leachate collection system, leachate detection system, runoff control, or final cover system.

4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, runoff control, or final cover system.

5. Modification of a landfill management practice.

6. Landfill different wastes:
   a. That require additional or different management practices,
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different design of the liner, leachate collection system, or leachate detection system.

2  b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.

Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

1  c. That are wastes restricted from land disposal that meet the applicable treatment standards. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

1  d. That are residues from wastewater treatment or incineration, provided the disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2) (Procedures for Case-by-Case Extensions to an Effective Date), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

1*  7. Modification of unconstructed units to comply with 35 Ill. Adm. Code 724.351(c), 724.352, 724.353, 724.354(c), 724.401(c), 724.402, 724.403(c), and 724.404.

8. Changes in response action plan:

3  a. Increase in action leakage rate.

3  b. Change in a specific response reducing its frequency or effectiveness.

2  c. Other changes.

Note: See Section 703.280(g) for modification procedures to be
K. Land Treatment

3  1. Lateral expansion of or other modification of a land treatment unit to increase area extent.

2  2. Modification of runon control system.

3  3. Modify runoff control system.

2  4. Other modification of land treatment unit component specifications or standards required in permit.

5. Management of different wastes in land treatment units:

3  a. That require a change in permit operating conditions or unit design specifications.

2  b. That do not require a change in permit operating conditions or unit design specifications.

   Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment unit management practice to:

3  a. Increase rate or change method of waste application.

1  b. Decrease rate of waste application.

2  7. Modification of a land treatment unit management practice to change measures of pH or moisture content or to enhance microbial or chemical reactions.

3  8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops or to modify operating plans for distribution of animal feeds resulting from such crops.
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10. Changes in the unsaturated zone monitoring system that result in a change to the location, depth, or number of sampling points or which replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements.

11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points or which replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements.

12. Changes in background values for hazardous constituents in soil and soil-pore liquid.

13. Changes in sampling, analysis, or statistical procedure.

14. Changes in land treatment demonstration program prior to or during the demonstration.

15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Agency's prior approval has been received.

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Agency.

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely,
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where the conditions for the second demonstration are not substantially
the same as the conditions for the first demonstration.

2  18. Changes in vegetative cover requirements for closure.

L. Incinerators, Boilers and Industrial Furnaces

3  1. Changes to increase by more than 25 percent any of the following
limits authorized in the permit: A thermal feed rate limit, a feedstream
feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate
limit, or an ash feed rate limit. The Agency must require a new trial
burn to substantiate compliance with the regulatory performance
standards unless this demonstration can be made through other means.

2  2. Changes to increase by up to 25 percent any of the following limits
authorized in the permit: A thermal feed rate limit, a feedstream feed
rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or
an ash feed rate limit. The Agency must require a new trial burn to
substantiate compliance with the regulatory performance standards
unless this demonstration can be made through other means.

3  3. Modification of an incinerator, boiler, or industrial furnace unit by
changing the internal size or geometry of the primary or secondary
combustion units; by adding a primary or secondary combustion unit;
by substantially changing the design of any component used to remove
HCl/Cl2, metals, or particulate from the combustion gases; or by
changing other features of the incinerator, boiler, or industrial furnace
that could affect its capability to meet the regulatory performance
standards. The Agency must require a new trial burn to substantiate
compliance with the regulatory performance standards, unless this
demonstration can be made through other means.

2  4. Modification of an incinerator, boiler, or industrial furnace unit in a
manner that will not likely affect the capability of the unit to meet the
regulatory performance standards but which will change the operating
conditions or monitoring requirements specified in the permit. The
Agency may require a new trial burn to demonstrate compliance with
the regulatory performance standards.
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5. Operating requirements:

3   a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide or hydrocarbon concentration, maximum temperature at the inlet to the PM emission control system, or operating parameters for the air pollution control system. The Agency must require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.

3   b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.

2   c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.

6. Burning different wastes:

3   a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit, the Agency must require a new trial burn to substantiate compliance with the regulatory performance standards, unless this demonstration can be made through other means.

2   b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.

Note: See Section 703.280(g) for modification procedures to be used for the management of newly listed or identified wastes.

7. Shakedown and trial burn:
2 a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period or the period immediately following the trial burn.

1* b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Agency.

1* c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Agency.

1* d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Agency.

1 8. Substitution of an alternative type of non-hazardous waste fuel that is not specified in the permit.


1* 10. Changes to RCRA Permit provisions needed to support transition to federal subpart EEE of 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), incorporated by reference in 35 Ill. Adm. Code 720.111(b), provided the procedures of Section 703.280(k) are followed.

M. Containment Buildings

1. Modification or addition of containment building units:

3 a. Resulting in greater than 25 percent increase in the facility's
containment building storage or treatment capacity.

2. b. Resulting in up to 25 percent increase in the facility's containment building storage or treatment capacity.

2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.

3. Replacement of a containment building with a containment building that meets the same design standards provided:

   a. The unit capacity is not increased.

   b. The replacement containment building meets the same conditions in the permit.

2. 4. Modification of a containment building management practice.

5. Storage or treatment of different wastes in containment buildings:

   a. That require additional or different management practices.

   b. That do not require additional or different management practices.

N. Corrective Action


2. 2. Approval of a temporary unit or time extension pursuant to 35 Ill. Adm. Code 724.653.

2. 3. Approval of a staging pile or staging pile operating term extension pursuant to 35 Ill. Adm. Code 724.654.

O. Burden Reduction

1. Approval of reduced inspection frequency for a Performance Track member facility for one of the following:
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1*   d. An area subject to spills pursuant to 35 Ill. Adm. Code 724.115(b)(4).


1  3. A change to recordkeeping and reporting requirements pursuant to any of the following: 35 Ill. Adm. Code 724.156(i), 724.443(a)(2), 724.961(b)(1) and (d), 724.962(a)(2), 724.296(f), 724.200(g), or 724.213(e)(5).

1  4. A change to inspection frequency for a tank system pursuant to 35 Ill. Adm. Code 724.295(b).

1  5. A change to a detection and compliance monitoring program pursuant to 35 Ill. Adm. Code 724.198(d), (g)(2), (g)(3), or 724.199(f) or (g).

Note: * indicates modifications requiring prior Agency approval.


(Source: Amended at 34 Ill. Reg. ______, effective ___________)

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1) Heading of the Part: Hazardous Waste Management System: General

2) Code Citation: 35 Ill. Adm. Code 720

3) Section Numbers: Proposed Action:

    720.110       Amend
    720.111       Amend
    720.122       Amend
    720.130       Amend
    720.133       Amend
    720.134       New Section
    720.142       New Section
    720.143       New Section

4) Statutory Authority: 415 ILCS 5/7.2, 13, 22.4, and 27.

5) A Complete Description of the Subjects and Issues Involved: The amendments to Part 720 are a single segment of the docket R09-16/R10-4 (consolidated) rulemaking that also affects 35 Ill. Adm. Code 703, 721, 722, 724, and 725, each of which is covered by a separate Notice in this issue of the Illinois Register. To save space, a more detailed description of the subjects and issues involved in the docket R09-16/R10-4 (consolidated) rulemaking in this Illinois Register only in the answer to question 5 in the Notice of Proposed Amendment for 35 Ill. Adm. Code 703. A comprehensive description is contained in the Board's opinion and order of June 17, 2010, proposing amendments in docket R09-16/R10-4 (consolidated), which opinion and order is available from the address below.

Specifically, the amendments to Part 720 implement segments of the federal amendments of October 30, 2008. The amendments add the definitions, the procedure for non-waste determination, the legitimacy rule, and the notice requirements necessary for operation.

Tables appear in the Board's opinion and order of June 17, 2010 in docket R09-16/R10-4 (consolidated) that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 opinion and order in docket R09-16/R10-4 (consolidated).
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Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the IAPA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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

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

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

9) Does this rulemaking contain incorporations by reference? Yes. Section 720.111 is the centralized location of all incorporations by reference for the purposes of 35 Ill. Adm. Code 703 through 705, 720 through 728, 730, 733, 738, and 739. The present amendments update the incorporations of federal regulations by reference to the latest versions of those regulations that are available as of December 31, 2009. The amendments also add new incorporations the following documents by reference: (1) "Accreditation Council for Graduate Medical Education: Glossary of Terms," for the purposes of the alternative standards for eligible academic entities; and (2) "North American Industry Classification System," for the purposes of the amendments to the exclusions from the definition of solid waste.

11) Are there any other proposed rulemakings pending on this Part? No

10) Statement of statewide policy objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

12) Time, Place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-16/R10-4 (consolidated) and be addressed to:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601
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Please direct inquiries to the following person and reference docket R09-16/R10-4 (consolidated):

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601

312-814-6924
E-mail: mccambm@ipcb.state.il.us

Request copies of the Board's opinion and order at 312-814-3620, or download a copy from the Board's Website at http:\\www.ipcb.state.il.us.

13) Initial regulatory flexibility analysis:

A) **Types of small businesses, small municipalities, and not-for-profit corporations affected:** This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.

B) **Reporting, bookkeeping or other procedures required for compliance:**

The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.

C) **Types of professional skills necessary for compliance:** Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

14) **Regulatory agenda on which this rulemaking was summarized:** July 2009 and January 2010

The full text of the Proposed Amendments begins on the next page:
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 720
HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

SUBPART A: GENERAL PROVISIONS

Section
720.101 Purpose, Scope, and Applicability  
720.102 Availability of Information; Confidentiality of Information  
720.103 Use of Number and Gender  
720.104 Electronic Reporting

SUBPART B: DEFINITIONS AND REFERENCES

Section
720.110 Definitions  
720.111 References

SUBPART C: RULEMAKING PETITIONS AND OTHER PROCEDURES

Section
720.120 Rulemaking  
720.121 Alternative Equivalent Testing Methods  
720.122 Waste Delisting  
720.123 Petitions for Regulation as Universal Waste  
720.130 Procedures for Solid Waste Determinations and Non-Waste Determinations  
720.131 Solid Waste Determinations  
720.132 Boiler Determinations  
720.133 Procedures for Determinations  
720.134 Non-Waste Determinations  
720.140 Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis  
720.141 Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities  
720.142 Notification Requirement for Hazardous Secondary Materials
720.143 Legitimate Recycling of Hazardous Secondary Materials

720. APPENDIX A Overview of Federal RCRA Subtitle C (Hazardous Waste) Regulations

AUTHORITY: Implementing Sections 7.2, 13, and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13, 22.4, and 27].

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SUBPART B: DEFINITIONS AND REFERENCES

Section 720.110 Definitions

When used in 35 Ill. Adm. Code 720 through 728, 733, 738, and 739 only, the following terms have the meanings given below:

"Aboveground tank" means a device meeting the definition of tank that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Agency receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after May 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion").

"Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

"Agency" means the Illinois Environmental Protection Agency.

"Ancillary equipment" means any device, including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tanks, between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

"Authorized representative" means the person responsible for the overall
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operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

"Battery" means a device that consists of one or more electrically connected electrochemical cells that is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Board" means the Illinois Pollution Control Board.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

Boiler physical characteristics.

The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and the unit's combustion chamber and primary energy recovery sections must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery sections (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and...
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The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit may be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.); or

Boiler by designation. The unit is one that the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section 720.132.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A "used, intact CRT" means a CRT whose vacuum has not been released. A "used, broken CRT" means glass removed from its housing or casing whose vacuum has been released.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Closed portion" means that portion of a facility that an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

"Component" means either the tank or ancillary equipment of a tank system.

"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste pursuant to the provisions of Subpart DD of 35 Ill. Adm. Code 724 and Subpart DD of 35 Ill. Adm. Code 725.
"Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

"Corrosion expert" means a person who, by reason of knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

Receiving broken or intact CRTs;

Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

Sorting or otherwise managing glass removed from CRT monitors.

"Designated facility" means either of the following entities:

A hazardous waste treatment, storage, or disposal facility that has been designated on the manifest by the generator, pursuant to 35 Ill. Adm. Code 722.120, of which any of the following is true:

The facility has received a RCRA permit (or interim status) pursuant to 35 Ill. Adm. Code 702, 703, and 705;
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The facility has received a RCRA permit from USEPA pursuant to 40 CFR 124 and 270 (2005);

The facility has received a RCRA permit from a state authorized by USEPA pursuant to 40 CFR 271 (2005); or

The facility is regulated pursuant to 35 Ill. Adm. Code 721.106(c)(2) or Subpart F of 35 Ill. Adm. Code 266; or

A generator site designated by the hazardous waste generator on the manifest to receive back its own waste as a return shipment from a designated hazardous waste treatment, storage, or disposal facility that has rejected the waste in accordance with 35 Ill. Adm. Code 724.172(f) or 725.172(f).

If a waste is destined to a facility in a state other than Illinois that has been authorized by USEPA pursuant to 40 CFR 271, but which has not yet obtained authorization to regulate that waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in 35 Ill. Adm. Code 733.113(a) and (c) and 733.133(a) and (c). A facility at which a particular category of universal waste is only accumulated is not a destination facility for the purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Dioxins and furans" or "D/F" means tetra-, penta-, hexa-, hepta-, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the Director of the Illinois Environmental Protection Agency.

"Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.
"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit (CAMU) into which remediation wastes are placed.

"Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation and surface water runon to an associated collection system at wood preserving plants.

"Elementary neutralization unit" means a device of which the following is true:

- It is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in 35 Ill. Adm. Code 721.122 or which are listed in Subpart D of 35 Ill. Adm. Code 721 only for this reason; and
- It meets the definition of tank, tank system, container, transport vehicle, or vessel in this Section.

"EPA hazardous waste number" or "USEPA hazardous waste number" means the number assigned by USEPA to each hazardous waste listed in Subpart D of 35 Ill. Adm. Code 721 and to each characteristic identified in Subpart C of 35 Ill. Adm. Code 721.

"EPA identification number" or "USEPA identification number" means the number assigned by USEPA pursuant to 35 Ill. Adm. Code 722 through 725 to each generator; transporter; and treatment, storage, or disposal facility.

"EPA region" or "USEPA region" means the states and territories found in any one of the following ten regions:
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Region III: Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV: Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V: Minnesota, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

Region VI: New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII: Nebraska, Kansas, Missouri, and Iowa.

Region VIII: Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX: California, Nevada, Arizona, Hawaii, Guam, American Samoa, and Commonwealth of the Northern Mariana Islands.


"Equivalent method" means any testing or analytical method approved by the Board pursuant to Section 720.120.

"Existing hazardous waste management (HWM) facility" or "existing facility" means a facility that was in operation or for which construction commenced on or before November 19, 1980. A facility had commenced construction if the owner or operator had obtained the federal, State, and local approvals or permits necessary to begin physical construction and either of the following had occurred:

A continuous on-site, physical construction program had begun; or

The owner or operator had entered into contractual obligations that could not be canceled or modified without substantial loss for physical
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construction of the facility to be completed within a reasonable time.

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and which was in operation, or for which installation was commenced, on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either of the following is true:

A continuous on-site physical construction or installation program has begun; or

The owner or operator has entered into contractual obligations that cannot be canceled or modified without substantial loss for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment, or destruction of the explosives or munitions or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an
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Explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include United States Department of Defense (USDOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and USDOD-certified civilian or contractor personnel and other federal, State, or local government or civilian personnel who are similarly trained in explosives or munitions emergency responses.

"Facility" means the following:

All contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

For the purpose of implementing corrective action pursuant to 35 Ill. Adm. Code 724.201 or 35 Ill. Adm. Code 727.201, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action pursuant to RCRA section 3008(h).

Notwithstanding the immediately-preceding paragraph of this definition, a remediation waste management site is not a facility that is subject to 35 Ill. Adm. Code 724.201, but a facility that is subject to corrective action requirements if the site is located within such a facility.

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation and the Government Printing Office.
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"Federal, State, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, State, or local hazardous waste control statutes, regulations, or ordinances.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities pursuant to 35 Ill. Adm. Code 724 and 725 are no longer conducted at the facility unless subject to the provisions of 35 Ill. Adm. Code 722.134.

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

"Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

"Gasification" means, for the purpose of complying with 35 Ill. Adm. Code 721.104(a)(12)(A), a process conducted in an enclosed device or system that is designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials, through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 35 Ill. Adm. Code 721 or whose act first causes a hazardous waste to become subject to regulation.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste pursuant to 35 Ill. Adm. Code 721.

"Hazardous secondary material generated and reclaimed under the control of the generator" means one of the following materials:
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A material that is both generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator);

A material that is generated and reclaimed at different facilities, if both of the following conditions are fulfilled:

Either the reclaiming facility is controlled by the generator, or both the generating facility and the reclaiming facility are controlled by the same person, as "person" is defined in this Section; and

The generator provides either of the following certifications:

"On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert the name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material."

or

"On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material."

For purposes of this definition, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person, as "person" is defined in this Section, shall not be deemed to "control" such facilities; or
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A material that is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and that is reclaimed by the tolling contractor, if the tolling contractor certifies the following:

"On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] that is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process."

For purposes of this definition, "tolling contractor" means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. "Toll manufacturer" means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

"Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this definition, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator.

For the purposes of Sections 721.102(a)(2)(B) and 721.104(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

"Hazardous waste" means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.


"Hazardous waste management unit" is a contiguous area of land on or in which
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hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers, and the land or pad upon which they are placed.

"Inactive portion" means that portion of a facility that is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

"Incinerator" means any enclosed device of which the following is true:

The facility uses controlled flame combustion, and both of the following are true of the facility:

The facility does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor

The facility is not listed as an industrial furnace; or

The facility meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a hazardous waste that is unsuitable for the following:

Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire, or explosion, violent reaction, toxic dusts, mists, fumes or gases, or flammable fumes or gases.

(See Appendix E to 35 Ill. Adm. Code 724 and Appendix E to 35 Ill. Adm. Code 725 for references that list examples.)
"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- Cement kilns;
- Lime kilns;
- Aggregate kilns;
- Phosphate kilns;
- Coke ovens;
- Blast furnaces;
- Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
- Titanium dioxide chloride process oxidation reactors;
- Methane reforming furnaces;
- Pulping liquor recovery furnaces;
- Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
- Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20 percent, as generated; and

Any other such device as the Agency determines to be an industrial furnace on the basis of one or more of the following factors:
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The design and use of the device primarily to accomplish recovery of material products;

The use of the device to burn or reduce raw materials to make a material product;

The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

The use of the device in common industrial practice to produce a material product; and

Other relevant factors.

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of tank whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"In operation" refers to a facility that is treating, storing, or disposing of hazardous waste.

"Injection well" means a well into which fluids are being injected. (See also "underground injection.")
"Inner liner" means a continuous layer of material placed inside a tank or container that protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days and that is neither a hazardous secondary material generator nor a reclaimer of hazardous secondary material.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

"Lamp" or "universal waste lamp" means the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, or infrared regions of the electromagnetic spectrum. Examples of common universal waste lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high-pressure sodium, and metal halide lamps.

"Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit (CAMU).

"Landfill cell" means a discrete volume of a hazardous waste landfill that uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of
landfill cells are trenches and pits.

"LDS" means leak detection system.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Liner" means a continuous layer of natural or manmade materials beneath or on the sides of a surface impoundment, landfill, or landfill cell that restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

"Manifest" means the shipping document USEPA Form 8700-22 (including, if necessary, USEPA Form 8700-22A) originated and signed by the generator or offeror that contains the information required by Subpart B of 35 Ill. Adm. Code 722 and the applicable requirements of 35 Ill. Adm. Code 722 through 727.

"Manifest tracking number" means the alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits) that is pre-printed in Item 4 of the manifest by a registered source.

"Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

"Military munitions" means all ammunition products and components produced or
used by or for the United States Department of Defense or the United States Armed Services for national defense and security, including military munitions under the control of the United States Department of Defense (USDOD), the United States Coast Guard, the United States Department of Energy (USDOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by USDOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components of these items and devices. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components of these items and devices. However, the term does include non-nuclear components of nuclear devices, managed under USDOE's nuclear weapons program after all sanitization operations required under the Atomic Energy Act of 1954 (42 USC 2014 et seq.), as amended, have been completed.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit that is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container; tank; surface impoundment; pile; land treatment unit; landfill; incinerator; boiler; industrial furnace; underground injection well with appropriate technical standards pursuant to 35 Ill. Adm. Code 730; containment building; corrective action management unit (CAMU); unit eligible for a research, development, and demonstration permit pursuant to 35 Ill. Adm. Code 703.231; or staging pile.

"Movement" means hazardous waste that is transported to a facility in an individual vehicle.

"NAICS Code" means the code number assigned a facility using the "North American Industry Classification System", incorporated by reference in Section 720.111.

"New hazardous waste management facility" or "new facility" means a facility that began operation, or for which construction commenced after November 19,
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1980. (See also "Existing hazardous waste management facility.")

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; except, however, for purposes of 35 Ill. Adm. Code 724.293(g)(2) and 725.293(g)(2), a new tank system is one for which construction commenced after July 14, 1986. (See also "existing tank system.")

"Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surfaces so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property that may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the owner controls and to which the public does not have access is also considered on-site property.

"Open burning" means the combustion of any material without the following characteristics:

- Control of combustion air to maintain adequate temperature for efficient combustion;
- Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- Control of emission of the gaseous combustion products.

(See also "incineration" and "thermal treatment.")

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person that owns a facility or part of a facility.

"Partial closure" means the closure of a hazardous waste management unit in
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accordance with the applicable closure requirements of 35 Ill. Adm. Code 724 or 725 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

"Performance Track member facility" means a facility that has been accepted by USEPA for membership in the National Environmental Performance Track Program (Program) and which is still a member of that Program. The National Environmental Performance Track Program is a voluntary, facility-based, program for top environmental performers. A program member must demonstrate a good record of compliance and past success in achieving environmental goals, and it must commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.

BOARD NOTE: The National Environmental Performance Track program is operated exclusively by USEPA. USEPA established the program in 2000 (see 65 Fed. Reg. 41655 (July 6, 2000)) and amended it in 2004 (see 69 Fed. Reg. 27922 (May 17, 2004)). USEPA confers membership in the program on application of interested and eligible entities. Information about the program is available from a website maintained by USEPA: www.epa.gov/performancetrack.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

"Personnel" or "facility personnel" means all persons who work at or oversee the operations of a hazardous waste facility and whose actions or failure to act may result in noncompliance with 35 Ill. Adm. Code 724 or 725.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant, other than any article that fulfills one of the following descriptions:

It is a new animal drug under section 201(v) of the Federal Food, Drug and Cosmetic Act (FFDCA; 21 USC 321(v)), incorporated by reference in
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Section 720.111(c);

It is an animal drug that has been determined by regulation of the federal Secretary of Health and Human Services pursuant to FFDCA section 512 (21 USC 360b), incorporated by reference in Section 720.111(c), to be an exempted new animal drug; or

It is an animal feed under FFDCA section 201(w) (21 USC 321(w)), incorporated by reference in Section 720.111(c), that bears or contains any substances described in either of the two preceding paragraphs of this definition.

BOARD NOTE: The second exception of corresponding 40 CFR 260.10 reads as follows: "Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug." This is very similar to the language of section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 USC 136(u)). The three exceptions, taken together, appear intended not to include as pesticide any material within the scope of federal Food and Drug Administration regulation. The Board codified this provision with the intent of retaining the same meaning as its federal counterpart while adding the definiteness required under Illinois law.

"Pile" means any noncontainerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage, and that is not a containment building.

"Plasma arc incinerator" means any enclosed device that uses a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Publicly owned treatment works" or "POTW" is as defined in 35 Ill. Adm. Code 310.110.

"Qualified groundwater scientist" means a scientist or engineer who has received
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a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields, as demonstrated by state registration, professional certifications, or completion of accredited university courses that enable the individual to make sound professional judgments regarding groundwater monitoring and contaminant rate and transport.

BOARD NOTE: State registration includes, but is not limited to, registration as a professional engineer with the Department of Professional Regulation, pursuant to 225 ILCS 325 and 68 Ill. Adm. Code 1380. Professional certification includes, but is not limited to, certification under the certified groundwater professional program of the National Ground Water Association.

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

"RCRA standardized permit" means a RCRA permit issued pursuant to Subpart J of 35 Ill. Adm. Code 703 and Subpart G of 35 Ill. Adm. Code 702 that authorizes management of hazardous waste. The RCRA standardized permit may have two parts: a uniform portion issued in all cases and a supplemental portion issued at the discretion of the Agency.

"Regional Administrator" means the Regional Administrator for the USEPA region in which the facility is located or the Regional Administrator's designee.

"Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.

"Remediation waste management site" means a facility where an owner or operator is or will be treating, storing, or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action pursuant to 35 Ill. Adm. Code 724.201, but a remediation waste management site is subject to corrective action requirements if the site is located in such a facility.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and which is subsequently reused to treat, store, or dispose of hazardous waste. Replacement unit does not include a unit from which waste is removed during closure, if the
subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure or corrective action plan approved by USEPA or the Agency.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) that can be expected to exhibit the average properties of the universe or whole.

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Runon" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

"SIC code" means "Standard Industrial Classification code," as assigned to a site by the United States Department of Transportation, Federal Highway Administration, based on the particular activities that occur on the site, as set forth in its publication "Standard Industrial Classification Manual," incorporated by reference in Section 720.111(a).

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and which has a total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb or less of sludge treated on a wet-weight basis.

"Small quantity generator" means a generator that generates less than 1,000 kg of hazardous waste in a calendar month.


"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. "Sorb" means to either adsorb or absorb, or
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"staging pile" means an accumulation of solid, non-flowing "remediation waste" (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the agency according to 35 ill. adm. code 724.654.

"state" means any of the several states, the district of columbia, the commonwealth of puerto rico, the virgin islands, guam, american samoa, and the commonwealth of the northern mariana islands.

"storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"sump" means any pit or reservoir that meets the definition of tank and those troughs or trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that, as used in the landfill, surface impoundment, and waste pile rules, sump means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and which is not an injection well. Examples of surface impoundments are holding, storage, settling and aeration pits, ponds, and lagoons.

"tank" means a stationary device, designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

"tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"teq" means toxicity equivalence, the international method of relating the toxicity of various dioxin and furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.
"Thermal treatment" means the treatment of hazardous waste in a device that uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element and mercury-containing ampules that have been removed from such a temperature control device in compliance with 35 Ill. Adm. Code 733.113(c)(2) or 733.133(c)(2).

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste that is directly connected to an industrial production process and which is constructed and operated in a manner that prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"Transportation" means the movement of hazardous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

"Treatability study" means the following:

A study in which a hazardous waste is subjected to a treatment process to determine the following:

Whether the waste is amenable to the treatment process;
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What pretreatment (if any) is required;

The optimal process conditions needed to achieve the desired treatment;

The efficiency of a treatment process for a specific waste or wastes; and

The characteristics and volumes of residuals from a particular treatment process;

Also included in this definition for the purpose of 35 Ill. Adm. Code 721.104(e) and (f) exemptions are liner compatibility, corrosion and other material compatibility studies, and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste, recover energy or material resources from the waste, or render the waste non-hazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

"Underground tank" means a device meeting the definition of tank whose entire surface area is totally below the surface of and covered by the ground.

"Unfit-for-use tank system" means a tank system that has been determined, through an integrity assessment or other inspection, to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous
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waste to the environment.

"United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Universal waste" means any of the following hazardous wastes that are managed pursuant to the universal waste requirements of 35 Ill. Adm. Code 733:

- Batteries, as described in 35 Ill. Adm. Code 733.102;
- Pesticides, as described in 35 Ill. Adm. Code 733.103;
- Mercury-containing equipment, as described in 35 Ill. Adm. Code 733.104; and
- Lamps, as described in 35 Ill. Adm. Code 733.105.

"Universal waste handler" means either of the following:

- A generator (as defined in this Section) of universal waste; or
- The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates the universal waste, and sends that universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

"Universal waste handler" does not mean either of the following:

- A person that treats (except under the provisions of Section 733.113(a) or (c) or 733.133(a) or (c)), disposes of, or recycles universal waste; or
- A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.
"Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"USDOT" or "Department of Transportation" means the United States Department of Transportation.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"USEPA" or "EPA" means the United States Environmental Protection Agency.

"USPS" means the United States Postal Service.

"Vessel" includes every description of watercraft used or capable of being used as a means of transportation on the water.

"Wastewater treatment unit" means a device of which the following is true:

- It is part of a wastewater treatment facility that has an NPDES permit pursuant to 35 Ill. Adm. Code 309 or a pretreatment permit or authorization to discharge pursuant to 35 Ill. Adm. Code 310;
- It receives and treats or stores an influent wastewater that is a hazardous waste as defined in 35 Ill. Adm. Code 721.103, or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 35 Ill. Adm. Code 721.103, or treats or stores a wastewater treatment sludge that is a hazardous waste as defined in 35 Ill. Adm. Code 721.103; and
- It meets the definition of tank or tank system in this Section.

"Water (bulk shipment)" means the bulk transportation of hazardous waste that is loaded or carried on board a vessel without containers or labels.
"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection" (See "underground injection.")

"Zone of engineering control" means an area under the control of the owner or operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

Section 720.111 References

The following documents are incorporated by reference for the purposes of this Part and 35 Ill. Adm. Code 702 through 705, 721 through 728, 730, 733, 738, and 739:

a) Non-Regulatory Government Publications and Publications of Recognized Organizations and Associations:

ACGME. Available from the Accreditation Council for Graduate Medical Education, 515 North State Street, Suite 2000, Chicago, IL 60654, 312-755-5000:

BOARD NOTE: Also available on the Internet for download and viewing as a PDF file at the following Internet address: http://www.acgme.org/acWebsite/about/ab_ACGMEglossary.pdf

ACI. Available from the American Concrete Institute, Box 19150, Redford Station, Detroit, Michigan 48219:

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ANSI. Available from the American National Standards Institute, 1430 Broadway, New York, New York 10018, 212-354-3300:

See ASME/ANSI B31.3 and B31.4 and supplements below in this subsection (a) under ASME.

API. Available from the American Petroleum Institute, 1220 L Street, N. W., Washington, D.C. 20005, 202-682-8000:


ASME. Available from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, 212-705-7722:


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ASTM. Available from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, 610-832-9585:


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NACE. Available from the National Association of Corrosion Engineers, 1400 South Creek Dr., Houston, TX 77084, 713-492-0535:


NFPA. Available from the National Fire Protection Association, 1 Batterymarch Park, Boston, MA 02269, 617-770-3000 or 800-344-3555:


NTIS. Available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, 703-605-6000 or 800-553-6847 (Internet address: www.ntis.gov):
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BOARD NOTE: "APTI" denotes USEPA's "Air Pollution Training Institute" (Internet address: www.epa.gov/air/oaqps/eog/).


"Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry," USEPA publication number EPA-821/R-98-002, NTIS document number PB99-121949, USEPA-approved for Appendix I to 35 Ill. Adm. Code 721.

BOARD NOTE: Also EPA-821/R-98-002 is also available on the Internet for free download as a PDF document from the USEPA website at: www.epa.gov/waterscience/methods/16640514.pdf.


BOARD NOTE: Also EPA-600/4-79-020 is also available on the Internet as a viewable/printable HTML document from the USEPA website at: www.epa.gov/clariton/clhtml/pubtitleORD.html as document 600479002.


BOARD NOTE: Also available on the Internet from the U.S. Census Bureau: www.census.gov/naics/2007/naicod07.htm.
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BOARD NOTE: EPA-454/R-92-019 is also available on the Internet for free download as a WordPerfect document from the USEPA website at the following Internet address:
www.epa.gov/scram001/guidance/guide/scrng.wpd.


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BOARD NOTE: Also EPA-530/SW-846 is also available on the Internet for free download in segments in PDF format from the USEPA website at: www.epa.gov/SW-846.


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STI. Available from the Steel Tank Institute, 728 Anthony Trail, Northbrook, IL 60062, 708-498-1980:


USDOD. Available from the United States Department of Defense:


"Requisition Tracking Form" (DD Form 1348), as in effect in July 1991, referenced in 35 Ill. Adm. Code 726.303.

"The Signature and Tally Record" (DD Form 1907), as in effect in November 2006, referenced in 35 Ill. Adm. Code 726.303.


USEPA, Office of Ground Water and Drinking Water. Available from United States Environmental Protection Agency, Office of Drinking Water, State Programs Division, WH 550 E, Washington, D.C. 20460:

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USEPA, Receptor Analysis Branch. Available from Receptor Analysis Branch, USEPA (MD-14), Research Triangle Park, NC 27711:


BOARD NOTE: Also EPA-454/R-92-019 is also available for purchase from NTIS (see above) and on the Internet for free download as a WordPerfect document from the USEPA website at following Internet address: www.epa.gov/scram001/guidance/guide/scrng.wpd.

USEPA Region 6. Available from United States Environmental Protection Agency, Region 6, Multimedia Permitting and Planning Division, 1445 Ross Avenue, Dallas, TX 75202 (phone: 214-665-7430):


USGSA. Available from the United States Government Services Administration:


Table II, column 2 in Appendix B to 10 CFR 20 (2010)(2008) (Water
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40 CFR 3.3 (2009)(2007) (What Definitions Are Applicable to This Part?), referenced in Section 720.104.


BOARD NOTE: Also available from NTIS (see above for contact information) as "Guideline on Air Quality Models," Revised 1986,
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USEPA publication number EPA-450/12-78-027R, NTIS document numbers PB86-245248 (Guideline) and PB88-150958 (Supplement).


Method 1 (Sample and Velocity Traverses for Stationary Sources), referenced in 35 Ill. Adm. Code 726.205.

Method 2 (Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)), referenced in 35 Ill. Adm. Code 724.933, 724.934, 725.933, 725.934, and 726.205.
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Method 2F (Determination of Stack Gas Velocity and Volumetric Flow Rate with Three-Dimensional Probes), referenced in 35 Ill. Adm. Code 726.205.


Method 3 (Gas Analysis for the Determination of Dry Molecular Weight), referenced in 35 Ill. Adm. Code 724.443 and 726.205.

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Method 3B (Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air), referenced in 35 Ill. Adm. Code 726.205.

Method 3C (Determination of Carbon Dioxide, Methane, Nitrogen, and Oxygen from Stationary Sources), referenced in 35 Ill. Adm. Code 726.205.


Method 5B (Determination of Nonsulfuric Acid Particulate Matter Emissions from Stationary Sources), referenced in 35 Ill. Adm. Code 726.205.


Method 5F (Determination of Nonsulfate Particulate Matter Emissions from Stationary Sources), referenced in 35 Ill. Adm. Code 726.205.

Method 5G (Determination of Particulate Matter Emissions from Wood Heaters (Dilution Tunnel Sampling Location)), referenced in 35 Ill. Adm. Code 726.205.
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Method 5H (Determination of Particulate Emissions from Wood Heaters from a Stack Location), referenced in 35 Ill. Adm. Code 726.205.


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Section 5.0 (Hazardous Waste Combustion Air Quality Screening Procedure), referenced in 35 Ill. Adm. Code 726.204.

Section 7.0 (Statistical Methodology for Bevill Residue Determinations), referenced in 35 Ill. Adm. Code 726.212.

BOARD NOTE: Also available from NTIS (see above for contact information) as "Methods Manual for Compliance with BIF Regulations: Burning Hazardous Waste in Boilers and Industrial Furnaces," December 1990, USEPA publication number EPA-530/SW-91-010, NTIS document number PB91-120006.


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c) Federal Statutes:


Sections 201(v), 201(w), and 512(j) of the Federal Food, Drug, and Cosmetic Act (FFDCA; 21 USC 321(v), 321(w), and 360b(j)), as amended through January 3, 2006, referenced in Section 720.110 and 35 Ill. Adm. Code 733.109.


d) This Section incorporates no later editions or amendments.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

SUBPART C: RULEMAKING PETITIONS AND OTHER PROCEDURES

Section 720.122 Waste Delisting

a) Any person seeking to exclude a waste from a particular generating facility from the lists in Subpart D of 35 Ill. Adm. Code 721 may file a petition, as specified in subsection (n) of this Section. The Board will grant the petition if the following occur:

1) The petitioner demonstrates that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or acute hazardous waste; and
2) The Board determines that there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A Board determination under the preceding sentence must be made by reliance on, and in a manner consistent with, "EPA RCRA Delisting Program – Guidance Manual for the Petitioner," incorporated by reference in Section 720.111(a). A waste that is so excluded, however, still may be a hazardous waste by operation of Subpart C of 35 Ill. Adm. Code 721.

b) Listed wastes and mixtures. A person may also petition the Board to exclude from 35 Ill. Adm. Code 721.103(a)(2)(B) or (c)(a)(2)(C), a waste that is described in these Sections and is either a waste listed in Subpart D of 35 Ill. Adm. Code 721, or is derived from a waste listed in that Subpart. This exclusion may only be granted for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by subsection (a) of this Section. Where the waste is a mixture of a solid waste and one or more listed hazardous wastes or is derived from one or more listed hazardous wastes, the demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste that is so excluded may still be a hazardous waste by operation of Subpart C of 35 Ill. Adm. Code 721.

c) Ignitable, corrosive, reactive and toxicity characteristic wastes. If the waste is listed in codes "I," "C," "R," or "E" in Subpart D of 35 Ill. Adm. Code 721, the following requirements apply:

1) The petitioner must demonstrate that the waste does not exhibit the relevant characteristic for which the waste was listed, as defined in 35 Ill. Adm. Code 721.121, 721.122, 721.123, or 721.124, using any applicable methods prescribed in those Sections. The petitioner must also show that the waste does not exhibit any of the other characteristics, defined in those Sections, using any applicable methods prescribed in those Sections; and

2) Based on a complete petition, the Board will determine, if it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be
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hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A Board determination under the preceding sentence must be made by reliance on, and in a manner consistent with, "EPA RCRA Delisting Program – Guidance Manual for the Petitioner," incorporated by reference in Section 720.111(a). A waste that is so excluded, however, may still be a hazardous waste by operation of Subpart C of 35 Ill. Adm. Code 721.

d) Toxic waste. If the waste is listed in code "T" in Subpart D of 35 Ill. Adm. Code 721, the following requirements apply:

1) The petitioner must demonstrate that the waste fulfills the following criteria:

A) It does not contain the constituent or constituents (as defined in Appendix G of 35 Ill. Adm. Code 721) that caused USEPA to list the waste; or

B) Although containing one or more of the hazardous constituents (as defined in Appendix G of 35 Ill. Adm. Code 721) that caused USEPA to list the waste, the waste does not meet the criterion of 35 Ill. Adm. Code 721.111(a)(3) when considering the factors used in 35 Ill. Adm. Code 721.111(a)(3)(A) through (a)(3)(K) under which the waste was listed as hazardous.

2) Based on a complete petition, the Board will determine, if it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics, defined in 35 Ill. Adm. Code 721.121, 721.122, 721.123, or 721.124, using any applicable methods prescribed in those Sections.

4) A waste that is so excluded, however, may still be a hazardous waste by operation of Subpart C of 35 Ill. Adm. Code 721.

e) Acute hazardous waste. If the waste is listed with the code "H" in Subpart D of
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35 Ill. Adm. Code 721, the following requirements apply:

1) The petitioner must demonstrate that the waste does not meet the criterion of 35 Ill. Adm. Code 721.111(a)(2); and

2) Based on a complete petition, the Board will determine, if it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A Board determination under the preceding sentence must be made by reliance on, and in a manner consistent with, "EPA RCRA Delisting Program – Guidance Manual for the Petitioner," incorporated by reference in Section 720.111(a).

3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics, defined in 35 Ill. Adm. Code 721.121, 721.122, 721.123, or 721.124, using any applicable methods prescribed in those Sections.

4) A waste that is so excluded, however, may still be a hazardous waste by operation of Subpart C of 35 Ill. Adm. Code 721.

f) This subsection (f) corresponds with 40 CFR 260.22(f), which USEPA has marked "reserved." This statement maintains structural consistency with the federal regulations.

g) This subsection (g) corresponds with 40 CFR 260.22(g), which USEPA has marked "reserved." This statement maintains structural consistency with the federal regulations.

h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

i) Each petition must include, in addition to the information required by subsection (n) of this Section:

1) The name and address of the laboratory facility performing the sampling or tests of the waste;
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2) The names and qualifications of the persons sampling and testing the waste;

3) The dates of sampling and testing;

4) The location of the generating facility;

5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in 35 Ill. Adm. Code 721.111(a)(3);

8) A description of the methodologies and equipment used to obtain the representative samples;

9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, and preservation of the samples;

10) A description of the tests performed (including results);

11) The names and model numbers of the instruments used in performing the tests; and

12) The following statement signed by the generator or the generator's authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that
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there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

j) After receiving a petition, the Board may request any additional information that the Board needs to evaluate the petition.

k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

l) The Board will exclude only part of the waste for which the demonstration is submitted if the Board determines that variability of the waste justifies a partial exclusion.


m) Delisting of specific wastes from specific sources that have been adopted by USEPA may be proposed as State regulations that are identical in substance pursuant to Section 720.120(a).

n) Delistings that have not been adopted by USEPA may be proposed to the Board pursuant to a petition for adjusted standard pursuant to Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104. The justification for the adjusted standard is as specified in subsections (a) through (g) of this Section, as applicable to the waste in question. The petition must be clearly labeled as a RCRA delisting adjusted standard petition.

1) In accordance with 35 Ill. Adm. Code 101.304, the petitioner must serve copies of the petition, and any other documents filed with the Board, on USEPA at the following addresses:

USEPA
Office of Resource Conservation and Recovery, Solid Waste and Emergency Response
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

USEPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604
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2) The Board will mail copies of all opinions and orders to USEPA at the above addresses.

3) In conjunction with the normal updating of the RCRA regulations, the Board will maintain, in Appendix I of 35 Ill. Adm. Code 721, a listing of all adjusted standards granted by the Board.

o) The Agency may determine in a permit or a letter directed to a generator that, based on 35 Ill. Adm. Code 721, a waste from a particular source is not subject to these regulations. Such a finding is evidence against the Agency in any subsequent proceedings but will not be conclusive with reference to other persons or the Board.

p) Any petition to delist directed to the Board or request for determination directed to the Agency must include a showing that the waste will be generated or managed in Illinois.

q) The Board will not grant any petition that would render the Illinois RCRA program less stringent than if the decision were made by USEPA.

r) Delistings apply only within Illinois. Generators must comply with 35 Ill. Adm. Code 722 for waste that is hazardous in any state to which it is to be transported.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

Section 720.130 Procedures for Solid Waste Determinations and Non-Waste Determinations

In accordance with the standards and criteria in Sections 720.131 and 720.134 and the procedures in Section 720.133, the Board will determine on a case-by-case basis that the following recycled materials are not solid wastes:

a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Section 721.101(c)(8));

b) Materials that are reclaimed and then reused within the original production process in which they were generated; and
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c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

Section 720.133 Procedures for Determinations

The Board will use the procedures of Subpart D of 35 Ill. Adm. Code 104 for determining whether a material is a solid waste, or for determining whether a particular enclosed flame combustion device is a boiler, or for evaluating an application for a non-waste determination.

a) The application must address the relevant criteria contained in Section 720.131, 720.132, or 720.134, as applicable.

b) This subsection (b) corresponds with 40 CFR 260.33(b), which pertains to the USEPA procedure for review of petitions. This statement maintains structural consistency with USEPA rules.

c) For a non-waste determination, in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in Section 720.134 upon which a non-waste determination has been based, the applicant must re-apply to the Board for a formal determination that the hazardous secondary material continues to meet the relevant criteria and therefore is not a solid waste.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

Section 720.134 Non-Waste Determinations

a) A person generating, managing, or reclaiming hazardous secondary material may petition the Board pursuant to this Section, Section 720.133 and Section 28.2 of the Act [415 ILCS 5/28.2] for an adjusted standard that is a formal determination that a hazardous secondary material is not discarded and therefore is not a solid
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waste. The Board's adjusted standard determination will be based on the criteria contained in either subsection (b) or (c) of this Section, as applicable. If the Board denies the petition, the hazardous secondary material might still be eligible for a solid waste determination pursuant to Section 720.131 or an exclusion. A determination made by the Board pursuant to this Section becomes effective upon occurrence of the first of the following two events:

1) After USEPA has authorized Illinois to administer this segment of the hazardous waste regulations, the determination is effective upon issuance of the Board order that grants the non-waste determination; or

2) Before USEPA has granted such authorization, the non-waste determination becomes effective upon fulfillment of all of the following conditions:
   A) The Board has granted an adjusted standard determining that the hazardous secondary material meets the criteria in either subsection (b) or (c) of this Section, as applicable;
   B) The Agency has requested that USEPA review the Board's non-waste determination; and
   C) USEPA has approved the Board's non-waste determination.

b) The Board will grant a non-waste determination for hazardous secondary material that is reclaimed in a continuous industrial process if the Board determines that the applicant has demonstrated that the hazardous secondary material is a part of the production process and the material is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled, as determined pursuant to Section 720.143, and on the following criteria:

1) The extent to which the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based
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on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

3) Whether the hazardous constituents in the hazardous secondary material are reclaimed, rather than released to the air, water, or land, at significantly higher levels, from either a statistical or from a health and environmental risk perspective, than would otherwise be released by the production process; and

4) Other relevant factors demonstrating that the hazardous secondary material is not discarded.

c) The Board will grant a non-waste determination for a hazardous secondary material that is indistinguishable in all relevant aspects from a product or intermediate if the petitioner demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The Board's determination will be based on whether the hazardous secondary material is legitimately recycled, as determined pursuant to Section 720.143, and on the following criteria:

1) Whether market participants treat the hazardous secondary material as a product or intermediate, rather than as a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

4) Whether the hazardous constituents in the hazardous secondary material are reclaimed, rather than released to the air, water, or land, at significantly higher levels, from either a statistical or from a health and environmental risk perspective, than would otherwise be released by the production process; and
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5) Other relevant factors demonstrating that the hazardous secondary material is not discarded.

BOARD NOTE: USEPA intended that use of the non-waste determination procedure is voluntary. By this procedure, the generator or other person managing a hazardous secondary material may obtain a formal determination that a particular use of a hazardous secondary material is legitimate recycling. The generator and others managing the material may independently make a determination pursuant to Section 720.143 and manage the material under one of the exemptions from the definition of solid waste codified at 35 Ill. Adm. Code 721.102(a)(2)(ii) or 721.104(a)(23), (a)(24), or (a)(25). See 73 Fed. Reg. 64668, 74710 (Oct. 30, 2008).

(Source: Added at 34 Ill. Reg. _____, effective ______________)

Section 720.142 Notification Requirement for Hazardous Secondary Materials

a) A hazardous secondary material generator, a tolling contractor, a toll manufacturer, a reclaimer, or an intermediate facility that manages hazardous secondary materials that are excluded from regulation under 35 Ill. Adm. Code 721.102(a)(2)(B) or 721.104(a)(23), (a)(24), or (a)(25) must send a notification to USEPA Region 5. The notification must occur prior to operating under the exclusion and before March 1 of every even-numbered calendar year thereafter using a copy of USEPA Form 8700-12 obtained from the Agency, Bureau of Land (217-782-6762). The notification must include the following information:

1) The name, address, and USEPA identification number (if applicable) of the facility;

2) The name and telephone number of a contact person for the facility;

3) The NAICS code of the facility;


4) The exclusion under which the facility will manage the hazardous secondary materials (e.g., 35 Ill. Adm. Code 721.102(a)(2)(B) or 721.104(a)(23), (a)(24), or (a)(25));
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5) For a reclaimer or intermediate facility that manages hazardous secondary materials in accordance with Section 721.104(a)(24) or (a)(25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

6) When the facility expects to begin managing the hazardous secondary materials in accordance with the exclusion;

7) A list of hazardous secondary materials that the facility will manage according to the exclusion (reported as the USEPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

9) The quantity of each hazardous secondary material to be managed annually; and

10) The certification (included in USEPA Form 8700-12) signed and dated by an authorized representative of the facility.

b) If a hazardous secondary materials generator, tolling contractor, toll manufacturer, reclaimer, or intermediate facility has submitted a notification, but then subsequently ceases managing hazardous secondary materials in accordance with the exclusions, the facility owner or operator must notify the Agency within 30 days after the cessation using a copy of USEPA Form 8700-12 obtained from the Agency, Bureau of Land (217-782-6762). For purposes of this Section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages, or reclaims hazardous secondary materials under the exclusions, and the facility owner or operator does not expect to manage any amount of hazardous secondary materials for at least one year.

BOARD NOTE: USEPA Form 8700-12 is the required instructions and forms for notification of regulated waste activity.

(Source: Added at 34 Ill. Reg. ______, effective ____________)
Section 720.143  Legitimate Recycling of Hazardous Secondary Materials

a) This Section applies to any person that is regulated pursuant to Section 720.134 or that claims to be excluded from hazardous waste regulation pursuant to 35 Ill. Adm. Code 721.102(a)(2)(B) or 721.104(a)(23), (a)(24), or (a)(25) because that person is engaged in reclamation. Any such person must be able to demonstrate that the recycling in which it is engaged is legitimate recycling. Hazardous secondary material that is not the subject of legitimate recycling is discarded material and is a solid waste. A determination that an activity is legitimate recycling must address the factors set forth in subsections (b) and (c) of this Section.

b) Factors fundamental to a determination of legitimate recycling. Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process, and the recycling process must produce a valuable product or intermediate.

1) The hazardous secondary material provides a useful contribution to the recycling process or to a product or intermediate if any of the following is true of its reclamation:

   A) It contributes valuable ingredients to a product or intermediate;
   B) It replaces a catalyst or carrier in the recycling process;
   C) It is the source of a valuable constituent recovered in the recycling process;
   D) It is recovered or regenerated by the recycling process; or
   E) It is used as an effective substitute for a commercial product.

2) The product or intermediate produced is valuable if either of the following describes it:

   A) It is sold to a third party; or
B) It is used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

c) Other factors for consideration in a determination of legitimate recycling. A determination whether a specific recycling activity constitutes legitimate recycling must consider the factors of subsection (c)(1) of this Section, in the way described in subsection (c)(2) of this Section.

1) The demonstration must show whether:

A) Both the generator and the recycler manage the hazardous secondary material as a valuable commodity. Where there is an analogous raw material, the demonstration must show whether the generator and the recycler manage the hazardous secondary material, at a minimum, in a manner consistent with the management of the raw material. Where there is no analogous raw material, the demonstration must show whether the hazardous secondary material is contained. A hazardous secondary material that is released to the environment and that is not immediately recovered is discarded material, which is solid waste; and

B) The demonstration must show whether each of the following is true of the product of the recycling process:

i) The product does not contain significant concentrations of any hazardous constituents listed in Appendix H to 35 Ill. Adm. Code 721 that are not found in analogous products;

ii) The product does not contain concentrations of any hazardous constituents listed in Appendix H to 35 Ill. Adm. Code 721 at levels that are significantly elevated above those found in analogous products; and

iii) The product does not exhibit a hazardous characteristic (as defined in Subpart C of 35 Ill. Adm. Code 721) that analogous products do not exhibit.
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2) Determination whether a specific instance of reclamation is legitimate recycling. A determination that a specific instance of reclamation of a hazardous secondary material is legitimate recycling requires evaluation of all of the factors set forth in subsection (c)(1) of this Section, and the determination must consider legitimacy as a whole.

A) If, after careful evaluation, the determination is that the conditions of one or both of the factors set forth in subsection (c)(1) of this Section are not fulfilled, this fact militates in favor of a determination that the reclamation of the hazardous secondary material is not legitimate recycling. However, the non-fulfillment of the factors set forth in subsection (c)(1) of this Section does not require a determination that the reclamation is not legitimate recycling.

B) In evaluating the extent to which the reclamation fulfills the factors set forth in subsection (c)(1) of this Section, and in determining whether a specific reclamation process that does not meet one or both of these factors is still legitimate recycling, the determination can consider the protectiveness of the storage methods, exposure of persons and the environment to toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations that bear on whether the recycling is legitimate.

BOARD NOTE: USEPA stated that the four legitimacy factors of this Section are substantially the same as its pre-existing "legitimacy policy," as embodied in an internal USEPA memorandum. That memorandum elaborates "other relevant factors" as the economics of the recycling process (i.e., whether most of the revenue derives from sale of the product or from fees charged generators for managing their wastes) and whether the toxic constituents are necessary or of use to the product or are "just 'along for the ride.'" Memorandum from Sylvia K. Lowrance, Director, USEPA, Office of Resource Conservation and Recovery, to Hazardous Waste Management Division Directors, USEPA Regions 1 through 10, attachment at p. 2; see 73 Fed. Reg. 64668, 709-10 (Oct. 31, 2008).

BOARD NOTE: USEPA uses "legitimate recycling" interchangeably with "legitimately recycled," "recycling is legitimate," and "recycling to be considered legitimate" in corresponding 40 CFR 260.43, as added at 73 Fed. Reg. 64668 (Oct. 30, 2008).
Board has standardized the usage "legitimate recycling" in this Section. USEPA refers to "reclamation of the material that is legitimate" in corresponding 40 CFR 261.2(a)(2)(ii) and 261.4(a)(23), (a)(24), and (a)(25) (2009), as determined pursuant to corresponding 40 CFR 260.43 (2009). The Illinois provision at 35 Ill. Adm. Code 721.101(c)(7) (and corresponding federal 40 CFR 261.1(c)(7)) states that a material is "recycled" if it is "used, reused, or reclaimed." The Board intends that "legitimate reclamation," in referenced provisions 35 Ill. Adm. Code 721.102(a)(2)(ii) or 721.104(a)(23), (a)(24), or (a)(25), is synonymous with "legitimate recycling," as used in this Section.

(Source: Added at 34 Ill. Reg. _____, effective ____________.)
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1) **Heading of the Part**: Identification and Listing of Hazardous Waste

2) **Code Citation**: 35 Ill. Adm. Code 721

3) **Section Numbers**: Proposed action:
   - 721.101   Amend
   - 721.102   Amend
   - 721.103   Amend
   - 721.104   Amend
   - 721.105   Amend
   - 721.133   Amend
   - 721.138   Amend
   - 721.240   New Section
   - 721.241   New Section
   - 721.242   New Section
   - 721.243   New Section
   - 721.247   New Section
   - 721.248   New Section
   - 721.249   New Section
   - 721.250   New Section
   - 721.251   New Section
   - 721.APPENDIX Y   Amend
   - 721.APPENDIX Z   Amend

4) **Statutory Authority**: 415 ILCS 5/7.2, 22.4, and 27

5) **A Complete Description of the Subjects and Issues Involved**: The amendments to Part 721 are a single segment of the docket R09-16/R10-4 (consolidated) rulemaking that also affects 35 Ill. Adm. Code 703, 720, 722, 724, and 725, each of which is covered by a separate Notice in this issue of the *Illinois Register*. To save space, a more detailed description of the subjects and issues involved in the docket R09-16/R10-4 (consolidated) rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Proposed Amendment for 35 Ill. Adm. Code 703. A comprehensive description is contained in the Board's opinion and order of June 17, 2010, proposing amendments in docket R09-16/R10-4 (consolidated), which opinion and order is available from the address below.

Specifically, the amendments to Part 721 implement segments of the federal amendments of October 30, 2008, December 1, 2008, December 19, 2008, June 25, 2009, and June 15,
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2010. The amendments add the substantive aspects of the amendments to the definition of solid waste. The amendments add USEPA's technical corrections to the excluded fuels rule. The amendments change appearances of "Office of Solid Waste" to "Office of Resource Conservation and Recovery."

Tables appear in the Board's opinion and order of June 17, 2010 in docket R09-16/R10-4 (consolidated) that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 opinion and order in docket R09-16/R10-4 (consolidated).

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the IAPA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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

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

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


11) Are there any other proposed rulemakings pending on this Part? No

10) Statement of statewide policy objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
12) Time, Place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-16/R10-4 (consolidated) and be addressed to:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference docket R09-16/R10-4 (consolidated):

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601

Phone: 312/814-6924
E-mail: mccambm@ipcb.state.il.us

Request copies of the Board's opinion and order at 312-814-3620, or download a copy from the Board's Website at http:\www.ipcb.state.il.us.

13) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.
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C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

14) Regulatory agenda on which this rulemaking was summarized: July 2009 and January 2010

The full text of the Proposed Amendments begin on the next page:
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 721
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SUBPART A: GENERAL PROVISIONS

Section
721.101 Purpose and Scope
721.102 Definition of Solid Waste
721.103 Definition of Hazardous Waste
721.104 Exclusions
721.105 Special Requirements for Hazardous Waste Generated by Small Quantity Generators
721.106 Requirements for Recyclable Materials
721.107 Residues of Hazardous Waste in Empty Containers
721.108 PCB Wastes Regulated under TSCA
721.109 Requirements for Universal Waste

SUBPART B: CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE AND FOR LISTING HAZARDOUS WASTES

Section
721.110 Criteria for Identifying the Characteristics of Hazardous Waste
721.111 Criteria for Listing Hazardous Waste

SUBPART C: CHARACTERISTICS OF HAZARDOUS WASTE

Section
721.120 General
721.121 Characteristic of Ignitability
721.122 Characteristic of Corrosivity
721.123 Characteristic of Reactivity
721.124 Toxicity Characteristic
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SUBPART D: LISTS OF HAZARDOUS WASTE

Section
721.130 General
721.131 Hazardous Wastes from Nonspecific Sources
721.132 Hazardous Waste from Specific Sources
721.133 Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof
721.135 Wood Preserving Wastes

SUBPART E: EXCLUSIONS AND EXEMPTIONS

Section
721.138 Comparable or Syngas Fuel Exclusion of Comparable Fuel and Syngas Fuel
721.139 Conditional Exclusion for Used, Broken CRTs and Processed CRT Glass Undergoing Recycling
721.140 Conditional Exclusion for Used, Intact CRTs Exported for Recycling
721.141 Notification and Recordkeeping for Used, Intact CRTs Exported for Reuse

SUBPART H: FINANCIAL REQUIREMENTS FOR MANAGEMENT OF EXCLUDED HAZARDOUS SECONDARY MATERIALS

Section
721.240 Applicability
721.241 Definitions of Terms as Used in This Subpart
721.242 Cost Estimate
721.243 Financial Assurance Condition
721.247 Liability Requirements
721.248 Incapacity of Owners or Operators, Guarantors, or Financial Institutions
721.249 Use of State-Required Mechanisms
721.250 State Assumption of Responsibility
721.251 Wording of the Instruments

721.APPENDIX A Representative Sampling Methods
721.APPENDIX B Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)
721.APPENDIX C Chemical Analysis Test Methods
721.TABLE A Analytical Characteristics of Organic Chemicals (Repealed)
721.TABLE B Analytical Characteristics of Inorganic Species (Repealed)
721.TABLE C Sample Preparation/Sample Introduction Techniques (Repealed)
721.APPENDIX G Basis for Listing Hazardous Wastes
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721.APPENDIX H Hazardous Constituents
721.APPENDIX I Wastes Excluded by Administrative Action
  721.TABLE A Wastes Excluded by USEPA pursuant to 40 CFR 260.20 and 260.22 from Non-Specific Sources
  721.TABLE B Wastes Excluded by USEPA pursuant to 40 CFR 260.20 and 260.22 from Specific Sources
  721.TABLE C Wastes Excluded by USEPA pursuant to 40 CFR 260.20 and 260.22 from Commercial Chemical Products, Off-Specification Species, Container Residues, and Soil Residues Thereof
  721.TABLE D Wastes Excluded by the Board by Adjusted Standard
721.APPENDIX J Method of Analysis for Chlorinated Dibenzo-p-Dioxins and Dibenzofurans (Repealed)
721.APPENDIX Y Table to Section 721.138: Maximum Contaminant Concentration and Minimum Detection Limit Values for Comparable Fuel Specification
721.APPENDIX Z Table to Section 721.102: Recycled Materials that Are Solid Waste

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4 and 27].


SUBPART A: GENERAL PROVISIONS

Section 721.101 Purpose and Scope

a) This Part identifies those solid wastes that are subject to regulation as hazardous wastes under 35 Ill. Adm. Code 702, 703, and 722 through 728, and which are subject to the notification requirements of Section 3010 of the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 et seq.). In this Part:

1) Subpart A of this Part defines the terms "solid waste" and "hazardous waste," identifies those wastes that are excluded from regulation under 35 Ill. Adm. Code 702, 703, and 722 through 728, and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste that is recycled.

2) Subpart B of this Part sets forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous wastes.

3) Subpart C of this Part identifies characteristics of hazardous wastes.
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4) Subpart D of this Part lists particular hazardous wastes.

b) Limitations on definition of solid waste.

1) The definition of solid waste contained in this Part applies only to wastes that also are hazardous for purposes of the regulations implementing Subtitle C of RCRA. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles or rubber) that are not otherwise hazardous wastes and that are recycled.

2) This Part identifies only some of the materials that are solid wastes and hazardous wastes under Sections 1004(5), 1004(27) and 7003 of RCRA. A material that is not defined as a solid waste in this Part, or is not a hazardous waste identified or listed in this Part, is still a hazardous waste for purposes of those Sections if, in the case of Section 7003 of RCRA, the statutory elements are established.

c) For the purposes of Sections 721.102 and 721.106 the following definitions apply:

1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

2) "Sludge" has the same meaning used in 35 Ill. Adm. Code 720.110.

3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of Sections 721.102(a)(2)(B) and 721.104(a)(23) and (a)(24) smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary
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materials meets the same requirements as those specified for metals recovery from hazardous waste found in 35 Ill. Adm. Code 726.200(d)(1) through (d)(3), and if the residuals meet the requirements specified in 35 Ill. Adm. Code 726.112.

5) A material is "used or reused" if either of the following is true:

A) It is employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

B) It is employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorus precipitant and sludge conditioner in wastewater treatment).

6) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, or railroad box cars) that when worn or superfluous can be recycled.

7) A material is "recycled" if it is used, reused, or reclaimed.

8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from
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regulation under Section 721.104(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

9) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

10) "Processed scrap metal" is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal that has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and fines, drosses and related materials that have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (Section 721.104(a)(13))).

11) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries, such as turnings, cuttings, punchings, and borings.

12) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries, and it includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap metal is also known as industrial or new scrap metal.

d) The Agency has inspection authority pursuant to Section 3007 of RCRA and Section 4 of the Environmental Protection Act [415 ILCS 5/4].


BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR 3, as added, and 40 CFR 271.10(b), 271.11(b), and 271.12(h) (2005), as amended at 70 Fed. Reg. 59848 (Oct. 13, 2005).

(Source: Amended at 34 Ill. Reg. _____, effective ____________)
Section 721.102 Definition of Solid Waste

a) Solid waste.

1) A solid waste is any discarded material that is not excluded pursuant to Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131 or 35 Ill. Adm. Code 720.130 and 720.134.

2) Discarded material.

A) A discarded material is any material that is described as follows:

iA) It is abandoned, as described in subsection (b) of this Section;

iiB) It is recycled, as described in subsection (c) of this Section;

iiiC) It is considered inherently waste-like, as described in subsection (d) of this Section; or

ivD) It is a military munition identified as a solid waste in 35 Ill. Adm. Code 726.302.

B) A hazardous secondary material is not discarded if each of the following is true with respect to the waste:

i) It is generated and reclaimed under the control of the generator, as defined in 35 Ill. Adm. Code 720.110;

ii) It is not speculatively accumulated, as defined in Section 721.101(c)(8);

iii) It is handled only in non-land-based units and is contained in such units;

iv) It is generated and reclaimed within the United States and its territories;
v) It is not otherwise subject to material-specific management conditions pursuant to Section 721.104(a) when reclaimed;

vi) It is not a spent lead acid battery (see 35 Ill. Adm. Code 726.180 and 733.102);

vii) It does not meet either of the listing descriptions for K171 or K172 waste in Section 721.132; and

viii) The reclamation of the material is legitimate, as determined pursuant to 35 Ill. Adm. Code 720.143.

BOARD NOTE: See also the notification requirements of 35 Ill. Adm. Code 720.142. For hazardous secondary materials managed in land-based units, see Section 721.104(a)(23).

b) A material is a solid waste if it is abandoned in one of the following ways:

1) It is disposed of;

2) It is burned or incinerated; or

3) It is accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

c) A material is a solid waste if it is recycled – or accumulated, stored, or treated before recycling – as specified in subsections (c)(1) through (c)(4) of this Section, if one of the following occurs with regard to the material:

1) The material is used in a manner constituting disposal.

   A) A material that is noted with a "yes" in column 1 of the table in Appendix Z of this Part is a solid waste when one of the following occurs:

      i) The material is applied to or placed on the land in a manner that constitutes disposal; or
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ii) The material is used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

B) However, a commercial chemical product that is listed in Section 721.133 is not a solid waste if it is applied to the land and that is its ordinary manner of use.

2) The material is burned for energy recovery.

A) A material that is noted with a "yes" in column 2 of the table in Appendix Z of this Part is a solid waste when one of the following occurs:

i) It is burned to recover energy;

ii) It is used to produce a fuel or is otherwise contained in fuels (in which case the fuel itself remains a solid waste);

iii) It is contained in fuels (in which case the fuel itself remains a solid waste).

B) However, a commercial chemical product that is listed in Section 721.133 is not a solid waste if it is itself a fuel.

3) Reclaimed. A material noted with a "No" in column 3 of the table in Appendix Z of this Part is not a solid waste when reclaimed (except as provided under Section 721.104(a)(17)). A material noted with a "Yes" in column 3 of Appendix Z of this Part is not a solid waste when reclaimed, unless it meets the requirements of Section 721.102(a)(2)(B) or 721.104(a)(17), (a)(23), (a)(24), or (a)(25).

4) Accumulated speculatively. A material noted with "yes" in column 4 of the table in Appendix Z of this Part is a solid waste when accumulated speculatively.

d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:
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1) Hazardous waste numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

2) A secondary material fed to a halogen acid furnace that exhibits a characteristic of a hazardous waste or which is listed as a hazardous waste, as defined in Subpart C or D of this Part, except for brominated material that meets the following criteria:

A) The material must contain a bromine concentration of at least 45 percent;

B) The material must contain less than a total of one percent of toxic organic compounds listed in Appendix H of this Part; and

C) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

3) The following criteria are used to add wastes to the list:

A) Disposal method or toxicity.

i) The material is ordinarily disposed of, burned, or incinerated; or

ii) The material contains toxic constituents listed in Appendix H of this Part and these constituents are not ordinarily found in raw materials or products for which the material substitutes (or are found in raw materials or products in smaller concentrations) and is not used or reused during the recycling process; and

B) The material may pose a substantial hazard to human health and the environment when recycled.

e) Materials that are not solid waste when recycled.

1) A material is not a solid waste when it can be shown to be recycled by fulfilling one of the following conditions:
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A) It is used or reused as an ingredient in an industrial process to make a product, provided the material is not being reclaimed; or

B) It is used or reused as effective substitutes for commercial products; or

C) It is returned to the original process from which it is generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the material must be managed in such a manner that there is no placement on the land. In cases where the material is generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at Section 721.104(a)(17) apply rather than this provision.

2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in subsections (e)(1)(A) through (e)(1)(C) of this Section):

A) A material used in a manner constituting disposal or used to produce a product that is applied to the land; or

B) A material burned for energy recovery, used to produce a fuel, or contained in fuels; or

C) A material accumulated speculatively; or

D) A material listed in subsections (d)(1) and (d)(2) of this Section.

f) Documentation of claims that a material is not a solid waste or is conditionally exempt from regulation. A respondent in an action to enforce regulations implementing Subtitle C of RCRA or Section 21 of the Environmental Protection Act that raises a claim that a certain material is not a solid waste or that the material is conditionally exempt from regulation must demonstrate that there is a known market or disposition for the material and that the material meets the terms of the exclusion or exemption. In doing so, the person must provide appropriate documentation (such as contracts showing that a second person uses the material...
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as an ingredient in a production process) to demonstrate that the material is not a waste or that the material is exempt from regulation. In addition, an owner or operator of a facility claiming that it actually is recycling a material must show that it has the necessary equipment to recycle that material.

(Source: Amended at 34 Ill. Reg. _____, effective ____________)

Section 721.103 Definition of Hazardous Waste

a) A solid waste, as defined in Section 721.102, is a hazardous waste if the following is true of the waste:

1) It is not excluded from regulation as a hazardous waste pursuant to Section 721.104(b); and

2) It meets any of the following criteria:

A) It exhibits any of the characteristics of hazardous waste identified in Subpart C of this Part. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded pursuant to Section 721.104(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste pursuant to Subpart C of this Part is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if the mixture continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Section 721.124 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

B) It is listed in Subpart D of this Part and has not been excluded from the lists in Subpart D of this Part pursuant to 35 Ill. Adm. Code 720.120 and 720.122.
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C) This subsection (a)(2)(B) corresponds with 40 CFR 261.3(a)(2)(iii), which USEPA removed and marked as "reserved" at 66 Fed. Reg. 27266 (May 16, 2001). This statement maintains structural consistency with the federal regulations.

D) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D of this Part and has not been excluded from this subsection (a)(2) pursuant to 35 Ill. Adm. Code 720.120 and 720.122, subsection (g) of this Section, or subsection (h) of this Section; however, the following mixtures of solid wastes and hazardous wastes listed in Subpart D of this Part are not hazardous wastes (except by application of subsection (a)(2)(A) or (a)(2)(B) of this Section) if the generator demonstrates that the mixture consists of wastewater the discharge of which is subject to regulation under either 35 Ill. Adm. Code 309 or 310 (including wastewater at facilities that have eliminated the discharge of wastewater) and the following is true of the waste:

i) It is one or more of the following solvents listed in Section 721.131: benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at a facility that is subject to regulation under the federal Clean Air Act new source performance standards or national emission standards for hazardous air pollutants of 40 CFR 60, 61, or 63 or at a facility that is subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions) does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined...
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surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. A facility that chooses to measure concentration levels must file a copy of its sampling and analysis plan with the Agency. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that the sampling and analysis plan has been received by the Agency. The Agency must reject the sampling and analysis plan if it determines that the sampling and analysis plan fails to include the information required by this subsection (a)(2)(D)(i) or that the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Agency rejects the sampling and analysis plan, or if the Agency determines that the facility is not following the sampling and analysis plan, the Agency must notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected;

ii) It is one or more of the following spent solvents listed in Section 721.131: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents, provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, or the total measured concentration of these solvents
entering the headworks of the facility's wastewater treatment system (at a facility that is subject to regulation under the federal Clean Air Act new source performance standards or national emission standards for hazardous air pollutants of 40 CFR 60, 61, or 63 or at a facility that is subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions) does not exceed 25 parts per million on an average weekly basis. A facility that chooses to measure concentration levels must file a copy of its sampling and analysis plan with the Agency. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that the sampling and analysis plan has been received by the Agency. The Agency must reject the sampling and analysis plan if it determines that the sampling and analysis plan fails to include the information required by this subsection (a)(2)(D)(ii) or that the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Agency rejects the sampling and analysis plan, or if the Agency determines that the facility is not following the sampling and analysis plan, the Agency must notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected;

iii) It is one of the following wastes listed in Section 721.132, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation: heat exchanger bundle cleaning sludge from the petroleum refining industry (USEPA hazardous waste number K050), crude oil storage tank sediment from petroleum refining operations (USEPA hazardous waste number K169), clarified slurry oil tank sediment or in-line filter/separation solids from petroleum refining operations
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(USEPA hazardous waste number K170), spent hydrotreating catalyst (USEPA hazardous waste number K171), and spent hydrorefining catalyst (USEPA hazardous waste number K172);

iv) It is a discarded hazardous waste, commercial chemical product or chemical intermediate listed in Section 721.121, 721.132, or 721.133 arising from de minimis losses of these materials. For purposes of this subsection (a)(2)(D)(iv), "de minimis" losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves, or other devices used to transfer materials); minor leaks of process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of a waste listed in Section 721.131 or 721.132, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in Subpart D of this Part, must either have eliminated the discharge of wastewaters or have included in its federal Clean Water Act (33 USC 1251 et seq.) permit application or wastewater pretreatment submission to the Agency or the wastewater pretreatment Control Authority pursuant to 35 Ill. Adm. Code 307 of the constituents for which each waste was listed (in Appendix G of this Part); and the constituents in Table T to 35 Ill. Adm. Code 728 for which each waste has a treatment standard (i.e., land disposal restriction constituents). A facility is eligible to claim the exemption once the Agency or Control Authority has been notified of possible de minimis releases via the Clean Water Act permit application or the wastewater pretreatment submission. A copy of the Clean Water Act permit application or the wastewater pretreatment
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submission must be placed in the facility's on-site files;

v) It is wastewater resulting from laboratory operations containing toxic (T) wastes listed in Subpart D of this Part, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system or provided that the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation;

vi) It is one or more of the following wastes listed in Section 721.132: wastewaters from the production of carbamates and carbamoyl oximes (USEPA hazardous waste number Hazardous Waste No. K157), provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight, or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at a facility that is subject to regulation under the federal Clean Air Act new source performance standards or national emission standards for hazardous air pollutants of 40 CFR 60, 61, or 63 or at a facility that is subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions) does not exceed 5 parts per million on an average weekly basis. A facility that chooses to measure concentration levels must file a copy of its sampling and analysis plan with the Agency. A facility must file a copy of a revised sampling and analysis plan.
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only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that the sampling and analysis plan has been received by the Agency. The Agency must reject the sampling and analysis plan if it determines that the sampling and analysis plan fails to include the information required by this subsection (a)(2)(D)(vi) or that the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Agency rejects the sampling and analysis plan, or if the Agency determines that the facility is not following the sampling and analysis plan, the Agency must notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

vii) It is wastewater derived from the treatment of one or more of the following wastes listed in Section 721.132: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (USEPA hazardous waste number Hazardous Waste No. K156), provided that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter, or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at a facility that is subject to regulation under the federal Clean Air Act new source performance standards or national emission standards for hazardous air pollutants of 40 CFR 60, 61, or 63 or at a facility that is subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions) does not exceed 5 milligrams per liter on an average weekly basis. A facility that chooses to measure concentration
levels must file a copy of its sampling and analysis plan with the Agency. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that the sampling and analysis plan has been received by the Agency. The Agency must reject the sampling and analysis plan if it determines that the sampling and analysis plan fails to include the information required by this subsection (a)(2)(D)(vii) or that the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Agency rejects the sampling and analysis plan, or if the Agency determines that the facility is not following the sampling and analysis plan, the Agency must notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

E) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of this Part. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix H of this Part).

i) The rebuttable presumption does not apply to a metalworking oil or fluid containing chlorinated paraffins if it is processed through a tolling arrangement, as described in 35 Ill. Adm. Code 739.124(c), to reclaim metalworking oils or fluids. The presumption does apply to a metalworking oil or fluid if such an oil or fluid is recycled in any other manner, or disposed of.
ii) The rebuttable presumption does not apply to a used oil contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to a used oil contaminated with CFCs that have been mixed with used oil from a source other than a refrigeration unit.

b) A solid waste that is not excluded from regulation pursuant to subsection (a)(1) of this Section becomes a hazardous waste when any of the following events occur:

1) In the case of a waste listed in Subpart D of this Part, when the waste first meets the listing description set forth in Subpart D of this Part.

2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in Subpart D of this Part is first added to the solid waste.

3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Subpart C of this Part.

c) Unless and until it meets the criteria of subsection (e)(d) of this Section, a hazardous waste will remain a hazardous waste.

BOARD NOTE: This subsection (c) corresponds with 40 CFR 261.3(c)(1). The Board has codified 40 CFR 261.3(c)(2) at subsection (e) of this Section.

d) Any solid waste described in subsection (e) of this Section is not a hazardous waste if it meets the following criteria:

1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Subpart C of this Part. (However, wastes that exhibit a characteristic at the point of generation may still be subject to 35 Ill. Adm. Code 728, even if they no longer exhibit a characteristic at the point of land disposal.)

2) In the case of a waste that is a listed waste pursuant to Subpart D of this Part, a waste that contains a waste listed pursuant to Subpart D of this Part, or a waste that is derived from a waste listed in Subpart D of this Part, it also has been excluded from subsection (e) of this Section pursuant to 35...
e) Specific inclusions and exclusions.

1) Except as otherwise provided in subsection (e)(2), (g), or (h) of this Section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off), is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

2) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

   A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

   B) Wastes from burning any of the materials exempted from regulation by Section 721.106(a)(3)(C) and (a)(3)(D).

   C) Nonwastewater residues, such as slag, resulting from high temperature metal recovery (HTMR) processing of K061, K062, or F006 waste in the units identified in this subsection (e)(2) that are disposed of in non-hazardous waste units, provided that these residues meet the generic exclusion levels identified in the tables in this subsection (e)(2)(C) for all constituents and the residues exhibit no characteristics of hazardous waste. The types of units identified are rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations, or the following types of industrial furnaces (as defined in 35 Ill. Adm. Code 720.110): blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces); and other furnaces designated by the Agency pursuant to that definition.
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i) Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and when the process or operation generating the waste changes.

ii) Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements. The generic exclusion levels are the following:

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues:

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Maximum for any single composite sample (mg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.10</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.50</td>
</tr>
<tr>
<td>Barium</td>
<td>7.6</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.010</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.050</td>
</tr>
<tr>
<td>Chromium (total)</td>
<td>0.33</td>
</tr>
<tr>
<td>Lead</td>
<td>0.15</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.009</td>
</tr>
<tr>
<td>Nickel</td>
<td>1.0</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.16</td>
</tr>
<tr>
<td>Silver</td>
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</tr>
<tr>
<td>Thallium</td>
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<tr>
<td>Vanadium</td>
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<tr>
<td>Zinc</td>
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Generic exclusion levels for F006 nonwastewater HTMR residues:

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<th>Constituent</th>
<th>Maximum for any single composite sample (mg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Constituent</th>
<th>Limit (mg/kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.10</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.50</td>
</tr>
<tr>
<td>Barium</td>
<td>7.6</td>
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<tr>
<td>Beryllium</td>
<td>0.010</td>
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<td>Cadmium</td>
<td>0.050</td>
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<tr>
<td>Chromium (total)</td>
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</tr>
<tr>
<td>Cyanide (total)</td>
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<tr>
<td>Lead</td>
<td>0.15</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.009</td>
</tr>
<tr>
<td>Nickel</td>
<td>1.0</td>
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<td>Selenium</td>
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<td>Thallium</td>
<td>0.020</td>
</tr>
<tr>
<td>Zinc</td>
<td>70</td>
</tr>
</tbody>
</table>

**iii)** A one-time notification and certification must be placed in the facility's files and sent to the Agency (or, for out-of-State shipments, to the appropriate Regional Administrator of USEPA or the state agency authorized to implement federal 40 CFR 268 requirements) for K061, K062, or F006 HTMR residues that meet the generic exclusion levels for all constituents, which do not exhibit any characteristics, and which are sent to RCRA Subtitle D (municipal solid waste landfill) units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes or if the RCRA Subtitle D unit receiving the waste changes. However, the generator or treater need only notify the Agency on an annual basis if such changes occur. Such notification and certification should be sent to the Agency by the end of the calendar year, but no later than December 31. The notification must include the following information: the name and address of the non-hazardous waste management unit receiving the waste shipment; the USEPA hazardous waste number and treatability group at the initial point of generation; and the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows:
"I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

D) Biological treatment sludge from the treatment of one of the following wastes listed in Section 721.132: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (USEPA hazardous waste number Hazardous Waste No. K156) and wastewaters from the production of carbamates and carbamoyl oximes (USEPA hazardous waste number Hazardous Waste No. K157).

E) Catalyst inert support media separated from one of the following wastes listed in Section 721.132: spent hydrotreating catalyst (USEPA hazardous waste number K171) and spent hydrorefining catalyst (USEPA hazardous waste number K172).

BOARD NOTE: This subsection (e) would normally correspond with 40 CFR 261.3(e), a subsection that has been deleted and marked "reserved" by USEPA. Rather, this subsection (e) corresponds with 40 CFR 261.3(c)(2), which the Board codified here to comport with codification requirements and to enhance clarity.

f) Notwithstanding subsections (a) through (e) of this Section and provided the debris, as defined in 35 Ill. Adm. Code 728.102, does not exhibit a characteristic identified at Subpart C of this Part, the following materials are not subject to regulation under 35 Ill. Adm. Code 702, 703, 720, 721 to 726, or 728:

1) Hazardous debris as defined in 35 Ill. Adm. Code 728.102 that has been treated using one of the required extraction or destruction technologies specified in Table F to 35 Ill. Adm. Code 728; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or
2) Debris, as defined in 35 Ill. Adm. Code 728.102, that the Agency, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

g) Exclusion of certain wastes listed in Subpart D of this Part solely because they exhibit a characteristic of ignitability, corrosivity, or reactivity.

   1) A hazardous waste that is listed in Subpart D of this Part solely because it exhibits one or more characteristics of ignitability, as defined under Section 721.121; corrosivity, as defined under Section 721.122; or reactivity, as defined under Section 721.123 is not a hazardous waste if the waste no longer exhibits any characteristic of hazardous waste identified in Subpart C of this Part.

   2) The exclusion described in subsection (g)(1) of this Section also pertains to the following:

      A) Any mixture of a solid waste and a hazardous waste listed in Subpart D of this Part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity, as regulated under subsection (a)(2)(D) of this Section; and

      B) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Subpart D of this Part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity, as regulated under subsection (e)(1) of this Section.

   3) Wastes excluded pursuant to this subsection (g) are subject to 35 Ill. Adm. Code 728 (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

h) Eligible radioactive mixed waste.

   1) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of Subpart N of 35 Ill. Adm. Code 726 (i.e., it is "eligible radioactive mixed waste").

   2) The exemption described in subsection (h)(1) of this Section also pertains
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to the following:

A) Any mixture of a solid waste and an eligible radioactive mixed waste; and

B) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

3) Waste exempted pursuant to this subsection (h) must meet the eligibility criteria and specified conditions in 35 Ill. Adm. Code 726.325 and 726.330 (for storage and treatment) and in 35 Ill. Adm. Code 726.410 and 726.415 (for transportation and disposal). Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

(Source: Amended at 34 Ill. Reg. _____, effective ____________)

Section 721.104 Exclusions

a) Materials that are not solid wastes. The following materials are not solid wastes for the purpose of this Part:

1) Sewage.

   A) Domestic sewage (untreated sanitary wastes that pass through a sewer system); and

   B) Any mixture of domestic sewage and other waste that passes through a sewer system to publicly-owned treatment works for treatment.

2) Industrial wastewater discharges that are point source discharges with National Pollutant Discharge Elimination System (NPDES) permits issued by the Agency pursuant to Section 12(f) of the Environmental Protection Act [415 ILCS 5/12(f)] and 35 Ill. Adm. Code 309.

   BOARD NOTE: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.
3) Irrigation return flows.


5) Materials subjected to in-situ mining techniques that are not removed from the ground as part of the extraction process.

6) Pulping liquors (i.e., black liquors) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively, as defined in Section 721.101(c).

7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively, as defined in Section 721.101(c).

8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated, where they are reused in the production process, provided that the following is true:

   A) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

   B) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

   C) The secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

   D) The reclaimed material is not used to produce a fuel or used to produce products that are used in a manner constituting disposal.

9) Wood preserving wastes.

   A) Spent wood preserving solutions that have been used and which are reclaimed and reused for their original intended purpose;
B) Wastewaters from the wood preserving process that have been reclaimed and which are reused to treat wood; and

C) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in subsections (a)(9)(A) and (a)(9)(B) of this Section, so long as they meet all of the following conditions:

i) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water-borne plants in the production process for their original intended purpose;

ii) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

iii) Any unit used to manage wastewaters or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

iv) Any drip pad used to manage the wastewaters or spent wood preserving solutions prior to reuse complies with the standards in Subpart W of 35 Ill. Adm. Code 725, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

v) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification to the Agency stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies only so long as the plant
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meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Agency for reinstatement. The Agency must reinstate the exclusion in writing if it finds that the plant has returned to compliance with all conditions and that the violations are not likely to recur. If the Agency denies an application, it must transmit to the applicant specific, detailed statements in writing as to the reasons it denied the application. The applicant under this subsection (a)(9)(C)(v) may appeal the Agency's determination to deny the reinstatement, to grant the reinstatement with conditions, or to terminate a reinstatement before the Board pursuant to Section 40 of the Act [415 ILCS 5/40].

10) Hazardous waste numbers K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the toxicity characteristic specified in Section 721.124, when subsequent to generation these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the waste from the point it is generated to the point it is recycled to coke ovens, to tar recovery, to the tar refining processes, or prior to when it is mixed with coal.

11) Nonwastewater splash condenser dross residue from the treatment of hazardous waste number K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

12) Certain oil-bearing hazardous secondary materials and recovered oil, as follows:

A) Oil-bearing hazardous secondary materials (i.e., sludges, by-products, or spent materials) that are generated at a petroleum refinery (standard industrial classification (SIC) code 2911) and are inserted into the petroleum refining process (SIC code 2911: including, but not limited to, distillation, catalytic cracking, fractionation, gasification (as defined in 35 Ill. Adm. Code
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720.110), or thermal cracking units (i.e., cokers)), unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this subsection (a)(12), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in subsection (a)(12)(B) of this Section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this Section. Residuals generated from processing or recycling materials excluded under this subsection (a)(12)(A), where such materials as generated would have otherwise met a listing under Subpart D of this Part, are designated as USEPA hazardous waste number F037 listed wastes when disposed of or intended for disposal.

B) Recovered oil that is recycled in the same manner and with the same conditions as described in subsection (a)(12)(A) of this Section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in Subpart D of this Part; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil, as defined in 35 Ill. Adm. Code 739.100.

13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

14) Shredded circuit boards being recycled, provided that they meet the following conditions:

A) The circuit boards are stored in containers sufficient to prevent a release to the environment prior to recovery; and
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B) The circuit boards are free of mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries.

15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with federal Clean Air Act regulation 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

16) Comparable fuels or comparable syngas fuels (i.e., comparable or syngas fuels) that meet the requirements of Section 721.138.

17) Spent materials (as defined in Section 721.101) (other than hazardous wastes listed in Subpart D of this Part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by benefication, provided that the following is true:

A) The spent material is legitimately recycled to recover minerals, acids, cyanide, water, or other values;

B) The spent material is not accumulated speculatively;

C) Except as provided in subsection (a)(17)(D) of this Section, the spent material is stored in tanks, containers, or buildings that meet the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except that smelter buildings may have partially earthen floors, provided that the spent material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 35 Ill. Adm. Code 720.110), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If a tank or container contains any particulate that may be subject to wind dispersal, the owner or operator must operate the unit in a manner that controls fugitive dust. A tank, container, or building must be
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designed, constructed, and operated to prevent significant releases to the environment of these materials.

D) The Agency must allow by permit that solid mineral processing spent materials only may be placed on pads, rather than in tanks, containers, or buildings if the facility owner or operator can demonstrate the following: the solid mineral processing secondary materials do not contain any free liquid; the pads are designed, constructed, and operated to prevent significant releases of the spent material into the environment; and the pads provide the same degree of containment afforded by the non-RCRA tanks, containers, and buildings eligible for exclusion.

i) The Agency must also consider whether storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, and air exposure pathways must include the following: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway; and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

ii) Pads must meet the following minimum standards: they must be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material; they must be capable of withstanding physical stresses associated with placement and removal; they must have runon and runoff controls; they must be operated in a manner that controls fugitive dust; and they must have integrity assurance through inspections and maintenance programs.

iii) Before making a determination under this subsection (a)(17)(D), the Agency must provide notice and the opportunity for comment to all persons potentially
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interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.


E) The owner or operator provides a notice to the Agency, providing the following information: the types of materials to be recycled, the type and location of the storage units and recycling processes, and the annual quantities expected to be placed in non-land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

F) For purposes of subsection (b)(7) of this Section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided that both of the following conditions are true of the oil:

A) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in Section 721.121) or toxicity for benzene (Section 721.124, USEPA hazardous waste code D018);

B) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility for which all of the following is true: its primary SIC code is 2869, but its operations may also include SIC codes 2821, 2822, and 2865; it is physically co-located with a petroleum refinery; and the petroleum
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refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (i.e., sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid, unless the material is placed on the land or accumulated speculatively, as defined in Section 721.101(c).

20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions are satisfied:

A) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in Section 721.101(c)(8).

B) A generator or intermediate handler of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must fulfill the following conditions:

i) It must submit a one-time notice to the Agency that contains the name, address, and USEPA identification number of the generator or intermediate handler facility, that provides a brief description of the secondary material that will be subject to the exclusion, and which identifies when the manufacturer intends to begin managing excluded zinc-bearing hazardous secondary materials under the conditions specified in this subsection (a)(20).

ii) It must store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earth materials that provide structural support, and it
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must have a floor, walls, and a roof that prevent wind dispersal and contact with rainwater. A tank used for this purpose must be structurally sound and, if outdoors, it must have a roof or cover that prevents contact with wind and rain. A container used for this purpose must be kept closed, except when it is necessary to add or remove material, and it must be in sound condition. Containers that are stored outdoors must be managed within storage areas that fulfill the conditions of subsection (a)(20)(F) of this Section:

iii) With each off-site shipment of excluded hazardous secondary materials, it must provide written notice to the receiving facility that the material is subject to the conditions of this subsection (a)(20).

iv) It must maintain records at the generator's or intermediate handler's facility for no less than three years of all shipments of excluded hazardous secondary materials. For each shipment these records must, at a minimum, contain the information specified in subsection (a)(20)(G) of this Section.

C) A manufacturer of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must fulfill the following conditions:

i) It must store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in subsection (a)(20)(B)(ii) of this Section.

ii) It must submit a one-time notification to the Agency that, at a minimum, specifies the name, address, and USEPA identification number of the manufacturing facility and which identifies when the manufacturer intends to begin managing excluded zinc-bearing hazardous secondary materials under the conditions specified in this subsection (a)(20).
iii) It must maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, the name of transporter, and the date on which the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

iv) It must submit an annual report to the Agency that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial processes from which the hazardous secondary materials were generated.

D) Nothing in this Section preempts, overrides, or otherwise negates the provision in 35 Ill. Adm. Code 722.111 that requires any person who generates a solid waste to determine if that waste is a hazardous waste.

E) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in subsection (a)(20)(B)(i) of this Section, and that afterward will be used only to store hazardous secondary materials excluded under this subsection (a)(20), are not subject to the closure requirements of 35 Ill. Adm. Code 724 and 725.

F) A container used to store excluded secondary material must fulfill the following conditions:

i) It must have containment structures or systems sufficiently impervious to contain leaks, spills, and accumulated precipitation;
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ii) It must provide for effective drainage and removal of leaks, spills, and accumulated precipitation; and

iii) It must prevent run-on into the containment system.


G) Required records of shipments of excluded hazardous secondary materials must, at a minimum, contain the following information:

i) The name of the transporter and date of the shipment;

ii) The name and address of the facility that received the excluded material, along with documentation confirming receipt of the shipment; and

iii) The type and quantity of excluded secondary material in each shipment.


21) Zinc fertilizers made from hazardous wastes or hazardous secondary materials that are excluded under subsection (a)(20) of this Section, provided that the following conditions are fulfilled:

A) The fertilizers meet the following contaminant limits:

i) For metal contaminants:

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)</th>
</tr>
</thead>
</table>


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Arsenic  0.3
Cadmium  1.4
Chromium  0.6
Lead  2.8
Mercury  0.3

ii) For dioxin contaminants, the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

B) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less frequently than once every six months, and for dioxins no less frequently than once every 12 months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the products introduced into commerce.

C) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with subsection (a)(21)(B) of this Section. Such records must at a minimum include the following:

i) The dates and times product samples were taken, and the dates the samples were analyzed;

ii) The names and qualifications of the persons taking the samples;

iii) A description of the methods and equipment used to take the samples;
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iv) The name and address of the laboratory facility at which analyses of the samples were performed;

v) A description of the analytical methods used, including any cleanup and sample preparation methods; and

vi) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subsection (a)(21).

22) Used CRTs.

A) Used, intact CRTs, as defined in 35 Ill. Adm. Code 720.110, are not solid waste within the United States, unless they are disposed of or speculatively accumulated, as defined in Section 721.101(e)(8), by a CRT collector or glass processor.

B) Used, intact CRTs, as defined in 35 Ill. Adm. Code 720.110, are not solid waste when exported for recycling, provided that they meet the requirements of Section 721.140.

C) Used, broken CRTs, as defined in 35 Ill. Adm. Code 720.110, are not solid waste, provided that they meet the requirements of Section 721.139.

D) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section 721.139(c).

23) Hazardous secondary materials managed in land-based units. Hazardous secondary material generated and reclaimed within the United States or its territories and managed in land-based units, as defined in 35 Ill. Adm. Code 720.110, is not a solid waste if the following conditions are fulfilled with regard to the material:

A) The material is contained;

B) The material is a hazardous secondary material generated and reclaimed under the control of the generator, as defined in 35 Ill. Adm. Code 720.110;
The material is not speculatively accumulated, as defined in Section 721.101(c)(8);

The material is not otherwise subject to material-specific management conditions under subsection (a) of this Section when reclaimed, it is not a spent lead acid battery (see 35 Ill. Adm. Code 726.180 and 733.102), and it does not meet either of the listing descriptions for K171 or K172 waste in Section 721.132;

The reclamation of the material is legitimate, as determined pursuant to 35 Ill. Adm. Code 720.143; and

In addition, a person claiming the exclusion under this subsection (a)(23) must provide notification of regulated waste activity, as required by 35 Ill. Adm. Code 720.142. (For hazardous secondary material managed in a non-land-based unit, see Section 721.102(a)(2)(B)).

Hazardous secondary materials transferred for off-site recycling. Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste if the management of the material fulfills the conditions of subsections (a)(24)(A) through (a)(24)(G) of this Section:

A) The hazardous secondary material must not be speculatively accumulated, as defined in Section 721.10.

B) No person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility, or a reclaimer handles the material; the material must not be stored for more than 10 days at a transfer facility, as defined in Section 721.110; and the material must be packaged according to applicable USDOT regulations codified as 49 CFR 173, 178, and 179, incorporated by reference in 35 Ill. Adm. Code 720.111, while in transport.

C) The hazardous secondary material must not otherwise be subject to material-specific management conditions pursuant to other provisions of this subsection (a) when reclaimed; the material must
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not be a spent lead-acid battery (see 35 Ill. Adm. Code 726.180 and 733.102); and the material must not fulfill either of the listing descriptions for K171 or K172 waste in Section 721.132.

D) The reclamation of the hazardous secondary material must be legitimate, as determined pursuant to 35 Ill. Adm. Code 720.143.

E) The hazardous secondary material generator must satisfy each of the following conditions:

i) The hazardous secondary material must be contained.

ii) This subsection (a)(24)(E)(ii) applies when non-RCRA management of hazardous secondary material will occur at a reclamation facility or transfer facility. For the purposes of this subsection (a)(24), "non-Subtitle C management" is management of the hazardous secondary material that is not addressed under a RCRA Part B permit or under the interim status facility standards (of 35 Ill. Adm. Code 725 or similar regulations authorized by USEPA as equivalent to 40 CFR 265). Prior to arranging for transport of hazardous secondary materials to a reclamation facility where non-Subtitle C management will occur, the hazardous secondary material generator must make reasonable efforts to ensure that the reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that the reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will pass through an intermediate facility where non-RCRA management will occur, the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and
the environment. Reasonable efforts must be repeated at a minimum of once every three years for the hazardous secondary material generator to claim the exclusion of this subsection (a)(24) and to send the hazardous secondary materials to a reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, or provided by a third party. The hazardous secondary material generator must make the series of affirmative determinations set forth in subsection (a)(24)(H) of this Section for each reclamation facility and intermediate facility that will manage its waste.

BOARD NOTE: Corresponding 40 CFR 261.4(a)(24)(v)(B) makes it clear that USEPA intends that the generator undertake this determination for each reclaimer that will manage its hazardous secondary material. The Board added a definition of "non-Subtitle C management" and substituted this term for the language "management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards." Although the Board shifted the language for enhanced readability, the Board intends no shift in meaning. The Board moved the material from 40 CFR 261.4(a)(24)(v)(B)(1) through (a)(24)(v)(B)(5) to appear as 35 Ill. Adm. Code 721.104(a)(24)(H)(i) through (a)(24)(H)(v). This movement allowed compliance with codification requirements relating to the maximum permissible indent level.

iii) The hazardous secondary material generator must execute a certification statement that includes the following language, together with the printed name and official title of an authorized representative of the hazardous secondary material generator, the authorized representative's signature, and the date signed:
I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert the name of each reclamation facility and any intermediate facility that will manage the materials], reasonable efforts were made in accordance with 35 Ill. Adm. Code 721.104(a)(24)(E)(ii) (and corresponding 40 CFR 261.4(a)(24)(v)(B)) to ensure that the hazardous secondary materials would be recycled legitimately and would be otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.

BOARD NOTE: Corresponding 40 CFR 261.4(a)(24)(v)(C) combines the requirements for records retention and availability for inspection with the requirement for certification. The Board combined the certification requirements from 40 CFR 261.4(a)(24)(v)(C), (a)(24)(v)(C)(1), and (a)(24)(v)(C)(2) in this single subsection (a)(24)(E)(iii). This combination allowed compliance with codification requirements relating to the maximum permissible indent level. The Board moved the records retention and availability for inspection requirements to subsection (a)(24)(E)(iv) of this Section. This forced renumbering 40 CFR 261.4(a)(24)(v)(D) and (a)(24)(v)(E) as subsections (a)(24)(E)(v) and (a)(24)(E)(vi) of this Section. Although the Board shifted the language for enhanced readability, the Board intends no shift in meaning.

iv) The hazardous secondary material generator must maintain the following records for a minimum of three years: documentation and certification that the generator made reasonable efforts, prior to transferring hazardous secondary material, for each reclamation facility and, if applicable, intermediate facility where non-Subtitle C management of the hazardous secondary materials will
occur. Documentation and certification must be made available, within 72 hours, or within any longer period of time specified by the Agency, upon request by the Agency.

BOARD NOTE: The Board moved the records retention and availability for inspection requirements of corresponding 40 CFR 261.4(a)(24)(v)(C) to this subsection (a)(24)(E)(iv).

v) The hazardous secondary material generator must maintain certain records at the generating facility for a minimum of three years that document every off-site shipment of hazardous secondary materials. The documentation for each shipment must, at a minimum, include the following information about the shipment: the name of the transporter and date of the shipment; the name and address of each reclaimer and intermediate facility to which the hazardous secondary material was sent; and the type and quantity of hazardous secondary material in the shipment.

BOARD NOTE: The Board combined and moved the shipping documentation and records retention requirements of corresponding 40 CFR 261.4(a)(24)(v)(D) and (a)(24)(v)(D)(1) through (a)(24)(v)(D)(3) to this single subsection (a)(24)(E)(v). This combination allowed compliance with codification requirements relating to the maximum permissible indent level.

vi) The hazardous secondary material generator must maintain at the generating facility, for a minimum of three years, for every off-site shipment of hazardous secondary materials, confirmations of receipt from each reclaimer and intermediate facility to which its hazardous secondary materials were sent. Each confirmation of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received, and the date on which the facility received the hazardous secondary materials. The generator may satisfy this requirement
using routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

BOARD NOTE: The Board moved the shipment confirmation documentation and records retention requirements of corresponding 40 CFR 261.4(a)(24)(v)(E) to this subsection (a)(24)(E)(vi).

F) The reclaimer of hazardous secondary material or any intermediate facility, as defined in 35 Ill. Adm. Code 720.110, that handles material that is excluded from regulation pursuant to this subsection (a)(24) must satisfy all of the following conditions:

i) The owner or operator of a reclamation or intermediate facility must maintain at its facility for a minimum of three years records of every shipment of hazardous secondary material that the facility received and, if applicable, for every shipment of hazardous secondary material that the facility received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must, at a minimum, contain the following information: the name of the transporter and date of the shipment; the name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility from which the facility received the hazardous secondary materials; the type and quantity of hazardous secondary material in the shipment; and, for hazardous secondary materials that the facility subsequently transferred off-site for further reclamation after receiving it, the name and address of the (subsequent) reclaimer and any intermediate facility to which the facility sent the hazardous secondary material.

BOARD NOTE: The Board combined the provisions from 40 CFR 261.4(a)(24)(vi)(A) and (a)(24)(vi)(A)(1) through (a)(24)(vi)(A)(3) that enumerate the required information into this single subsection (b)(24)(F)(i). This combination
allowed compliance with codification requirements relating to the maximum permissible indent level.

ii) The intermediate facility must send the hazardous secondary material to the reclaimers designated by the generator of the hazardous secondary materials.

iii) The reclaimer or intermediate facility that receives a shipment of hazardous secondary material must send a confirmation of receipt to the hazardous secondary material generator for each off-site shipment of hazardous secondary materials. A confirmation of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received, and the date on which the facility received the hazardous secondary materials. The reclaimer or intermediate facility may satisfy this requirement using routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

iv) The reclaimer or intermediate facility must manage the hazardous secondary material in a manner that is at least as protective of human health and the environment as that employed for analogous raw material, and the material must be contained. An "analogous raw material" is a raw material for which the hazardous secondary material substitutes and that serves the same function and has similar physical and chemical properties as the hazardous secondary material.

v) A reclaimer of hazardous secondary materials must manage any residuals that are generated from its reclamation processes in a manner that is protective of human health and the environment. If any residuals of the reclamation process exhibit a characteristic of hazardous waste, as defined in Subpart C of this Part, or if the residuals themselves are specifically listed as hazardous waste in Subpart D of this Part, those residuals are hazardous waste.
The reclaimer and any subsequent persons must manage that hazardous waste in accordance with the applicable requirements of 35 Ill. Adm. Code: Subtitle G or similar regulations authorized by USEPA as equivalent to 40 CFR 260 through 272.

vi) The reclaimer and intermediate facility must have financial assurance that satisfies the requirements of Subpart H of this Part.

G) Any person claiming the exclusion for recycled hazardous secondary material pursuant to this subsection (a)(24) must provide notification as required by 35 Ill. Adm. Code 720.142.

H) For the purposes of subsection (a)(24)(E)(ii) of this Section, the hazardous secondary material generator must affirmatively determine that each of the following conditions is true for each reclamation facility and any intermediate facility that will manage the generator’s hazardous secondary material:

i) Available information indicates that the reclamation process is legitimate recycling, as determined pursuant to 35 Ill. Adm. Code 720.143. In making this determination, the hazardous secondary material generator may rely on its existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as on information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process. (By making this determination, the hazardous secondary material generator has also satisfied the requirement in 35 Ill. Adm. Code 720.143(a) that the generator demonstrate that the recycling is legitimate).

ii) Publicly available information indicates that each reclamation facility and any intermediate facility that is used by the hazardous secondary material generator has submitted the notification required by 35 Ill. Adm. Code 720.142, and these facilities have submitted the required proofs of financial assurance as required by the applicable
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of Section 721.243(a)(1), (b)(1), (c)(1), (d)(1), (e)(3), and (g) and notification of financial assurance pursuant to 35 Ill. Adm. Code 720.142(a)(5). In making this dual determination, the hazardous secondary material generator may rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements pursuant to 35 Ill. Adm. Code 720.142, including the requirement in 35 Ill. Adm. Code 720.142(a)(5) to notify the Agency whether the reclaimer or intermediate facility has financial assurance.

iii) Publicly available information indicates that each reclamation facility and any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility within the previous three years for violations of the RCRA hazardous waste regulations, and the facility has not been classified as a significant non-complier (SNC) with RCRA Subtitle C requirements. In making this determination, the hazardous secondary material generator may rely on the publicly available information from USEPA, the Agency, or the Office of the Attorney General. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility within the previous three years for violations of the RCRA hazardous waste regulations, or if the facility has been classified as a SNC with RCRA Subtitle C requirements, the hazardous secondary material generator must have credible evidence that the facility will manage the hazardous secondary materials properly. In making this determination, the hazardous secondary material generator can obtain additional information from USEPA, the Agency, the Office of the Attorney General, or the facility itself that indicates the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to
the proper management of the generator's hazardous secondary materials.

BOARD NOTE: USEPA or a state may make a formalized determination that a facility is a SNC (pronounced "snick") pursuant to USEPA's "Hazardous Waste Civil Enforcement Response Policy" (most recent version: December 2003, available from USEPA, Envirofacts Data Warehouse (www.epa.gov/compliance/resources/policies/civil/rcra/finerlperp1203.pdf)). USEPA operates the online RCRAInfo database (www.epa.gov/enviro/html/rcris/) from which interested persons can learn whether a facility has significant federal enforcement action against it, or if it is a SNC.

iv) Available information indicates that the reclamation facility and any intermediate facility used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material. In making this determination, the generator may rely on a description made by the reclamation facility or an independent third party of the equipment and trained personnel that the facility will use to manage and recycle the generator's hazardous secondary material.

v) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility has the permits required (if any) to manage the residuals. If the reclamation facility does not have required permits, the facility has a contract with an appropriately permitted facility to dispose of the residuals. If the reclamation facility does not have required permits or a contract with a permitted facility, the hazardous secondary material generator has credible evidence that the residuals will be managed in a manner that is protective of human health and the environment. In making these determinations, the hazardous secondary material generator may rely on publicly available information from USEPA or
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the Agency, or on information provided by the facility itself.


25) Hazardous secondary materials exported for recycling. Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, so long as the hazardous secondary material generator complies with the applicable requirements of subsection (a)(24)(A) through (a)(24)(E) of this Section, except that the requirements of subsection (a)(24)(H)(i) of this Section (requiring the use of publicly available information to verify that the facility has submitted required notifications) do not apply to foreign reclaimers and intermediate facilities, and the hazardous secondary material generator also complies with the following requirements:

A) The generator must notify the Agency and USEPA of an intended export before the hazardous secondary material is scheduled to leave the United States. The generator must submit a complete notification at least 60 days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a period up to 12 months in duration, but not longer. The notification must be in writing and signed by the hazardous secondary material generator, and must include the following information:

i) The name, mailing address, telephone number and USEPA identification number (if applicable) of the hazardous secondary material generator;

ii) A description of the hazardous secondary material; the USEPA hazardous waste number that would apply were the hazardous secondary material to be managed as hazardous...
waste; and the USDOT proper shipping name, hazard class, and identification number (UN or NA number) for each hazardous secondary material, as identified in 49 CFR 171 through 173, each incorporated by reference in 35 Ill. Adm. Code 720.111;

iii) The estimated frequency or rate at which the hazardous secondary material is to be exported, and the period of time over which the hazardous secondary material is to be exported;

iv) The estimated total quantity of hazardous secondary material;

v) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

vi) A description of the means by which each shipment of the hazardous secondary material will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), and the types of container (drums, boxes, tanks, etc.));

vii) A description of the manner in which the hazardous secondary material will be reclaimed in the receiving country;

viii) The name and address of each reclaimer, any intermediate facility, and any alternative reclaimer and intermediate facilities; and

ix) The name of any transit countries through which the hazardous secondary material will be sent, together with a description of the approximate length of time the material will remain in each transit country and the nature of the handling of the material while in the country (for purposes of this Section, the meanings of the terms "Acknowledgement of Consent," "receiving country," and "transit country" are as defined in 35 Ill. Adm. Code
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722.151, with the exception that the terms in this Section refer to hazardous secondary materials, rather than hazardous waste).

B) Submission of notification of intent to export hazardous secondary material. Whether delivered by mail or hand delivery, the following words must prominently appear on the front of the envelope: "Attention: Notification of Intent to Export."

i) A notification that is submitted by mail must be sent to the following mailing addresses:

Office of Enforcement and Compliance Assurance
Office of Federal Activities
International Compliance Assurance Division (Mail Code 2254A)
Environmental Protection Agency
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Permits Section
Division of Land Pollution Control
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, Illinois 62794-9276

ii) A notification that is hand-delivered must be delivered to the following addresses:

Office of Enforcement and Compliance Assurance
Office of Federal Activities
International Compliance Assurance Division
Environmental Protection Agency
Ariel Rios Bldg., Room 6144
12th St. and Pennsylvania Ave., NW.
Washington, DC 20004

Permits Section
Division of Land Pollution Control
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

C) Except for a change in the telephone number submitted pursuant to subsection (a)(25)(A)(i) of this Section or a decrease in the quantity of hazardous secondary material indicated pursuant to subsection (a)(25)(A)(iv) of this Section, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification), the hazardous secondary material generator must provide the Agency and USEPA with a written re-notification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to subsection (a)(25)(A)(ix) of this Section and in the ports of entry to and departure from transit countries pursuant to subsection (a)(25)(A)(v) of this Section) has been obtained and the hazardous secondary material generator receives from USEPA an Acknowledgment of Consent reflecting the receiving country's consent to the changes.

D) Upon request from the Agency or USEPA, the hazardous secondary material generator must furnish to the Agency and USEPA any additional information that a receiving country requests in order to respond to a notification.

E) USEPA has stated in corresponding 40 CFR 261.4(a)(25)(v) that it will provide a complete notification to the receiving country and any transit countries. A notification is complete when USEPA determines that the notification satisfies the requirements of subsection (a)(25)(A) of this Section. When a claim of confidentiality is asserted with respect to any notification information required by subsection (a)(25)(A) of this Section, USEPA has stated in corresponding 40 CFR 261.4(a)(25)(v) that it may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

F) The export of hazardous secondary material pursuant to this subsection (a)(25) is prohibited, unless the receiving country
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consents to the intended export. When the receiving country consents in writing to the receipt of the hazardous secondary material, USEPA has stated in corresponding 40 CFR 261.4(a)(25)(vi) that it will send an Acknowledgment of Consent to the hazardous secondary material generator. When the receiving country objects to receipt of the hazardous secondary material or withdraws a prior consent, USEPA has stated that it will notify the hazardous secondary material generator in writing. USEPA has stated that it will also notify the hazardous secondary material generator of any responses from transit countries.

G) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any receiving country or transit countries to a notification provided pursuant to subsection (a)(25)(A) of this Section within 30 days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the receiving country, the trans-boundary movement may commence. In such cases, USEPA has stated in corresponding 40 CFR 261.4(a)(25)(vii) that it will send an Acknowledgment of Consent to inform the hazardous secondary material generator that the receiving country and any relevant transit countries have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one calendar year after the close of the 30-day period; re-notification and renewal of all consents is required for exports after that date.

H) A copy of the Acknowledgment of Consent must accompany the shipment. The shipment must conform to the terms of the Acknowledgment of Consent.

I) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator must re-notify the Agency and USEPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with subsection (a)(25)(C) of this Section and obtain another Acknowledgment of Consent.
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J) The hazardous secondary material generator must keep a copy of each notification of intent to export and each Acknowledgment of Consent for a period of three years following receipt of the Acknowledgment of Consent.

K) Annual reporting of hazardous secondary material exports. A hazardous secondary material generator must file with the Agency and USEPA, no later than March 1 of each year, a report that summarizes the types, quantities, frequency, and ultimate destinations of all hazardous secondary materials exported during the previous calendar year. Annual reports must be sent to the addresses listed in subsection (a)(25)(B) of this Section (for mail or hand delivery, as appropriate) for submission notification of intent to export hazardous secondary material. The annual reports must include the following information:

i) The name, mailing and site addresses, and USEPA identification number (if applicable) of the hazardous secondary material generator;

ii) The calendar year covered by the report;

iii) The name and site address of each reclaimer and intermediate facility that received exported hazardous secondary material from the generator;

iv) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the USEPA hazardous waste number that would apply were the hazardous secondary material to be managed as hazardous waste; the USDOT hazard class for the material, as determined pursuant to 49 CFR 171 through 173, each incorporated by reference in 35 Ill. Adm. Code 720.111; the name and USEPA identification number (when applicable) for each transporter used; the total amount of hazardous secondary material shipped; and the number of shipments pursuant to each notification;
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v) A certification signed by the hazardous secondary material generator that states as follows:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

L) Any person that claims an exclusion under this subsection (a)(25) must provide notification as required by 35 Ill. Adm. Code 720.142.

b) Solid wastes that are not hazardous wastes. The following solid wastes are not hazardous wastes:

1) Household waste, including household waste that has been collected, transported, stored, treated, disposed of, recovered (e.g., refuse-derived fuel), or reused. "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels, and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste must not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this Part, if the following describe the facility:

A) The facility receives and burns only the following waste:

i) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); or

ii) Solid waste from commercial or industrial sources that does not contain hazardous waste; and
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B) The facility does not accept hazardous waste and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

BOARD NOTE: The U.S. Supreme Court determined, in City of Chicago v. Environmental Defense Fund, Inc., 511 U.S. 328, 114 S. Ct. 1588, 128 L. Ed. 2d 302 (1994), that this exclusion and RCRA section 3001(i) (42 USC 6921(i)) do not exclude the ash from facilities covered by this subsection (b)(1) from regulation as a hazardous waste. At 59 Fed. Reg. 29372 (June 7, 1994), USEPA granted facilities managing ash from such facilities that is determined a hazardous waste under Subpart C of this Part until December 7, 1994 to file a Part A permit application pursuant to 35 Ill. Adm. Code 703.181. At 60 Fed. Reg. 6666 (Feb. 3, 1995), USEPA stated that it interpreted that the point at which ash becomes subject to RCRA Subtitle C regulation is when that material leaves the combustion building (including connected air pollution control equipment).

2) Solid wastes generated by any of the following that are returned to the soil as fertilizers:

A) The growing and harvesting of agricultural crops, or

B) The raising of animals, including animal manures.

3) Mining overburden returned to the mine site.

4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided in 35 Ill. Adm. Code 726.212 for facilities that burn or process hazardous waste.

5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.
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6) Chromium wastes.

A) Wastes that fail the test for the toxicity characteristic (Section 721.124 and Appendix B to this Part) because chromium is present or which are listed in Subpart D of this Part due to the presence of chromium, that do not fail the test for the toxicity characteristic for any other constituent or which are not listed due to the presence of any other constituent, and that do not fail the test for any other characteristic, if the waste generator shows the following:

i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium;

ii) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

iii) The waste is typically and frequently managed in non-oxidizing environments.

B) The following are specific wastes that meet the standard in subsection (b)(6)(A) of this Section (so long as they do not fail the test for the toxicity characteristic for any other constituent and do not exhibit any other characteristic):

i) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish, hair save/chrome tan/retan/wet finish, retan/wet finish, no beamhouse, through-the-blue, and shearling;

ii) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish, hair save/chrome tan/retan/wet finish, retan/wet finish, no beamhouse, through-the-blue, and shearling;

iii) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair
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pulp/chrome tan/retan/wet finish, hair save/chrome tan/retan/wet finish, retan/wet finish, no beamhouse, through-the-blue;

iv) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish, hair save/chrome tan/retan/wet finish, retan/wet finish, no beamhouse, through-the-blue, and shearling;

v) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish, hair save/chrome tan/retan/wet finish, retan/wet finish, no beamhouse, through-the-blue, and shearling;

vi) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish, hair save/chrome tan/retan/wet finish, and through-the-blue;

vii) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries; and

viii) Wastewater treatment sludges from the production of titanium dioxide pigment using chromium-bearing ores by the chloride process.

7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided by 35 Ill. Adm. Code 726.212 for facilities that burn or process hazardous waste.

A) For purposes of this subsection (b)(7), beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water or carbon dioxide; roasting; autoclaving or
chlorination in preparation for leaching (except where the roasting (or autoclaving or chlorination) and leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; floatation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat tank, and in situ leaching.

B) For the purposes of this subsection (b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

i) Slag from primary copper processing;

ii) Slag from primary lead processing;

iii) Red and brown muds from bauxite refining;

iv) Phosphogypsum from phosphoric acid production;

v) Slag from elemental phosphorus production;

vi) Gasifier ash from coal gasification;

vii) Process wastewater from coal gasification;

viii) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

ix) Slag tailings from primary copper processing;

x) Fluorogypsum from hydrofluoric acid production;

xi) Process wastewater from hydrofluoric acid production;

xii) Air pollution control dust or sludge from iron blast furnaces;

xiii) Iron blast furnace slag;
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xiv) Treated residue from roasting and leaching of chrome ore;

xv) Process wastewater from primary magnesium processing by the anhydrous process;

xvi) Process wastewater from phosphoric acid production;

xvii) Basic oxygen furnace and open hearth furnace air pollution control dust or sludge from carbon steel production;

xviii) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

xix) Chloride processing waste solids from titanium tetrachloride production;

xx) Slag from primary zinc production.

C) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under this subsection (b) if the following conditions are fulfilled:

i) The owner or operator processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials;

ii) The owner or operator legitimately reclaims the secondary mineral processing materials.

8) Cement kiln dust waste, except as provided by 35 Ill. Adm. Code 726.212 for facilities that burn or process hazardous waste.

9) Solid waste that consists of discarded arsenical-treated wood or wood products that fails the test for the toxicity characteristic for hazardous waste codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons that utilize the arsenical-treated wood and wood products for these materials' intended
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end use.

10) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of Section 721.124 (hazardous waste codes D018 through D043 only) and which are subject to corrective action regulations under 35 Ill. Adm. Code 731.

11) This subsection (b)(11) corresponds with 40 CFR 261.4(b)(11), which expired by its own terms on January 25, 1993. This statement maintains structural parity with USEPA regulations.

12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems, that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

13) Non-terne plated used oil filters that are not mixed with wastes listed in Subpart D of this Part, if these oil filters have been gravity hot-drained using one of the following methods:

A) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

B) Hot-draining and crushing;

C) Dismantling and hot-draining; or

D) Any other equivalent hot-draining method that will remove used oil.

14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed of, under the following circumstances:

A) The following conditions must be fulfilled:
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i) The solid wastes disposed of would meet one or more of the listing descriptions for the following USEPA hazardous waste numbers that are generated after the effective date listed for the waste:

<table>
<thead>
<tr>
<th>USEPA Hazardous Waste Numbers</th>
<th>Listing Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>K169, K170, K171, and K172</td>
<td>February 8, 1999</td>
</tr>
<tr>
<td>K174 and K175</td>
<td>May 7, 2001</td>
</tr>
<tr>
<td>K176, K177, and K178</td>
<td>May 20, 2002</td>
</tr>
<tr>
<td>K181</td>
<td>August 23, 2005</td>
</tr>
</tbody>
</table>

ii) The solid wastes described in subsection (b)(15)(A)(i) of this Section were disposed of prior to the effective date of the listing (as set forth in that subsection);

iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor is derived from any other listed hazardous waste; and

iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under section 307(b) or 402 of the federal Clean Water Act.

B) Leachate or gas condensate derived from K169, K170, K171, K172, K176, K177, or K178 waste will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 waste will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas
condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this subsection (b)(15) after the emergency ends.

c) Hazardous wastes that are exempted from certain regulations. A hazardous waste that is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit, or an associated non-waste-treatment manufacturing unit, is not subject to regulation under 35 Ill. Adm. Code 702, 703, and 722 through 728 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing or for storage or transportation of product or raw materials.

d) Samples.

1) Except as provided in subsection (d)(2) of this Section, a sample of solid waste or a sample of water, soil, or air that is collected for the sole purpose of testing to determine its characteristics or composition is not subject to any requirements of this Part or 35 Ill. Adm. Code 702, 703, and 722 through 728. The sample qualifies when it fulfills one of the following conditions:

   A) The sample is being transported to a laboratory for the purpose of testing;

   B) The sample is being transported back to the sample collector after testing;

   C) The sample is being stored by the sample collector before transport to a laboratory for testing;

   D) The sample is being stored in a laboratory before testing;

   E) The sample is being stored in a laboratory for testing but before it is returned to the sample collector; or

   F) The sample is being stored temporarily in the laboratory after
testing for a specific purpose (for example, until conclusion of a
court case or enforcement action where further testing of the
sample may be necessary).

2) In order to qualify for the exemption in subsection (d)(1)(A) or (d)(1)(B)
of this Section, a sample collector shipping samples to a laboratory and a
laboratory returning samples to a sample collector must do the following:

A) Comply with U.S. Department of Transportation (USDOT), U.S.
Postal Service (USPS), or any other applicable shipping
requirements; or

B) Comply with the following requirements if the sample collector
determines that USDOT, USPS, or other shipping requirements do
not apply to the shipment of the sample:

i) Assure that the following information accompanies the
sample: The sample collector's name, mailing address, and
telephone number; the laboratory's name, mailing address,
and telephone number; the quantity of the sample; the date
of the shipment; and a description of the sample; and

ii) Package the sample so that it does not leak, spill, or
vaporize from its packaging.

3) This exemption does not apply if the laboratory determines that the waste
is hazardous but the laboratory is no longer meeting any of the conditions
stated in subsection (d)(1) of this Section.

e) Treatability study samples.

1) Except as is provided in subsection (e)(2) of this Section, a person that
generates or collects samples for the purpose of conducting treatability
studies, as defined in 35 Ill. Adm. Code 720.110, are not subject to any
requirement of 35 Ill. Adm. Code 721 through 723 or to the notification
requirements of section 3010 of the Resource Conservation and Recovery
Act. Nor are such samples included in the quantity determinations of
Section 721.105 and 35 Ill. Adm. Code 722.134(d) when:
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A) The sample is being collected and prepared for transportation by the generator or sample collector;

B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

2) The exemption in subsection (e)(1) of this Section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that the following conditions are fulfilled:

A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1,000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, or 2,500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

B) The mass of each shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2,500 kg of media contaminated with acute hazardous waste, 1,000 kg of hazardous waste, and 1 kg of acute hazardous waste;

C) The sample must be packaged so that it does not leak, spill, or vaporize from its packaging during shipment and the requirements of subsection (e)(2)(C)(i) or (e)(2)(C)(ii) of this Section are met.

i) The transportation of each sample shipment complies with U.S. Department of Transportation (USDOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

ii) If the USDOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following
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information must accompany the sample: The name, mailing address, and telephone number of the originator of the sample; the name, address, and telephone number of the facility that will perform the treatability study; the quantity of the sample; the date of the shipment; and, a description of the sample, including its USEPA hazardous waste number;

D) The sample is shipped to a laboratory or testing facility that is exempt under subsection (f) of this Section, or has an appropriate RCRA permit or interim status;

E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

i) Copies of the shipping documents;

ii) A copy of the contract with the facility conducting the treatability study; and

iii) Documentation showing the following: The amount of waste shipped under this exemption; the name, address, and USEPA identification number of the laboratory or testing facility that received the waste; the date the shipment was made; and whether or not unused samples and residues were returned to the generator; and

F) The generator reports the information required in subsection (e)(2)(E)(iii) of this Section in its report under 35 Ill. Adm. Code 722.141.

3) The Agency may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Agency may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in subsections (e)(2)(A), (e)(2)(B), and (f)(4) of this Section, for up to an additional 5,000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2,500 kg of media contaminated with acute hazardous waste, and 1 kg of acute
hazardous waste under the circumstances set forth in either subsection (e)(3)(A) or (e)(3)(B) of this Section, subject to the limitations of subsection (e)(3)(C) of this Section:

A) In response to requests for authorization to ship, store, and conduct further treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), the size of the unit undergoing testing (particularly in relation to scale-up considerations), the time or quantity of material required to reach steady-state operating conditions, or test design considerations, such as mass balance calculations.

B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies when the following occurs: There has been an equipment or mechanical failure during the conduct of the treatability study, there is need to verify the results of a previously-conducted treatability study, there is a need to study and analyze alternative techniques within a previously-evaluated treatment process, or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

C) The additional quantities allowed and timeframes allowed in subsections (e)(3)(A) and (e)(3)(B) of this Section are subject to all the provisions in subsections (e)(1) and (e)(2)(B) through (e)(2)(F) of this Section. The generator or sample collector must apply to the Agency and provide in writing the following information:

i) The reason why the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

ii) Documentation accounting for all samples of hazardous waste from the waste stream that have been sent for or undergone treatability studies, including the date each previous sample from the waste stream was shipped, the
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quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

iii) A description of the technical modifications or change in specifications that will be evaluated and the expected results;

iv) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

v) Such other information as the Agency determines is necessary.

4) Final Agency determinations pursuant to this subsection (e) may be appealed to the Board.

f) Samples undergoing treatability studies at laboratories or testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this Part, or of 35 Ill. Adm. Code 702, 703, 722 through 726, and 728 or to the notification requirements of Section 3010 of the Resource Conservation and Recovery Act, provided that the requirements of subsections (f)(1) through (f)(11) of this Section are met. A mobile treatment unit may qualify as a testing facility subject to subsections (f)(1) through (f)(11) of this Section. Where a group of mobile treatment units are located at the same site, the limitations specified in subsections (f)(1) through (f)(11) of this Section apply to the entire group of mobile treatment units collectively as if the group were one mobile treatment unit.

1) No less than 45 days before conducting treatability studies, the facility notifies the Agency in writing that it intends to conduct treatability studies under this subsection (f).

2) The laboratory or testing facility conducting the treatability study has a
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USEPA identification number.

3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2,500 kg of media contaminated with acute hazardous waste, or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2,500 kg of media contaminated with acute hazardous waste, 1,000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including non-hazardous solid waste) added to "as received" hazardous waste.

5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

A) The name, address, and USEPA identification number of the generator or sample collector of each waste sample;
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B) The date the shipment was received;

C) The quantity of waste accepted;

D) The quantity of "as received" waste in storage each day;

E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

F) The date the treatability study was concluded;

G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the USEPA identification number.

8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

9) The facility prepares and submits a report to the Agency, by March 15 of each year, that includes the following information for the previous calendar year:

A) The name, address, and USEPA identification number of the facility conducting the treatability studies;

B) The types (by process) of treatability studies conducted;

C) The names and addresses of persons for whom studies have been conducted (including their USEPA identification numbers);

D) The total quantity of waste in storage each day;

E) The quantity and types of waste subjected to treatability studies;

F) When each treatability study was conducted; and
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G) The final disposition of residues and unused sample from each treatability study.

10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section 721.103 and, if so, are subject to 35 Ill. Adm. Code 702, 703, and 721 through 728, unless the residues and unused samples are returned to the sample originator under the exemption of subsection (e) of this Section.

11) The facility notifies the Agency by letter when the facility is no longer planning to conduct any treatability studies at the site.

g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under section 404 of the Federal Water Pollution Control Act (33 USC 1344) is not a hazardous waste. For the purposes of this subsection (g), the following definitions apply:

"Dredged material" has the meaning ascribed it in 40 CFR 232.2 (Definitions), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

"Permit" means any of the following:

A permit issued by the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Federal Water Pollution Control Act (33 USC 1344);

A permit issued by the Army Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC 1413); or

In the case of Army Corps civil works projects, the administrative equivalent of the permits referred to in the preceding two paragraphs of this definition, as provided for in Army Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

Section 721.105 Special Requirements for Hazardous Waste Generated by Small Quantity Generators
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a) A generator is a conditionally exempt small quantity generator (CESQG) in a calendar month if it generates no more than 100 kilograms of hazardous waste in that month.

b) Except for those wastes identified in subsections (e), (f), (g), and (j) of this Section, a CESQG's conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under 35 Ill. Adm. Code 702, 703, and 722 through 728, and the notification requirements of section 3010 of Resource Conservation and Recovery Act, provided the generator complies with subsections (f), (g), and (j) of this Section.

c) When making the quantity determinations of this Part and 35 Ill. Adm. Code 722, the generator must include all hazardous waste that it generates, except the following hazardous waste:

1) Hazardous waste that is exempt from regulation under Section 721.104(c) through (f), 721.106(a)(3), 721.107(a)(1), or 721.108;

2) Hazardous waste that is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities, as defined in 35 Ill. Adm. Code 720.110;

3) Hazardous waste that is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under Section 721.106(c)(2);

4) Hazardous waste that is used oil managed pursuant to Section 721.106(a)(4) and 35 Ill. Adm. Code 739;

5) Hazardous waste that is spent lead-acid batteries managed pursuant to Subpart G of 35 Ill. Adm. Code 726; and

6) Hazardous waste that is universal waste managed pursuant to Section 721.109 and 35 Ill. Adm. Code 733; and

7) Hazardous waste that is an unused commercial chemical product (that is listed in Subpart D of 35 Ill. Adm. Code 721 or that exhibits one or more characteristics in Subpart C of 35 Ill. Adm. Code 721) that is generated
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solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to Section 722.313. For purposes of this subsection (c)(7), the term "eligible academic entity" has the meaning given that term in 35 Ill. Adm. Code 722.300.

d) In determining the quantity of hazardous waste it generates, a generator need not include the following:

1) Hazardous waste when it is removed from on-site storage;

2) Hazardous waste produced by on-site treatment (including reclamation) of its hazardous waste so long as the hazardous waste that is treated was counted once;

3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

e) If a generator generates acute hazardous waste in a calendar month in quantities greater than those set forth in subsections (e)(1) and (e)(2) of this Section, all quantities of that acute hazardous waste are subject to full regulation under 35 Ill. Adm. Code 702, 703, and 722 through 728, and the notification requirements of section 3010 of the Resource Conservation and Recovery Act.

1) A total of one kilogram of one or more of the acute hazardous wastes listed in Section 721.131, 721.132, or 721.133(e); or

2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any one or more of the acute hazardous wastes listed in Section 721.131, 721.132, or 721.133(e).

BOARD NOTE: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acute hazardous waste in a calendar month.

f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (e)(2) of this Section to be excluded from full regulation under this Section, the generator must comply with the following requirements:
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2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than set forth in subsection (e)(1) or (e)(2) of this Section, all of those accumulated wastes are subject to regulation under 35 Ill. Adm. Code 702, 703, and 722 through 728, and the applicable notification requirements of section 3010 of the Resource Conservation and Recovery Act. The time period of 35 Ill. Adm. Code 722.134(a), for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit.

3) A CESQG conditionally exempt small quantity generator may either treat or dispose of its acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, any of which, if located in the United States, meets any of the following conditions:

A) The facility is permitted under 35 Ill. Adm. Code 702 and 703;

B) The facility has interim status under 35 Ill. Adm. Code 702, 703, and 725;

C) The facility is authorized to manage hazardous waste by a state with a hazardous waste management program approved by USEPA pursuant to 40 CFR 271;

D) The facility is permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill facility, the landfill is subject to 35 Ill. Adm. Code 810 through 814 or federal 40 CFR 258;

E) The facility is permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, the unit is subject to federal 40 CFR 257.5 through 257.30;

BOARD NOTE: The Illinois non-hazardous waste landfill regulations, 35 Ill. Adm. Code 810 through 814, do not allow the
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disposal of hazardous waste in a landfill regulated under those rules. The Board intends that subsections (f)(3)(D) and (f)(3)(E) of this Section impose a federal requirement on the hazardous waste generator. The Board specifically does not intend that these subsections authorize any disposal of conditionally-exempt small quantity generator waste in a landfill not specifically permitted to accept the particular hazardous waste.

F) The facility is one that fulfills one of the following conditions:

i) It beneficially uses or reuses or legitimately recycles or reclaim its waste; or

ii) It treats its waste prior to beneficial use or reuse or legitimate recycling or reclamation; or

G) For universal waste managed under 35 Ill. Adm. Code 733 or federal 40 CFR 273, the facility is a universal waste handler or destination facility subject to 35 Ill. Adm. Code 733 or federal 40 CFR 273.

g) In order for hazardous waste generated by a CESQGconditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this Section, the generator must comply with the following requirements:

1) 35 Ill. Adm. Code 722.111;

2) The CESQGconditionally exempt small quantity generator may accumulate hazardous waste on-site. If it accumulates at any time more than a total of 1,000 kilograms of the generator's hazardous waste, all of those accumulated wastes are subject to regulation pursuant to the special provisions of 35 Ill. Adm. Code 722 applicable to generators of between 100 kg and 1,000 kg of hazardous waste in a calendar month, as well as 35 Ill. Adm. Code 702, 703, and 723 through 728, and the applicable notification requirements of Section 3010 of the Resource Conservation and Recovery Act. The time period of 35 Ill. Adm. Code 722.134(d) for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed 1,000 kilograms;
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3) A **CESQG** (conditionally exempt small quantity generator) may either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, any of which, if located in the United States, meets any of the following conditions:

A) The facility is permitted under 35 Ill. Adm. Code 702 and 703;

B) The facility has interim status under 35 Ill. Adm. Code 702, 703, and 725;

C) The facility is authorized to manage hazardous waste by a state with a hazardous waste management program approved by USEPA pursuant to 40 CFR 271;

D) The facility is permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill facility, the landfill is subject to 35 Ill. Adm. Code 810 through 814 or federal 40 CFR 258;

E) The facility is permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, the unit is subject to federal 40 CFR 257.5 through 257.30;

BOARD NOTE: The Illinois non-hazardous waste landfill regulations, 35 Ill. Adm. Code 810 through 814, do not allow the disposal of hazardous waste in a landfill regulated under those rules. The Board intends that subsections (g)(3)(D) and (g)(3)(E) of this Section impose a federal requirement on the hazardous waste generator. The Board specifically does not intend that these subsections authorize any disposal of conditionally-exempt small quantity generator waste in a landfill not specifically permitted to accept the particular hazardous waste.

F) The facility is one that fulfills the following conditions:

   i) It beneficially uses or re-uses, or legitimately recycles or reclaims the small quantity generator's waste; or
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ii) It treats its waste prior to beneficial use or re-use or legitimate recycling or reclamation; or

G) For universal waste managed under 35 Ill. Adm. Code 733 or federal 40 CFR 273, the facility is a universal waste handler or destination facility subject to 35 Ill. Adm. Code 733 or federal 40 CFR 273.

h) Hazardous waste subject to the reduced requirements of this Section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this Section, unless the mixture meets any of the characteristics of hazardous wastes identified in Subpart C of this Part.

i) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this Section, the mixture is subject to full regulation.

j) If a CESQG's conditionally exempt small quantity generator's hazardous wastes are mixed with used oil, the mixture is subject to 35 Ill. Adm. Code 739. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

SUBPART D: LISTS OF HAZARDOUS WASTE

Section 721.133 Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded, as described in Section 721.102(a)(2)(A); when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment; when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to land in lieu of their original intended use; or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.
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a) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (e) or (f) of this Section.

b) Any off-specification commercial chemical product or manufacturing chemical intermediate that, if it met specifications, would have the generic name listed in subsection (e) or (f) of this Section.

c) Any residue remaining in a container or inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (e) or (f) of this Section, unless the container is empty, as defined in Section 721.107(b)(3).

BOARD NOTE: Unless the residue is being beneficially used or reused; legitimately recycled or reclaimed; or accumulated, stored, transported, or treated prior to such use, reuse, recycling, or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate reuse of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner that reconditions the drum but discards the residue.

d) Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (e) or (f) of this Section or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical product or manufacturing chemical intermediate that, if it met specifications, would have the generic name listed in subsection (e) or (f) of this Section.

BOARD NOTE: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in..." refers to a chemical substance that is manufactured or formulated for commercial or manufacturing use that consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in subsection (e) or (f) of this Section. Where a manufacturing process waste is
deemed to be a hazardous waste because it contains a substance listed in subsection (e) or (f) of this Section, such waste will be listed in either Sections 721.131 or 721.132 or will be identified as a hazardous waste by the characteristics set forth in Subpart C of this Part.

**e)** The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections (a) through (d) of this Section are identified as acute hazardous waste (H) and are subject to the small quantity exclusion defined in Section 721.105(e). These wastes and their corresponding USEPA hazardous waste numbers are the following:

BOARD NOTE: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). The absence of a letter indicates that the compound is only listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by USEPA hazardous waste number.

### Alphabetical Listing

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<td>Acetamide, 2-fluoro-</td>
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<td>1,2-Benzenediol, 4-((1-hydroxy-2-(methylamino)ethyl) -, (R)-</td>
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<td>P046</td>
<td>122-09-8</td>
<td>Benzenethanamine, $\alpha,\alpha$-dimethyl-</td>
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<td>P014</td>
<td>108-98-5</td>
<td>Benzenethiol</td>
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<td>P127</td>
<td>1563-66-2</td>
<td>7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-,-, methylcarbamate</td>
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<td>P188</td>
<td>57-64-7</td>
<td>Benzoic acid, 2-hydroxy-, compound with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo(2,3-b) indol-5-yl methylcarbamate ester (1:1)</td>
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<td>P001</td>
<td>81-81-2*</td>
<td>2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3 percent</td>
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<td>P028</td>
<td>100-44-7</td>
<td>Benzyl chloride</td>
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<td>P015</td>
<td>7440-41-7</td>
<td>Beryllium powder</td>
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<td>P017</td>
<td>598-31-2</td>
<td>Bromoacetone</td>
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<td>P018</td>
<td>357-57-3</td>
<td>Brucine</td>
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<td>P045</td>
<td>39196-18-6</td>
<td>2-Butanone,3,3-dimethyl-1-(methylthio)-,-, O-((methylamino)carbonyl) oxime</td>
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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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<tr>
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<td>55285-14-8</td>
<td>Carbamic acid, ((dibutylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester</td>
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<td>Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl) -5-methyl-1H-pyrazol-3-yl ester</td>
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<td>P192</td>
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<td>Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester</td>
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<td>Carbamic acid, methyl-, 3-methylphenyl ester</td>
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<td>O,O-Diethyl O-pyrazinyl phosphorothioate</td>
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<td>Diisopropylfluorophosphate (DFP)</td>
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<td>Dimetilan</td>
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### NOTICE OF PROPOSED AMENDMENTS

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<td>P060</td>
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<td>1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1α,4α,4αβ,5β,8β,8ββ)-</td>
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<td>P037</td>
<td>60-57-1</td>
<td>2,7,3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2a,3,6,6a,7,7a-octahydro-, (1αα,2β,2αα,3β,6β,6αα,7β,7αα)-</td>
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<td>P051</td>
<td>72-20-8*</td>
<td>2,7,3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2a,3,6,6a,7,7a-octahydro-, (1αα,2β,2αβ,3α,6α,6αβ,7β,7αα)-, and metabolites</td>
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<td>51-28-5</td>
<td>2,4-Dinitrophenol</td>
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<td>Dinoseb</td>
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<td>Diphosphoramid, octamethyl-</td>
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<td>Ethanimidothioic acid, 2-(dimethylamino)-N-(((methylamino)carbonyl)oxy)-2-oxo-, methyl ester</td>
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# POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

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<th>CAS</th>
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<tbody>
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<td>P066</td>
<td>Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-, methyl ester</td>
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<td>Fluoroacetic acid, sodium salt</td>
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<td>Formetanate hydrochloride</td>
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<td>Fulminic acid, mercury (2+) salt (R, (R, T) T)</td>
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<td>Manganese, bis(dimethylcarbamothioato-S,S')-</td>
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<td>Manganese dimethyldithiocarbamate</td>
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<td>Mercury fulminate (R, T)</td>
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<td>Methanethiol, trichloro-</td>
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**NOTICE OF PROPOSED AMENDMENTS**

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<td>Methanimidamide, N,N-dimethyl-N'-(3-((methylamino)carbonyl)oxy)phenyl), monohydrochloride</td>
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<td>P043</td>
<td>55-91-4</td>
<td>Phosphorofluoridic acid, bis(1-methylethyl)ester</td>
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<td>Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester</td>
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NOTICE OF PROPOSED AMENDMENTS

P040 297-97-2 Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097 52-85-7 Phosphorothioic acid, O-(4-((dimethylamino)-sulfonyl)phenyl) O,O-dimethyl ester
P071 298-00-0 Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester
P204 57-47-6 Physostigmine
P188 57-64-7 Physostigmine salicylate
P110 78-00-2 Plumbane, tetraethyl-
P098 151-50-8 Potassium cyanide
P098 151-50-8 Potassium cyanide KCN
P099 506-61-6 Potassium silver cyanide
P201 2631-37-0 Promecarb
P203 1646-88-4 Propanal, 2-methyl-2-(methylsulfonyl)-, O-((methylamino)carbonyl) oxime
P070 116-06-3 Propanal, 2-methyl-2-(methylthio)-, O-((methylamino)carbonyl)oxime
P101 107-12-0 Propanenitrile
P027 542-76-7 Propanenitrile, 3-chloro-
P069 75-86-5 Propanenitrile, 2-hydroxy-2-methyl-
P081 55-63-0 1,2,3-Propanetriol, trinitrate- (R) (R)
P017 598-31-2 2-Propanone, 1-bromo-
P102 107-19-7 Propargyl alcohol
P003 107-02-8 2-Propanol
P005 107-18-6 2-Propen-1-ol
P067 75-55-8 1,2-Propylenimine
P102 107-19-7 2-Propyn-1-ol
P008 504-24-5 4-Pyridinamine
P075 54-11-5* Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)- and salts
P204 57-47-6 Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P114 12039-52-0 Selenious acid, dithallium (1+) salt
P103 630-10-4 Selenourea
P104 506-64-9 Silver cyanide
### POLLUTION CONTROL BOARD

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<tr>
<th></th>
<th>CAS Number</th>
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<td>P104</td>
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<td>143-33-9</td>
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<td>Sodium cyanide NaCN</td>
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<td>57-24-9*</td>
<td>Strychnidin-10-one, and salts</td>
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<td>P018</td>
<td>357-57-3</td>
<td>Strychnidin-10-one, 2,3-dimethoxy-</td>
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<td>Strychnine and salts</td>
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<td>7446-18-6</td>
<td>Sulfuric acid, dithallium (1+) salt</td>
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<td>P109</td>
<td>3689-24-5</td>
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<td>1314-32-5</td>
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<td>5344-82-1</td>
<td>Thiourea, (2-chlorophenyl)-</td>
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<td>86-88-4</td>
<td>Thiourea, 1-naphthalenyl-</td>
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<td>103-85-5</td>
<td>Thiourea, phenyl-</td>
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<td>4549-40-0</td>
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<td>P001</td>
<td>81-81-2*</td>
<td>Warfarin, and salts, when present at concentrations greater than 0.3 percent</td>
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<tr>
<td>P121</td>
<td>557-21-1</td>
<td>Zinc cyanide</td>
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**POLLUTION CONTROL BOARD**

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<th>Chemical Abstracts No. (CAS No.)</th>
<th>Substance</th>
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<tr>
<td>P121 557-21-1</td>
<td>Zinc cyanide Zn(CN)_2</td>
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<td>P205 137-30-4</td>
<td>Zinc, bis(dimethylcarbamodithioato- S,S')-</td>
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<td>P122 1314-84-7</td>
<td>Zinc phosphide Zn_3P_2, when present at concentrations greater than 10 percent (R, T)</td>
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<td>P205 137-30-4</td>
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**Numerical Listing**

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<td>P001 81-81-2*</td>
<td>2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3 percent</td>
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<td>1-Acetyl-2-thiourea</td>
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<td>P003 107-02-8</td>
<td>2-Propenal</td>
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<td>5-(Aminomethyl)-3-isoxazolol</td>
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<td>3(2H)-Isoxazolone, 5-(aminomethyl)-</td>
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<td>P009 131-74-8</td>
<td>Ammonium picrate (R)</td>
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<td>Phenol, 2,4,6-trinitro-, ammonium salt (R)</td>
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<td>P010 7778-39-4</td>
<td>Arsenic acid H_3AsO_4</td>
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<td>P011 1303-28-2</td>
<td>Arsenic oxide As_2O_5</td>
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| P011 | 1303-28-2 | Arsenic pentoxide |
| P012 | 1327-53-3 | Arsenic oxide As$_2$O$_3$ |
| P012 | 1327-53-3 | Arsenic trioxide |
| P013 | 542-62-1 | Barium cyanide |
| P014 | 108-98-5 | Benzenethiol |
| P014 | 108-98-5 | Thiophenol |
| P015 | 7440-41-7 | Beryllium powder |
| P016 | 542-88-1 | Dichloromethyl ether |
| P016 | 542-88-1 | Methane, oxybis(chloro- |
| P017 | 598-31-2 | Bromoacetone |
| P017 | 598-31-2 | 2-Propanone, 1-bromo- |
| P018 | 357-57-3 | Brucine |
| P018 | 357-57-3 | Strychnidin-10-one, 2,3-dimethoxy- |
| P020 | 88-85-7 | Dinoseb |
| P020 | 88-85-7 | Phenol, 2-(1-methylpropyl)-4,6-dinitro- |
| P021 | 592-01-8 | Calcium cyanide |
| P021 | 592-01-8 | Calcium cyanide Ca(CN)$_2$ |
| P022 | 75-15-0 | Carbon disulfide |
| P023 | 107-20-0 | Acetaldehyde, chloro- |
| P023 | 107-20-0 | Chloroacetaldehyde |
| P024 | 106-47-8 | Benzenamine, 4-chloro- |
| P024 | 106-47-8 | p-Chloroaniline |
| P026 | 5344-82-1 | 1-(o-Chlorophenyl)thiourea |
| P026 | 5344-82-1 | Thiourea, (2-chlorophenyl)- |
| P027 | 542-76-7 | 3-Chloropropionitrile |
| P027 | 542-76-7 | Propanenitrile, 3-chloro- |
| P028 | 100-44-7 | Benzene, (chloromethyl)- |
| P028 | 100-44-7 | Benzyl chloride |
| P029 | 544-92-3 | Copper cyanide |
| P029 | 544-92-3 | Copper cyanide CuCN |
| P030 | 460-19-5 | Cyanogen |
| P030 | 460-19-5 | Ethanedinitrile |
| P033 | 506-77-4 | Cyanogen chloride |
| P033 | 506-77-4 | Cyanogen chloride CNCI |
| P034 | 131-89-5 | 2-Cyclohexyl-4,6-dinitrophenol |
| P034 | 131-89-5 | Phenol, 2-cyclohexyl-4,6-dinitro- |
| P036 | 696-28-6 | Arsonous dichloride, phenyl- |
### NOTICE OF PROPOSED AMENDMENTS

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### NOTICE OF PROPOSED AMENDMENTS

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<td>(methylamino)carbonyl)oxime</td>
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### NOTICE OF PROPOSED AMENDMENTS

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<td>103-85-5</td>
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<td>Tetranitromethane (R)</td>
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<td>Thallium (I) selenite</td>
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<td>Thallium (I) sulfate</td>
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<td>(3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-</td>
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<td>Manganese, bis(dimethylcarbamodithioato-S,S')-</td>
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<td>Manganese dimethylidithiocarbamate</td>
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<td>Acetic acid, (2,4-dichlorophenoxy)-, salts and esters</td>
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BOARD NOTE: An asterisk (*) following the CAS number indicates that the CAS number is given for the parent compound only.

f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (a) through (d) of this Section, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in Section 721.105(a) and (g). These wastes and their corresponding USEPA hazardous waste numbers are the following:

BOARD NOTE: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability), and C (Corrosivity). The absence of a letter indicates that the compound is only listed for toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by USEPA hazardous waste number.

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<th>Chemical Abstracts No.</th>
<th>Substance</th>
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<td>75-87-6</td>
<td>Acetaldehyde, trichloro-</td>
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<td>U187</td>
<td>62-44-2</td>
<td>Acetamide, N-(4-ethoxyphenyl)-</td>
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<td>U005</td>
<td>53-96-3</td>
<td>Acetamide, N-9H-fluoren-2-yl-</td>
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<tr>
<td>U240</td>
<td>P94-75-7</td>
<td>Acetic acid, (2,4-dichlorophenoxy)-, salts and esters</td>
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<td>U112</td>
<td>141-78-6</td>
<td>Acetic acid, ethyl ester (I)</td>
</tr>
<tr>
<td>U144</td>
<td>301-04-2</td>
<td>Acetic acid, lead (2+) salt</td>
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(R, T) indicates reevaluation.
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See F027 87-86-5 Pentachlorophenol
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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

U176 759-73-9 Urea, N-ethyl-N-nitroso-
U177 684-93-5 Urea, N-methyl-N-nitroso-
U043 75-01-4 Vinyl chloride
U248 P 81-81-2 Warfarin, and salts, when present at concentrations of 0.3 percent or less
U239 1330-20-7 Xylene (I) (I, T)
U200 50-55-5 Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3β,16β,17α,18β,20α)-
U249 1314-84-7 Zinc phosphide Zn₃P₂, when present at concentrations of 10 percent or less

Numerical Listing

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| U028 | 117-81-7 | Diethylhexyl phthalate |
| U029 | 74-83-9 | Methane, bromo- |
| U029 | 74-83-9 | Methyl bromide |
| U030 | 101-55-3 | Benzene, 1-bromo-4-phenoxy- |
| U030 | 101-55-3 | 4-Bromophenyl phenyl ether |
| U031 | 71-36-3 | 1-Butanol (I) |
| U031 | 71-36-3 | n-Butyl alcohol (I) |
| U032 | 13765-19-0 | Calcium chromate |
| U032 | 13765-19-0 | Chromic acid H₂CrO₄, calcium salt |
| U033 | 353-50-4 | Carbonic difluoride (R, T) |
| U033 | 353-50-4 | Carbon oxyfluoride (R, T) (R, T) |
| U034 | 75-87-6 | Acetaldehyde, trichloro- |
| U034 | 75-87-6 | Chloral |
| U035 | 305-03-3 | Benzenebutanoic acid, 4-(bis(2-chloroethyl)amino)- |
| U035 | 305-03-3 | Chlorambucil |
| U036 | 57-74-9 | Chlordane, α and γ isomers |
| U036 | 57-74-9 | 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro- |
| U037 | 108-90-7 | Benzene, chloro- |
| U037 | 108-90-7 | Chlorobenzene |
| U038 | 510-15-6 | Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester |
| U038 | 510-15-6 | Chlorobenzilate |
| U039 | 59-50-7 | p-Chloro-m-cresol |
| U039 | 59-50-7 | Phenol, 4-chloro-3-methyl- |
| U041 | 106-89-8 | Epichlorohydrin |
| U041 | 106-89-8 | Oxirane, (chloromethyl)- |
| U042 | 110-75-8 | 2-Chloroethyl vinyl ether |
| U042 | 110-75-8 | Ethene, (2-chloroethoxy)- |
| U043 | 75-01-4 | Ethene, chloro- |
| U043 | 75-01-4 | Vinyl chloride |
| U044 | 67-66-3 | Chloroform |
| U044 | 67-66-3 | Methane, trichloro- |
| U045 | 74-87-3 | Methane, chloro- (I, T) |
| U045 | 74-87-3 | Methyl chloride (I, T) (I, T) |
| U046 | 107-30-2 | Chloromethyl methyl ether |
| U046 | 107-30-2 | Methane, chloromethoxy- |
| U047 | 91-58-7 | β-Chlornaphthalene |
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<td>U154</td>
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<td>Methanol (I)</td>
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<td>1,2-Ethanediame, N,N-dimethyl-N'-(2-pyridinyl-N'-(2-thienylmethyl)-</td>
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<td>U155</td>
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<td>U156</td>
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| U177  | 684-93-5 | N-Nitroso-N-methylurea |
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| U178  | 615-53-2 | N-Nitroso-N-methylurethane |
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| U179  | 100-75-4 | Piperidine, 1-nitroso- |
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| U181  | 99-55-8 | 5-Nitro-o-toluidine |
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| U182  | 123-63-7 | 1,3,5-Trioxane, 2,4,6-trimethyl- |
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| U183  | 608-93-5 | Pentachlorobenzene |
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| U193  | 1120-71-4 | 1,2-Oxathiolane, 2,2-dioxide |
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| U194  | 107-10-8 | 1-Propanamine (L, T) |
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<td>2,5-Cyclohexadiene-1,4-dione</td>
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<td>Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3β,16β,17α,18β,20α)-</td>
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<td>1,3-Benzenediol</td>
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<td>1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, and salts</td>
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<td>1,3-Benzodioxole, 5-(2-propenyl)-</td>
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<td>Selenium sulfide SeS₂ (R, T)</td>
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<td>Glucopyranose, 2-deoxy-2-((methylnitrosoamino)-carbonyl)amino)-D-</td>
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<td>U206</td>
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<td>D-Glucose, 2-deoxy-2-((methylnitrosoamino)-carbonyl)amino)-D-Streptozotocin</td>
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<td>Tetrahydrofuran (I)</td>
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<td>563-68-8</td>
<td>Acetic acid, thallium (1+) salt</td>
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<td>U214</td>
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<td>Thallium (I) acetate</td>
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| U215 | 6533-73-9 | Thallium (I) carbonate |
| U216 | 7791-12-0 | Thallium (I) chloride |
| U216 | 7791-12-0 | Thallium chloride TlCl |
| U217 | 10102-45-1 | Nitric acid, thallium (1+) salt |
| U217 | 10102-45-1 | Thallium (I) nitrate |
| U218 | 62-55-5 | Ethanethioamide |
| U218 | 62-55-5 | Thioacetamide |
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| U220 | 108-88-3 | Toluene |
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| U223 | 26471-62-5 | Toluene diisocyanate (R, T) |
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| U234 | 99-35-4 | 1,3,5-Trinitrobenzene (R, T) (R, T) |
| U235 | 126-72-7 | 1-Propanol, 2,3-dibromo-, phosphate (3:1) |
| U235 | 126-72-7 | Tris(2,3-dibromopropyl) phosphate |
| U236 | 72-57-1 | 2,7-Naphthalenedisulfonic acid, 3,3'-(3,3',dimethyl-(1,1'-biphenyl)-4,4'-dial)bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt |
| U236 | 72-57-1 | Trypan blue |
| U237 | 66-75-1 | 2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)- |
| U237 | 66-75-1 | Uracil mustard |
| U238 | 51-79-6 | Carbamic acid, ethyl ester |
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<td>1,3-Benzodioxol-4-ol, 2,2-dimethyl-</td>
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<td>7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-</td>
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<td>121-44-8</td>
<td>Triethylamine</td>
</tr>
<tr>
<td>U409</td>
<td>23564-05-8</td>
<td>Carbamic acid, (1,2-phenylenebis(iminocarbonothioyl))bis-, dimethyl ester</td>
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<tr>
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<td>23564-05-8</td>
<td>Thiophanate-methyl</td>
</tr>
<tr>
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<td>Ethanimidothioic acid, N,N'- (thiobis((methylimino)carbonyloxy))bis-, dimethyl ester</td>
</tr>
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(Source: Amended at 34 Ill. Reg. ______, effective ____________)

SUBPART E: EXCLUSIONS AND EXEMPTIONS

Section 721.138 Comparable or Syngas Fuel Exclusion of Comparable Fuel and Syngas Fuel

a) Specifications for excluded fuels. Wastes that meet specifications for the following comparable fuel or syngas fuel under subsection (a)(1) or (a)(2) of this Section, respectively, and the other requirements of this Section, are not solid wastes:

1a) Comparable fuel specifications.

A4) Physical specifications.

iA) Heating value. The heating value must exceed 5,000 Btu/lb (11,500 J/g).

iiB) Viscosity. The viscosity must not exceed 50 cSes, as fired.

B2) Constituent specifications. For the compounds listed, the constituent specification levels and minimum required detection limits (where non-detect is the constituent specification) are set forth in the table in Appendix Y to this Part at subsection (d) of this Section.

2b) Synthesis gas fuel specifications. Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must fulfill the following requirements:

A4) It must have a minimum Btu value of 100 Btu/Scf;

B2) It must contain less than 1 ppmv of total halogen;

C3) It must contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N2);

D4) It must contain less than 200 ppmv of hydrogen sulfide; and
It must contain less than 1 ppmv of each hazardous constituent in the target list of constituents listed in Appendix H of this Part.

3) Blending to meet the specifications.

A) Hazardous waste shall not be blended to meet the comparable fuel specification under subsection (a)(1) of this Section, except as provided by subsection (a)(3)(B) of this Section;

B) Blending to meet the viscosity specification. A hazardous waste blended to meet the viscosity specification for comparable fuel must fulfill the following requirements:

i) As generated, and prior to any blending, manipulation, or processing, the hazardous waste must meet the constituent and heating value specifications of subsections (a)(1)(A)(i) and (a)(1)(B) of this Section;

ii) The hazardous waste must be blended at a facility that is subject to the applicable requirements of 35 Ill. Adm. Code 722.134, 724, 725, or 727; and

iii) The hazardous waste must not violate the dilution prohibition of subsection (a)(6) of this Section.

4) Treatment to meet the comparable fuel specifications.

A) A hazardous waste may be treated to meet the specifications for comparable fuel set forth in subsection (a)(1) of this Section, provided the treatment fulfills the following requirements:

i) The treatment destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

ii) The treatment is performed at a facility that is subject to the applicable requirements of 35 Ill. Adm. Code 722.134, 724, 725, or 727; and
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iii) The treatment does not violate the dilution prohibition of subsection (a)(6) of this Section.

B) Residuals resulting from the treatment of a hazardous waste listed in Subpart D of this Part to generate a comparable fuel remain a hazardous waste.

5) Generation of a syngas fuel.

A) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of subsection (a)(2) of this Section, provided the processing fulfills the following requirements:

i) The processing destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

ii) The processing is performed at a facility that is subject to the applicable requirements of 35 Ill. Adm. Code 722.134, 724, 725, or 727 or is an exempt recycling unit pursuant to 35 Ill. Adm. Code 721.106(c); and

iii) The processing does not violate the dilution prohibition of subsection (a)(6) of this Section.

B) Residuals resulting from the treatment of a hazardous waste listed in Subpart D of this Part to generate a syngas fuel remain a hazardous waste.

b) Implementation.

1) General.

Ae) Wastes that meet the comparable or syngas fuel specifications provided by subsection (a) or (b) of this Section for comparable fuel or syngas fuel are (these constituent levels must be achieved by the comparable fuel when generated, or
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as a result of treatment or blending, as provided in subsection (c)(3) or (c)(4) of this Section) is excluded from the definition of solid waste provided that the following requirements are met. For purposes of this Section, such materials are called "excluded fuel," the person claiming and qualifying for the exclusion is called the "excluded fuel generator," and the person burning the excluded fuel is called the "excluded fuel burner."

B) The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this Section and keeping records necessary to document compliance with those conditions.

24) Notices. For purposes of this Section, the person claiming and qualifying for the exclusion is called the comparable or syngas fuel generator and the person burning the comparable or syngas fuel is called the comparable or syngas burner. The person that generates the comparable fuel or syngas fuel must claim and certify to the exclusion.

A) Notice to the Agency.

i) The generator must submit a one-time notice, except as provided by subsection (b)(2)(A)(iii) of this Section, to the Agency, certifying compliance with the conditions of the exclusion and providing documentation, as required by subsection (b)(2)(C)(e)(1)(A)(iii) of this Section;


ii) If there is a substantive change in the information provided in the one-time notice required under this subsection (b)(2)(A), the generator must submit a revised notification,
iii) An excluded fuel generator must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed in notices for newly excluded fuel or for revised notices as required by subsection (b)(2)(A)(ii) of this Section.

ii) If the generator is a company that generates comparable or syngas fuel at more than one facility, the generator must specify at which sites the comparable or syngas fuel will be generated;

iii) A comparable or syngas fuel generator's notification to the Agency must contain the items listed in subsection (c)(1)(C) of this Section.

B) Public notice. Prior to burning an excluded comparable or syngas fuel, the burner must publish in a major newspaper of general circulation, local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable or Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

i) The name, address, and USEPA identification number of the generating facility;

ii) The name and address of the burner and identification of the units that will burn the excluded comparable or syngas fuel;

iii) A brief, general description of the manufacturing, treatment, or other process generating the excluded comparable or syngas fuel;

iv) An estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded fuel to be burned; and

v) The name and mailing address of the Agency office to which the generator claim was submitted a claim for the
C) **The one-time notice required by subsection (b)(2)(A)(i) of this Section must certify compliance with the conditions of the exclusion and provide documentation, as follows:**

- **i)** The name, address, and USEPA identification number of the person or facility claiming the exclusion;
- **ii)** The applicable USEPA hazardous waste codes for the hazardous waste;
- **iii)** The name and address of the units that meet the requirements of subsection (b)(3) and (c)(2) of this Section that will burn the excluded comparable or syngas fuel; and
- **iv)** An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by subsection (b)(2)(A)(iii) of this Section; and
- **viv)** The following statement must be, signed and submitted by the person claiming the exclusion or its authorized representative:

  Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 35 Ill. Adm. Code 721.138 have been met for all waste identified in this notification. Copies of the records and information required by 35 Ill. Adm. Code 721.138(b)(8) are available at the comparable or syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant
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penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.


32) Burning. The comparable or syngas fuel exclusion for fuels that meet the requirements of subsections (a) or (b) and (c)(1) of this Section applies only if the fuel is burned in the following units that also must be subject to federal, State, and local air emission requirements, including all applicable federal hazardous air pollutant emissions requirements implementing section 112 of the Clean Air Act (CAA) (42 USC 7412) maximum achievable control technology (MACT) requirements:

A) Industrial furnaces, as defined in 35 Ill. Adm. Code 720.110;

B) Boilers, as defined in 35 Ill. Adm. Code 720.110, that are further defined as follows:

   i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

   ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;


D) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

3) Blending to meet the viscosity specification. A hazardous waste blended
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to meet the viscosity specification must fulfill the following requirements:

A) As generated and prior to any blending, manipulation, or processing, the waste must meet the constituent and heating value specifications of subsections (a)(1)(A) and (a)(2) of this Section;

B) The waste must be blended at a facility that is subject to the applicable requirements of 35 Ill. Adm. Code 724 and 725 or 35 Ill. Adm. Code 722.134; and

C) The waste must not violate the dilution prohibition of subsection (c)(6) of this Section.

4) Treatment to meet the comparable fuel exclusion specifications.

A) A hazardous waste may be treated to meet the exclusion specifications of subsections (a)(1) and (a)(2) of this Section provided the treatment fulfills the following requirements:

i) The treatment destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

ii) The treatment is performed at a facility that is subject to the applicable requirements of 35 Ill. Adm. Code 724 and 725 or 35 Ill. Adm. Code 722.134; and

iii) The treatment does not violate the dilution prohibition of subsection (c)(6) of this Section.

B) Residuals resulting from the treatment of a hazardous waste listed in Subpart D of this Part to generate a comparable fuel remain a hazardous waste.

5) Generation of a syngas fuel.

A) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of subsection (b) of this Section provided the processing fulfills the following
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requirements:

i) The processing destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

ii) The processing is performed at a facility that is subject to the applicable requirements of 35 Ill. Adm. Code 724 and 725 or 35 Ill. Adm. Code 722.134 or is an exempt recycling unit pursuant to Section 721.106(c); and

iii) The processing does not violate the dilution prohibition of subsection (c)(6) of this Section.

B) Residuals resulting from the treatment of a hazardous waste listed in Subpart D of this Part to generate a syngas fuel remain a hazardous waste.

6) Dilution prohibition for comparable and syngas fuels. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility must in any way dilute a hazardous waste to meet the exclusion specifications of subsection (a)(1)(A), (a)(2), or (b) of this Section.

47) FuelWaste analysis plan for generators. The generator of an excluded comparable or syngas fuel must develop and follow a written fuelWaste analysis plan that describes the procedures for sampling and analysis of the materialhazardous waste to be excluded. The plan must be followed and retained at the site of the generator claiming the exclusion facility excluding the waste.

A) At a minimum, the plan must specify the following:

i) The parameters for which each excluded fuel hazardous waste will be analyzed and the rationale for the selection of those parameters;

ii) The test methods that will be used to test for these parameters;
iii) The sampling method that will be used to obtain a representative sample of the excluded fuel\_waste\; to be analyzed;

iv) The frequency with which the initial analysis of the excluded fuel\_waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

v) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

B) For each waste analysis, the generator must also document the following:

i) The dates and times that waste samples were obtained, and the dates the samples were analyzed;

ii) The names and qualifications of the persons who obtained the samples;

iii) A description of the temporal and spatial locations of the samples;

iv) The name and address of the laboratory facility at which analyses of the samples were performed;

v) A description of the analytical methods used, including any clean-up and sample preparation methods;

vi) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan that occurred;

vii) All laboratory results demonstrating whether the
exclusion specifications have been met for the waste; and

viii) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in subsection (b)(9)(e)(11) of this Section and also provides for the availability of the documentation to the claimant upon request.

C) A syngas fuel generator must submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded syngas fuel waste, a fuel waste analysis plan containing the elements of subsection (b)(4)(A)(e)(7)(A) of this Section to the Agency. The approval of a fuel waste analysis plan must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

58) Excluded fuel sampling and analysis.

A) General. For each waste for which an exclusion is claimed under the specifications provided by subsection (a)(1) or (a)(2) of this Section, the generator of the hazardous waste must test for all the constituents in Appendix H of this Part, except for those constituents that the generator determines, based on testing or knowledge, should not be present in the fuel waste. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in the table in Appendix Y to this Part should not be present:

i) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis for the listing of the secondary material as a hazardous waste stream, or constituents for which there is a treatment standard for the
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waste code in 35 Ill. Adm. Code 728.140;

ii) A constituent detected in previous analysis of the waste;

iii) Constituents introduced into the process that generates the waste; or

iv) Constituents that are byproducts or side reactions to the process that generates the waste.

B) Use of process knowledge. For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded comparable or syngas fuel is not the original generator of the hazardous waste, the generator of the comparable or syngas fuel may not use process knowledge pursuant to subsection (b)(5)(A)(c)(8)(A) of this Section and must test to determine that all of the constituent specifications of subsections (a)(1) and (a)(2) and (b) of this Section, as applicable, have been met.

C) The excluded comparable or syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel waste. For the fuel waste to be eligible for exclusion, a generator must demonstrate the following:

i) That the 95% upper confidence limit of the mean concentration for each constituent of concern is not present in the waste above the specification level at the 95 percent upper confidence limit around the mean; and

ii) That the analyses could have detected the presence of the constituent at or below the specification level at the 95 percent upper confidence limit around the mean.

D) Nothing in this subsection (b)(5)(e)(8) preempts, overrides, or otherwise negates the provision in 35 Ill. Adm. Code 722.111 that
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requires any person that generates a solid waste to determine if that waste is a hazardous waste.

E) In an enforcement action, the burden of proof to establish conformance with the exclusion specification must be on the generator claiming the exclusion.

F) The generator must conduct sampling and analysis in accordance with the fuel its waste analysis plan developed pursuant to subsection (b)(4)(c)(7) of this Section.

G) **Viscosity condition for comparable fuel.**

   i(G) **Excluded** syngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications must be analyzed as generated.

   ii(G) If hazardous waste a comparable fuel is blended in order to meet the kinematic viscosity specification for comparable fuel specifications, the generator must analyze the hazardous waste as generated to ensure that it meets the constituent and heating value specifications of subsection (a)(1) of this Section, and after blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications undertaken following actions:

   BOARD NOTE: The Board found it necessary to combine the text of 40 CFR 261.38(b)(5)(vii)(B)(1) and (b)(5)(vii)(B)(2) together with the text of 40 CFR 261.38(b)(5)(vii)(B) to comport with the maximum indent level allowed by Illinois Administrative Code codification requirements.

   i) Analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and

   ii) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable or syngas fuel specifications.
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**II**) Excluded comparable or syngas fuel must be retested, at a minimum, annually and must be retested after a process change that could change its chemical or physical properties in a manner that may affect conformance with the specifications of the waste.

BOARD NOTE: Any claim pursuant to this Section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.

6) This subsection (b)(6) corresponds with 40 CFR 261.38(b)(6), which USEPA has marked "reserved." This statement maintains structural parity with the corresponding federal regulations.

79) Speculative accumulation. Any persons handling a comparable or syngas Excluded fuel must not be accumulated speculatively, as such is defined in 35 Ill. Adm. Code 721.101(c)(8) are subject to the speculative accumulation test pursuant to Section 721.102(c)(4).

810) Operating record Records. The generator must maintain an operating record on site containing records of the following information on-site:

A) All information required to be submitted to the implementing authority as part of the notification of the claim:

i) The owner or operator name, address, and RCRA facility USEPA identification number of the person claiming the exclusion;

ii) For each excluded fuel, the applicable USEPA hazardous waste codes that would be applicable if the material were discarded for each hazardous waste excluded as a fuel; and

iii) The certification signed by the person claiming the exclusion or his authorized representative;
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B) A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste excluded fuel, if not the same;

C) An estimate of the average and maximum monthly and annual quantities of each fuel claimed to be excluded;

D) Documentation for any claim that a constituent is not present in the excluded fuel hazardous waste, as required pursuant to subsection (b)(5)(A)(c)(8)(A) of this Section;

E) The results of all analyses and all detection limits achieved, as required pursuant to subsection (b)(4)(e)(8) of this Section;

F) If the comparable fuel excluded waste was generated through treatment or blending, documentation of compliance with the applicable provisions of subsections (a)(3) and (a)(4), as required pursuant to subsection (e)(3) or (e)(4) of this Section;

G) If the excluded fuel waste is to be shipped off-site, a certification from the burner, as required pursuant to subsection (b)(10)(e)(12) of this Section;

H) The fuel waste analysis plan and documentation the results of all the sampling and analysis results as required by subsection (b)(4) of this Section; and that include the following:

i) The dates and times waste samples were obtained, and the dates the samples were analyzed;

ii) The names and qualifications of the persons that obtained the samples;

iii) A description of the temporal and spatial locations of the samples;

iv) The name and address of the laboratory facility at which analyses of the samples were performed;
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v) A description of the analytical methods used, including any clean-up and sample preparation methods;

vi) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan that occurred;

vii) All laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

viii) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in subsection (c)(11) of this Section and also provides for the availability of the documentation to the claimant upon request; and

I) If the generator ships excluded comparable or syngas fuel off-site for burning, the generator must retain for each shipment the following information on-site:

i) The name and address of the facility receiving the excluded comparable or syngas fuel for burning;

ii) The quantity of excluded comparable or syngas fuel shipped and delivered;

iii) The date of shipment or delivery;

iv) A cross-reference to the record of excluded comparable or syngas fuel analysis or other information used to make the determination that the excluded comparable or syngas fuel meets the specifications, as required pursuant to subsection (b)(4)(e)(8) of this Section; and
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v) A one-time certification by the burner, as required pursuant to subsection (b)(10)(e)(12) of this Section.

911) Records retention. Records must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three-year period.

1042) Burner certification to the generator. Prior to submitting a notification to the Agency, a comparable or syngas fuel generator of excluded fuel that intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner that includes the following:

A) A certification that the excluded comparable or syngas fuel will only be burned in an industrial furnace, industrial or boiler, utility boiler, or hazardous waste incinerator, as required pursuant to subsection (b)(3)(e)(2) of this Section;

B) Identification of the name and address of the facility units that will burn the excluded comparable or syngas fuel; and

C) A certification that the state in which the burner is located is authorized to exclude wastes as excluded comparable or syngas fuel under the provisions of 40 CFR 261.38.

1143) Ineligible waste codes. Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in Appendix G of this Part, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to the full RCRA hazardous waste management requirements.

12) Regulatory status of boiler residues. Burning excluded fuel that was otherwise a hazardous waste listed under Sections 721.131 through 721.133 of this Part does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived from hazardous wastes.

13) Residues in containers and tank systems upon cessation of operations.
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A) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under 35 Ill. Adm. Code 702, 703, 722 through 725, 727, and 728.

B) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under Sections 721.121 through 721.124 or if the fuel were otherwise a hazardous waste listed under Sections 721.131 through 721.133 when the exclusion was claimed.

C) Liquid and accumulated solid residues that are removed from a container or tank system and do not meet the specifications for exclusion under subsection (a)(1) or (a)(2) of this Section are solid wastes subject to regulation as hazardous waste if either of the following conditions exist with regard to the residues:

i) The waste exhibits a characteristic of hazardous waste under Sections 721.121 through 721.124; or

ii) The fuel was otherwise a hazardous waste listed under Sections 721.131 through 721.133. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.

14) Waiver of RCRA closure requirements. Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under 35 Ill. Adm. Code 722.134, are not subject to the closure requirements of 35 Ill. Adm. Code 724, 725, or 727, provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this Section, and that afterward will be used only to manage fuel excluded under this Section.

15) Spills and leaks.
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A) Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under Sections 721.121 through 721.124 or if the fuel were otherwise a hazardous waste listed in Sections 721.131 through 721.133.

B) For excluded fuel that would have otherwise been a hazardous waste listed in Sections 721.131 through 721.133 and that is spilled or leaked, the USEPA hazardous waste code for the listed waste applies to the spilled or leaked material.

16) In corresponding 40 CFR 261.38(b)(16), USEPA included the following disclaimer, which the Board quotes in full: "Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180."

c) Failure to comply with the conditions of the exclusion. An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this Section, and the material must be managed as a hazardous waste from the point of generation. In such situations, USEPA, the Agency, or any person may take enforcement action pursuant to Section 31 of the Act [415 ILCS 5/31].

BOARD NOTE: Corresponding 40 CFR 261.38(c) provides that USEPA or an authorized state may take enforcement action pursuant to section 3008(a) of RCRA (42 USC 6927(a)). In Illinois, Section 31(a) and (d) of the Act [415 ILCS 5/31(a) and (d)] provide that the Agency or any person may pursue an enforcement action for violation of the Act or Board regulations.

d) Appendix Y of this Part sets forth the table of detection and detection limit values for comparable fuel specification.

(Source: Amended at 34 Ill. Reg. _______, effective ____________)

SUBPART H: FINANCIAL REQUIREMENTS FOR MANAGEMENT
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OF EXCLUDED HAZARDOUS SECONDARY MATERIALS

Section 721.240 Applicability

a) The requirements of this Subpart H apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under Section 721.104(a)(24), except as provided otherwise in this Section.

b) States and the federal government are exempt from the financial assurance requirements of this Subpart H.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.241 Definitions of Terms as Used in This Subpart

The terms defined in 35 Ill. Adm. Code 725.241(d), (f), (g), and (h) have the same meaning in this Subpart H as they do in 35 Ill. Adm. Code 725.241.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.242 Cost Estimate

a) The owner or operator of a reclamation or intermediate facility must have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

1) The estimate must equal the cost of conducting the activities described in this subsection (a) at the point when the extent and manner of the facility's operation would make these activities the most expensive.

2) The cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" in 35 Ill. Adm. Code 725.241(d).) The owner or operator may use costs for on-site disposal in accordance with applicable requirements if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.
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3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, hazardous waste, non-hazardous wastes (if permitted by the Agency pursuant to 35 Ill. Adm. Code 725.213(d)), facility structures or equipment, land, or other assets associated with the facility.

4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, hazardous waste, non-hazardous wastes (if permitted by the Agency pursuant to 35 Ill. Adm. Code 725.213(d)) that might have economic value.

b) During the active life of the facility, the owner or operator must adjust the written cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with the requirements of Section 721.243. An owner or operator that uses the financial test or corporate guarantee must update its cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency and USEPA pursuant to Section 721.243(e)(3). The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product (Deflator) published by the U.S. Department of Commerce, as specified in subsections (b)(1) and (2) of this Section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

BOARD NOTE: The table of Deflators is available as Table 1.1.9. in the National Income and Product Account Tables, published by U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, available on-line at the following web address:
www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&FirstYear=2002&LastYear=2004&Freq=Qtr.

c) During the active life of the facility, the owner or operator must revise the cost estimate no later than 30 days after a change in a facility's operating plan or
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design that would increase the costs of conducting the activities described in subsection (a) of this Section or no later than 60 days after an unexpected event that increases the cost of conducting the activities described in subsection (a) of this Section. The revised cost estimate must be adjusted for inflation, as specified in subsection (b) of this Section.

d) The owner or operator must keep the following documents at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with subsections (a) and (c) of this Section and, when this estimate has been adjusted in accordance with subsection (b) of this Section, the latest adjusted cost estimate.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.243 Financial Assurance Condition

As required by Section 721.104(a)(24)(F)(vi), an owner or operator of a reclamation facility or an intermediate facility must have financial assurance as a condition of the exclusion. The owner or operator must choose from among the options specified in subsections (a) through (e) of this Section.

a) Trust fund.

1) An owner or operator may satisfy the requirements of this Section by establishing a trust fund that conforms to the requirements of this subsection (a) and submitting an originally signed duplicate of the trust agreement to the Agency. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

2) The wording of the trust agreement must be identical to the wording specified by the Agency pursuant to Section 721.251, and the trust agreement must be accompanied by a formal certification of acknowledgment as specified by the Agency pursuant to Section 721.251. Schedule A of the trust agreement must be updated within 60 days after any change in the amount of the current cost estimate covered by the agreement.
3) The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this Section.

4) Whenever the current cost estimate changes, the owner or operator must compare the new cost estimate with the trustee's most recent annual valuation of the trust fund. Within 60 days after the change in the cost estimate, if the value of the fund is less than the amount of the new cost estimate, the owner or operator must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or the owner or operator must obtain other financial assurance that satisfies the requirements of this Section to cover the difference.

5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current cost estimate.

6) If an owner or operator substitutes other financial assurance that satisfies the requirements of this Section for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current cost estimate covered by the trust fund.

7) Within 60 days after receiving a request from the owner or operator for a release of funds, as specified in subsection (a)(5) or (a)(6) of this Section, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing. If the owner or operator begins final closure pursuant to Subpart G of 35 Ill. Adm. Code 724 or 725, it may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified, the Agency must instruct the trustee to make reimbursements in those amounts as the Agency specifies in writing. If the Agency has reason to believe that the maximum cost of closure over the remaining life of the facility will be
significantly greater than the value of the trust fund, the Agency may withhold reimbursements of such amounts as the Agency deems prudent until the Agency determines, in accordance with 35 Ill. Adm. Code 725.243(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide to the owner or operator a detailed written statement of reasons.

8) The Agency must agree to termination of the trust fund when either of the following has occurred:

   A) The Agency determines that the owner or operator has substituted alternative financial assurance that satisfies the requirements of this Section; or

   B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i) of this Section.

b) Surety bond guaranteeing payment into a trust fund.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: http://www.fms.treas.gov/c570/.

2) The wording of the surety bond must be identical to the wording specified by the Agency pursuant to Section 721.251.

3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety
directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in subsection (a) of this Section, except that the following also apply:

A) The owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the surety bond; and

B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required:

i) Payments into the trust fund, as specified in subsection (a) of this Section;

ii) Updating of Schedule A of the trust agreement to show current cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will undertake one of the following actions:

A) That the owner or operator will fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion pursuant to Section 721.104(a)(24);

B) That the owner or operator will fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin closure issued by the Agency becomes final, or within 15 days after an order to begin closure is issued by the Board or a court of competent jurisdiction; or

C) Within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety, that the owner or operator will provide alternate financial assurance that satisfies the requirements of this Section and obtain the Agency's written approval of the assurance provided.
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5) Under the terms of the bond, the surety must become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in subsection (f) of this Section.

7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance that satisfies the requirements of this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate, following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on receipt of evidence of alternate financial assurance that satisfies the requirements of this Section.

c) Letter of credit.

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (c) and submitting the letter to the Agency. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

2) The wording of the letter of credit must be identical to the wording specified by the Agency pursuant to Section 721.251.
3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this Section, except that the following also apply:

A) The owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required:

i) Payments into the trust fund, as specified in subsection (a) of this Section;

ii) Updating of Schedule A of the trust agreement to show current cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The letter of credit must be accompanied by a letter from the owner or operator that refers to the letter of credit by number, issuing institution, and date, and that provides the following information: The USEPA identification number (if any issued), name and address of the facility, and the amount of funds assured for the facility by the letter of credit.

5) The letter of credit must be irrevocable, and the letter must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.
6) The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in subsection (f) of this Section.

7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, within 60 days after the increase, the owner or operator must either cause the amount of the credit to be increased, so that it at least equals the current cost estimate, and submit evidence of such increase to the Agency, or it must obtain other financial assurance that satisfies the requirements of this Section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Agency.

8) Following a determination by the Agency that the hazardous secondary materials do not meet the conditions of the exclusion set forth in Section 721.104(a)(24), the Agency may draw on the letter of credit.

9) If the owner or operator does not establish alternative financial assurance that satisfies the requirements of this Section and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency may draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the Agency may draw on the letter of credit if the owner or operator has failed to provide alternative financial assurance that satisfies the requirements of this Section and to obtain written approval of such assurance from the Agency.

10) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) The owner or operator substitutes alternative financial assurance that satisfies the requirements of this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i) of this Section.
d) Insurance.

1) An owner or operator may satisfy the requirements of this Section by obtaining insurance that conforms to the requirements of this subsection (d) and submitting a certificate of such insurance to the Agency. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

2) The wording of the certificate of insurance must be identical to the wording specified by the Agency pursuant to Section 721.251.

3) The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in subsection (f) of this Section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4) The insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, and to pay the costs of the performance of activities required under Subpart G of 35 Ill. Adm. Code 724 or 725, as applicable, for the facilities covered by the policy. The policy must also guarantee that once funds are needed, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency, to such party or parties as the Agency specifies.

5) After beginning partial or final closure pursuant to 35 Ill. Adm. Code 724 or 725, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. If the Agency determines that the expenditures are in accordance with the approved plan or are otherwise justified, the Agency must, within 60 days after receiving bills for closure activities, instruct the
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insurer in writing to make reimbursements in such amounts as the Agency specifies. If the Agency has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, the Agency may withhold reimbursement of such amounts as the Agency deems prudent until the Agency determines, in accordance with subsection (h) of this Section, that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Agency does not instruct the insurer to make such reimbursements, the Agency must provide to the owner or operator a detailed written statement of reasons.

BOARD NOTE: The owner or operator may appeal any Agency determination made pursuant to this subsection (d)(5), as provided by Section 40 of the Act [415 ILCS 5/40].

6) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator, as specified in subsection (d)(10) of this Section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations warranting such remedies as are deemed necessary pursuant to Sections 31, 39, and 40 of the Act [415 ILCS 5/31, 39, and 40]. Such a violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew the policy due to nonpayment of the premium, rather than upon the date of policy expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditioned on consent of the insurer, so long as the policy provides that the insurer may not unreasonably refuse such consent.

8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If the owner or operator fails to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or
failure to renew may not occur, however, during the 120 days that begin on the date that both the Agency and the owner or operator have received the notice, as evidenced by the return receipts. Cancellation, termination, or failure to renew the policy may not occur, and the policy will remain in full force and effect, in the event that on or before the expiration date, one of the following events occurs:

A) The Agency deems the facility abandoned;

B) Conditional exclusion or interim status is lost, terminated, or revoked;

C) Closure is ordered by the Board or a court of competent jurisdiction;

D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 of the U.S. Code (Bankruptcy); or

E) The premium due has been paid.

9) Whenever the owner or operator learns that the current cost estimate has increased to an amount greater than the face amount of the policy, the owner or operator must, within 60 days after learning of the increase, either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency, or the owner or operator must obtain other financial assurance that satisfies the requirements of this Section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate after the owner or operator has obtained the written approval of the Agency.

10) The Agency must give written consent that allows the owner or operator to terminate the insurance policy when either of the following events occurs:

A) The Agency has determined that the owner or operator has substituted alternative financial assurance that satisfies the requirements of this Section; or
B) The Agency has released the owner or operator from the requirements of this Section pursuant to subsection (i) of this Section.

e) Financial test and corporate guarantee.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes one of the financial tests specified in this subsection (e). To pass a financial test, the owner or operator must meet the criteria of either subsection (e)(1)(A) or (e)(1)(B) of this Section:

A) Test 1. The owner or operator must have each of the following:

i) Two of the following three ratios: A ratio of total liabilities to net worth less than 2:0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0:1; and a ratio of current assets to current liabilities greater than 1:5;

ii) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

B) Test 2. The owner or operator must have each of the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;
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ii) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to either at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

2) Definitions.

"Current cost estimates", as used in subsection (e)(1) of this Section, refers to the following four cost estimates required in the standard letter from the owner's or operator's chief financial officer:

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in subsections (e)(1) through (e)(9) of this Section;

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the corporate guarantee specified in subsection (e)(10) of this Section;

For facilities in a state outside of Illinois, the cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in Subpart H of 40 CFR 261 or through a financial test deemed by USEPA as equivalent to that set forth in Subpart H of 40 CFR 261; and

The cost estimate for each facility for which the owner or operator has not demonstrated financial assurance to the Agency, USEPA, or a sister state in which the facility is located by any mechanism that satisfies the requirements of the applicable of this Subpart H, Subpart H of 40 CFR 261, or regulations deemed by USEPA as equivalent to Subpart H of 40 CFR 261.
"Current plugging and abandonment cost estimates", as used in subsection (e)(1) of this Section, refers to the following four cost estimates required in the standard form of a letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 704.240):

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in 35 Ill. Adm. Code 704.219(a) through (i):

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in 35 Ill. Adm. Code 704.219(j):

For facilities in a state outside of Illinois, the cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in Subpart F of 40 CFR 144 or through a financial test deemed by USEPA as equivalent to that set forth in Subpart F of 40 CFR 144; and

The cost estimate for each facility for which the owner or operator has not demonstrated financial assurance to the Agency, USEPA, or a sister state in which the facility is located by any mechanism that satisfies the requirements of the applicable of Subpart G of 35 Ill. Adm. Code 704, Subpart F of 40 CFR 144, or regulations deemed by USEPA as equivalent to Subpart F of 40 CFR 144.

BOARD NOTE: Corresponding 40 CFR 261.143(e)(2) defines "current cost estimate" as "the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (Section 261.151(e))" and "current plugging and abandonment cost estimates" as "the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (Section 144.70(f) of this chapter)." The Board has substituted the descriptions of these estimates, using those set forth by USEPA in 40 CFR 261.151(e) and 144.70(f), as appropriate. Since the letter of the chief financial officer must include the cost estimates for any facilities that the owner or operator manages outside of Illinois, the Board has referred to the corresponding regulations of those sister states as "regulations deemed by USEPA as equivalent to Subpart F of 40 CFR 144 and Subpart H of 40 CFR 261".
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3) To demonstrate that it meets the financial test set forth in subsection (e)(1) of this Section, the owner or operator must submit the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified by the Agency pursuant to Section 721.251 that is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts of the pertinent environmental liabilities included in such financial statements;

B) A copy of an independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

C) If the chief financial officer's letter prepared pursuant to subsection (e)(3)(A) of this Section includes financial data showing that the owner or operator satisfies the test set forth in subsection (e)(1)(A) of this Section (Test 1), and either the data in the chief financial officer's letter are different from the data in the audited financial statements required by subsection (e)(3)(B) of this Section, or the data are different from any other audited financial statement or data filed with the federal Securities and Exchange Commission, then the owner or operator must submit a special report from its independent certified public accountant. The special report must be based on an agreed-upon procedures engagement, in accordance with professional auditing standards. The report must describe the procedures used to compare the data in the chief financial officer's letter (prepared pursuant to subsection (e)(3)(A) of this Section), the findings of the comparison, and the reasons for any differences.

4) This subsection (e)(3)(4) corresponds with 40 CFR 261.143(e)(3)(iv), a provision relating to extension of the deadline for filing the financial documents required by 40 CFR 261.143(e)(3) until as late as 90 days after the effective date of the federal rule. Thus, the latest date for filing the documents was March 29, 2009, which is now past. See 40 CFR 261.143(e)(3) and 73 Fed. Reg. 64668 (Oct. 30, 2008). This statement maintains structural consistency with the corresponding federal provision.
5) After the initial submission of items specified in subsection (e)(3) of this Section, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (e)(3) of this Section.

6) If the owner or operator no longer fulfills the requirements of subsection (e)(1) of this Section, it must send notice to the Agency of intent to establish alternative financial assurance that satisfies the requirements of this Section. The owner or operator must send the notice by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternative financial assurance within 120 days after the end of such fiscal year.

7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this Section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this Section. If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this Section, the owner or operator must provide alternative financial assurance that satisfies the requirements of this Section within 30 days after notification of such a finding.

8) The Agency must disallow use of the financial tests set forth in this subsection (e) on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this Section) when the Agency determines that those qualifications significantly, adversely affect the owner's or operator's ability to provide its own financial assurance by this mechanism. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate all other kinds of qualifications on an individual basis. The owner or operator must provide alternative financial assurance that satisfies the requirements of this Section within 30 days after a notification of Agency disallowance pursuant to this subsection (e)(8).
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9) The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this Section when either of the following events occur:

A) An owner or operator has substituted alternative financial assurance that satisfies the requirements of this Section; or

B) The Agency releases the owner or operator from the requirements of this Section pursuant to subsection (i) of this Section.

10) Corporate guarantee for financial responsibility. An owner or operator may comply with the requirements of this Section by obtaining a written corporate guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a sister firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator, as that term is defined in subsection (g)(1)(B) of this Section. The guarantor must meet the requirements applicable to an owner or operator as set forth in subsections (e)(1) through (e)(8) of this Section, and it must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified by the Agency pursuant to Section 721.251. A certified copy of the guarantee must accompany the items sent to the Agency that are required by subsection (e)(3) of this Section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide as follows:

A) Following a determination by the Agency that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under Section 721.104(a)(24), the guarantor must dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with the applicable closure requirements set
f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. The mechanisms that an owner or operator may use for this purpose are limited to a trust fund that satisfies the requirements of subsection (a) of this Section, a surety bond that satisfies the requirements of subsection (b) of this Section, a letter of credit that satisfies the requirements of subsection (c) of this Section, and insurance that satisfies the requirements of subsection (d) of this Section. The mechanisms must individually satisfy the indicated requirements of this Section, except that it is the combination of all mechanisms used by the owner or operator, rather than any individual mechanism, that must provide financial assurance for an aggregated amount at least equal to the current cost estimate.

B) The corporate guarantee must remain in force unless the guarantor has sent notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date on which both the owner or operator and the Agency have received the notice of cancellation, as evidenced by the return receipts.

C) If the owner or operator fails to provide alternative financial assurance that satisfies the requirements of this Section and obtain the written approval of such alternate assurance from the Agency within 90 days after the date on which both the owner or operator and the Agency have received the notice of cancellation of the corporate guarantee from the guarantor, the guarantor must provide such alternative financial assurance in the name of the owner or operator.

BOARD NOTE: Corresponding 40 CFR 261.143(e)(10) refers to 40 CFR 264.141(h) and 265.141(h) for definition of "substantial business relationship." The Board did not previously include the federal definition in the Illinois rules at corresponding 35 Ill. Adm. Code 724.241(h) and 725.241(h). Thus, the Board has added the definition at subsection (g)(1)(B) of this Section.
estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. The owner or operator may establish a single standby trust fund for two or more mechanisms. The Agency may use any or all of the mechanisms to provide care for the facility.

g) Use of a single financial mechanism for multiple facilities. An owner or operator may use a single financial assurance mechanism that satisfies the requirements of this Section to fulfill the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA identification number (if any), name, address, and the amount of funds assured by the mechanism. If the facilities covered by the mechanism are in more than one Region, USEPA requires the owner of operator to submit and maintain identical evidence of financial assurance with each USEPA Region in which a covered facility is located. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through a mechanism for any of the facilities covered by that mechanism, the Agency may direct only that amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

h) Removal and decontamination plan for release from financial assurance obligations.

1) An owner or operator of a reclamation facility or an intermediate facility that wishes to be released from its financial assurance obligations under Section 721.104(a)(24)(F)(vi) must submit a plan for removing all hazardous secondary material residues from the facility. The owner or operator must submit the plan to the Agency at least 180 days prior to the date on which the owner or operator expects to cease to operate under the exclusion.

2) The plan must, at a minimum, include the following information:

A) For each hazardous secondary materials storage unit subject to financial assurance requirements pursuant to Section 721.104(a)(24)(F)(vi), the plan must include a description of how all excluded hazardous secondary materials will be recycled or sent
for recycling, and how all residues, contaminated containment systems (liners, etc.), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment;

B) The plan must include a detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment;

C) The plan must include a detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc.; and

D) The plan must include a schedule for conducting the activities described, which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and to decontaminate all units subject to financial assurance pursuant to Section 721.104(a)(24)(F)(vi) and the time required for intervening activities that will allow tracking of the progress of decontamination.

3) The Agency must provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on and request modifications to the plan. The Agency must accept any comments or requests to modify the plan that it receives no later than 30 days after the date of publication of the notice. The Agency must also, in response to a request or in its discretion, hold a public hearing whenever it determines that such a hearing might clarify one or more issues concerning the plan. The Agency must give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the Agency may combine the two notices.) The Agency must approve, modify, or disapprove the plan within 90 days after its receipt. If the
Agency does not approve the plan, the Agency must provide the owner or operator with a detailed written statement of reasons for its refusal, and the owner or operator must modify the plan or submit a new plan for approval within 30 days after the owner or operator receives such a written statement from the Agency. The Agency must approve or modify this owner- or operator-modified plan in writing within 60 days. If the Agency modifies the owner- or operator-modified plan, this modified plan becomes the approved plan. The Agency must assure that the approved plan is consistent with this subsection (h). A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

4) Within 60 days after completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Agency, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and that the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Upon request, the owner or operator must furnish the Agency with documentation that supports the Professional Engineer's certification, until the Agency releases the owner or operator from the financial assurance requirements of Section 721.104(a)(24)(F)(vi).

i) Release of the owner or operator from the requirements of this Section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or from a unit at the facility and the facility or unit has been decontaminated in accordance with the approved plan in compliance with the requirements of subsection (h) of this Section, the Agency must determine whether or not the owner or operator has accomplished the objectives of removing all hazardous secondary materials from the facility or from a unit at the facility and decontaminating the facility in accordance with the approved plan. If the Agency determines that the owner or operator has accomplished both objectives, the Agency must notify the owner or operator in writing, within the 60 days, that the owner and operator are no longer required pursuant to Section 721.104(a)(24)(F)(vi) to maintain financial assurance for that facility or unit at the facility. If the Agency determines that the owner or operator has not
accomplished both objectives, it must provide the owner or operator with a
detailed written statement of the basis for its determination.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.247 Liability Requirements

a) Coverage for sudden accidental occurrences. The owner or operator of one or
more hazardous secondary material reclamation facilities or intermediate facilities
that are subject to financial assurance requirements pursuant to Section
721.104(a)(24)(F)(vi) must demonstrate financial responsibility for bodily injury
and property damage to third parties caused by sudden accidental occurrences
arising from operations of its facilities. The owner or operator must maintain
liability coverage in force for sudden accidental occurrences in the amount of at
least $1 million per occurrence with an annual aggregate of at least $2 million,
exclusive of legal defense costs. This liability coverage may be demonstrated as
specified in any of subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this
Section.

1) An owner or operator may demonstrate the required liability coverage by
having liability insurance that satisfies the requirements of this subsection
(a)(1).

A) Each insurance policy must be amended by attachment of the
Hazardous Secondary Material Facility Liability Endorsement, or
evidenced by a Certificate of Liability Insurance. The wording of
the Hazardous Secondary Material Facility Liability Endorsement
must be identical to the wording specified by the Agency pursuant
to Section 721.251. The wording of the Certificate of Liability
Insurance must be identical to the wording specified by the Agency
pursuant to Section 721.251. The owner or operator must submit a
signed duplicate original of the Hazardous Secondary Material
Facility Liability Endorsement or the Certificate of Liability
Insurance to the Agency. If requested by the Agency, the owner or
operator must provide a signed duplicate original of the insurance
policy.

B) At a minimum, each insurance policy must be issued by an insurer
that is licensed to transact the business of insurance, or is eligible
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to provide insurance as an excess or surplus lines insurer, in one or more states.

2) An owner or operator may satisfy the requirements of this Section by passing a financial test or using the guarantee for liability coverage that satisfies the requirements of subsections (f) and (g) of this Section.

3) An owner or operator may satisfy the requirements of this Section by obtaining a letter of credit for liability coverage that satisfies the requirements of subsection (h) of this Section.

4) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond for liability coverage that satisfies the requirements of subsection (i) of this Section.

5) An owner or operator may satisfy the requirements of this Section by obtaining a trust fund for liability coverage that satisfies the requirements of subsection (j) of this Section.

6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance (subsection (a)(1) of this Section), financial test (subsection (f) of this Section), guarantee (subsection (g) of this Section), letter of credit (subsection (h) of this Section), surety bond (subsection (i) of this Section), and trust fund (subsection (j) of this Section), except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee in which the financial statement of the owner or operator is consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated by the combination must total at least the minimum amounts required for the facility by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances pursuant to this subsection (a)(6), the owner or operator must specify at least one such assurance as "primary" coverage and all other assurance as "excess" coverage.

7) An owner or operator must notify the Agency in writing within 30 days whenever any of the following events has occurred:
A) A claim has resulted in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized by any of subsections (a)(1) through (a)(6) of this Section;

B) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and a third-party claimant for liability coverage established pursuant to any of subsections (a)(1) through (a)(6) of this Section; or

C) A final court order that establishes a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence that arose from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage pursuant to any of subsections (a)(1) through (a)(6) of this Section.

BOARD NOTE: Corresponding 40 CFR 261.147(a) recites that it applies to "a hazardous secondary material reclamation facility or intermediate facility with land-based units...or a group of such facilities." The Board has rendered this provision in the singular, intending that it include several facilities as a group when necessary. The Board does not intend to limit the applicability of this provision to multiple facilities. Note that the Agency can require compliance with this provision by a facility to which it would not otherwise apply pursuant to subsection (d)(2) of this Section, subject to the owner's or operator's right to appeal an Agency determination to the Board.

b) Coverage for non-sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in Section 720.110, that is used to manage hazardous secondary materials excluded pursuant to Section 721.104(a)(24) must demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences that arise from operations of the facility or group of facilities. The owner or operator must maintain liability coverage for non-sudden accidental occurrences in the amount
of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator that must satisfy the requirements of this Section may combine the required per occurrence coverage levels for sudden and non-sudden accidental occurrences into a single per-occurrence level, and the owner or operator may combine the required annual aggregate coverage levels for sudden and non-sudden accidental occurrences into a single annual aggregate level. An owner or operator that combines coverage levels for sudden and non-sudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. The owner or operator may establish this liability coverage as demonstrated by any of the means set forth in subsections (b)(1) through (b)(6) of this Section:

1) An owner or operator may demonstrate the required liability coverage by having liability insurance that satisfies the requirements of this subsection (b)(1).

A) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the Hazardous Secondary Material Facility Liability Endorsement must be identical to the wording specified by the Agency pursuant to Section 721.251. The wording of the Certificate of Liability Insurance must be identical to the wording specified by the Agency pursuant to Section 721.251. The owner or operator must submit a signed duplicate original of the Hazardous Secondary Material Facility Liability Endorsement or the Certificate of Liability Insurance to the Agency. If requested by the Agency, the owner or operator must provide a signed duplicate original of the insurance policy.

B) At a minimum, each insurance policy must be issued by an insurer that is licensed to transact the business of insurance, or is eligible to provide insurance as an excess or surplus lines insurer in one or more states.

2) An owner or operator may satisfy the requirements of this Section by passing a financial test or by using the guarantee for liability coverage that satisfies the requirements of subsections (f) and (g) of this Section.
3) An owner or operator may satisfy the requirements of this Section by obtaining a letter of credit for liability coverage that satisfies the requirements of subsection (h) of this Section.

4) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond for liability coverage that satisfies the requirements of subsection (i) of this Section.

5) An owner or operator may satisfy the requirements of this Section by obtaining a trust fund for liability coverage that satisfies the requirements of subsection (j) of this Section.

6) An owner or operator may demonstrate the required liability coverage through the use of a combination of insurance (subsection (b)(1) of this Section), financial test (subsection (f) of this Section), guarantee (subsection (g) of this Section), letter of credit (subsection (h) of this Section), surety bond (subsection (i) of this Section), or trust fund (subsection (j) of this Section), except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee in which the financial statement of the owner or operator is consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated by the combination must total at least the minimum amounts required for the facility by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances pursuant to this subsection (b)(6), the owner or operator must specify at least one such assurance as "primary" coverage and all other assurance as "excess" coverage.

7) An owner or operator must notify the Agency in writing within 30 days whenever any of the following events has occurred:

A) A claim has resulted in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized by any of subsections (b)(1) through (b)(6) of this Section;

B) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence
arising from the operation of a hazardous secondary material treatment or storage facility is entered between the owner or operator and a third-party claimant for liability coverage established pursuant to any of subsections (b)(1) through (b)(6) of this Section; or

C) A final court order that establishes a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence that arose from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage pursuant to any of subsections (b)(1) through (b)(6) of this Section.

BOARD NOTE: Corresponding 40 CFR 261.147(b) recites that it applies to "a hazardous secondary material reclamation facility or intermediate facility with land-based units...or a group of such facilities." The Board has rendered this provision in the singular, intending that it include several facilities as a group when necessary. The Board does not intend to limit the applicability of this provision to multiple facilities. Note that the Agency can require compliance with this provision by a facility to which it would not otherwise apply pursuant to subsection (d)(2) of this Section, subject to the owner's or operator's right to appeal an Agency determination to the Board.

c) Petition for adjusted standard. If an owner or operator can demonstrate that the level of financial responsibility required by subsection (a) or (b) of this Section is not consistent with the degree and duration of risk associated with treatment or storage at a facility, the owner or operator may petition the Board for an adjusted standard pursuant to Section 28.1 of the Act [415 ILCS 5/28.1]. The petition for an adjusted standard must be filed with the Board and submitted in writing to the Agency, as required by 35 Ill. Adm. Code 101 and Subpart D of 35 Ill. Adm. Code 104. If granted, the adjusted standard will take the form of an adjusted level of required liability coverage, such level to be based on the Board's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The owner or operator that requests an adjusted standard must provide such technical and engineering information as is necessary for the Board to determine that an alternative level of financial responsibility to that required by subsection (a) or (b) of this Section should apply.
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BOARD NOTE: Corresponding 40 CFR 261.147(c) allows application for a "variance" for "the levels of financial responsibility" required for "the facility or group of facilities." The Board has rendered this provision in the singular, intending that it include a single petition pertaining to several facilities as a group. The Board does not intend to limit the applicability of this provision to multiple facilities in a single petition. The Board has chosen the adjusted standard procedure for variance from the level of financial responsibility required by subsection (a) or (b) of this Section.

d) Adjustments by the Agency.

1) If the Agency determines that the level of financial responsibility required by subsection (a) or (b) of this Section is not consistent with the degree and duration of risk associated with treatment or storage of hazardous secondary material at a facility, the Agency may adjust the level of financial responsibility required to satisfy the requirements of subsection (a) or (b) of this Section to the level that the Agency deems necessary to protect human health and the environment. The Agency must base this adjusted level on an assessment of the degree and duration of risk associated with the ownership or operation of the facility.

2) In addition, if the Agency determines that there is a significant risk to human health and the environment from non-sudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, the Agency may require the owner or operator of the facility to comply with subsection (b) of this Section.

3) An owner or operator must furnish to the Agency, within a reasonable time, any information that the Agency requests to aid its determination whether cause exists for such adjustments of level or type of coverage.

BOARD NOTE: The owner or operator may appeal any Agency determination made pursuant to this subsection (d) pursuant to Section 40 of the Act [415 ILCS 5/40].

e) Release from the financial assurance obligation for a facility or a unit at a facility.
1) After an owner or operator has removed all hazardous secondary material from a facility or a unit at a facility and decontaminated the facility or unit at the facility, the owner or operator may submit a written request that the Agency release it from the obligation of subsection (a) and (b) of this Section as they apply to the facility or to the unit. The owner or operator and a qualified Professional Engineer must submit with the request certifications stating that all hazardous secondary materials have been removed from the facility or from a unit at the facility, and that the facility or a unit has been decontaminated in accordance with the owner's or operator's Agency-approved Section 721.243(h) plan.

2) Within 60 days after receiving the complete request and certifications described in subsection (e)(1) of this Section, the Agency must notify the owner or operator in writing of its determination on the request. The Agency must grant the request only if it determines that the owner or operator has removed all hazardous secondary materials from the facility or from the unit at the facility and that the owner or operator has decontaminated the facility or unit in accordance with its Agency-approved Section 721.243(h) plan.

3) After an affirmative finding by the Agency pursuant to subsection (e)(2) of this Section, the owner or operator is no longer required to maintain liability coverage pursuant to Section 721.104(a)(24)(F)(vi) for that facility or unit at the facility that is indicated in the written notice issued by the Agency.

BOARD NOTE: The Board has broken the single sentence of corresponding 40 CFR 261.147(e) into five sentences in three subsections in this subsection (e) for enhanced clarity. The owner or operator may appeal any Agency determination made pursuant to this subsection (e) pursuant to Section 40 of the Act [415 ILCS 5/40].

f) Financial test for liability coverage.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that it passes one of the financial tests specified in this subsection (f)(1). To pass a financial test, the owner or operator must meet the criteria of either subsection (f)(1)(A) or (f)(1)(B) of this Section:
A) Test 1. The owner or operator must have each of the following:

i) Net working capital and tangible net worth each at least six times the amount of liability coverage that the owner or operator needs to demonstrate by this test;

ii) Tangible net worth of at least $10 million; and

iii) Assets in the United States that amount to either at least 90 percent of the owner’s or operator's total assets or at least six times the amount of liability coverage that it needs to demonstrate by this test.

B) Test 2. The owner or operator must have each of the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;

ii) Tangible net worth of at least $10 million;

iii) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

iv) Assets in the United States amounting to either at least 90 percent of the owner's or operator's total assets or at least six times the amount of liability coverage that it needs to demonstrate by this test.

2) Definition.

"Amount of liability coverage," as used in subsection (f)(1) of this Section, refers to the annual aggregate amounts for which coverage is required pursuant to subsections (a) and (b) of this Section and the annual aggregate amounts for which coverage is required pursuant to 35 Ill. Adm. Code 724.247(a) and (b) or 725.247(a) and (b).
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3) To demonstrate that it meets the financial test set forth in subsection (f)(1) of this Section, the owner or operator must submit the following three items to the Agency:

   A) A letter signed by the owner's or operator's chief financial officer and worded as specified by the Agency pursuant to Section 721.251. If an owner or operator is using the financial test to demonstrate both financial assurance, as specified by Section 721.243(e), and liability coverage, as specified by this Section, the owner or operator must submit the letter specified by the Agency pursuant to Section 721.251 for financial assurance to cover both forms of financial responsibility; no separate letter is required for liability coverage;

   B) A copy of an independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

   C) If the chief financial officer's letter prepared pursuant to subsection (f)(3)(A) of this Section includes financial data showing that the owner or operator satisfies the test set forth in subsection (f)(1)(A) of this Section (Test 1), and either the data in the chief financial officer's letter are different from the data in the audited financial statements required by subsection (f)(3)(B) of this Section, or the data are different from any other audited financial statement or data filed with the federal Securities and Exchange Commission, then the owner or operator must submit a special report from its independent certified public accountant. The special report must be based on an agreed-upon procedures engagement, in accordance with professional auditing standards. The report must describe the procedures used to compare the data in the chief financial officer's letter (prepared pursuant to subsection (f)(3)(A) of this Section), the findings of the comparison, and the reasons for any difference.

4) This subsection (f)(4) corresponds with 40 CFR 261.147(f)(3)(iv), a provision relating to extension of the deadline for filing the financial documents required by 40 CFR 261.147(f)(3) until as late as 90 days after the effective date of the federal rule. Thus, the latest date for filing the documents was March 29, 2009, which is now past. See 40 CFR
5) After the initial submission of items specified in subsection (f)(3) of this Section, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (f)(3) of this Section.

6) If the owner or operator no longer fulfills the requirements of subsection (f)(1) of this Section, it must obtain insurance (subsection (a)(1) of this Section), a letter of credit (subsection (h) of this Section), a surety bond (subsection (i) of this Section), a trust fund (subsection (j) of this Section), or a guarantee (subsection (g) of this Section) for the entire amount of required liability coverage required by this Section. Evidence of liability coverage must be submitted to the Agency within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

7) The Agency must disallow use of the financial tests set forth in this subsection (f) on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this Section) when the Agency determines that those qualifications significantly, adversely affect the owner's or operator's ability to provide its own financial assurance by this mechanism. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate all other kinds of qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage that satisfies the requirements of this Section within 30 days after a notification of Agency disallowance pursuant to this subsection (f)(7).

g) Corporate guarantee for liability coverage.

1) Subject to the limitations of subsection (g)(2) of this Section, an owner or operator may meet the requirements of this Section by obtaining a written guarantee ("guarantee"). The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a sister firm whose parent
corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator, as that term is defined in subsection (g)(1)(B) of this Section. The guarantor must meet the requirements applicable to an owner or operator as set forth in subsections (f)(1) through (f)(6) of this Section. The wording of the guarantee must be identical to the wording specified by the Agency pursuant to Section 721.251. A certified copy of the guarantee must accompany the items sent to the Agency that are required by subsection (f)(3) of this Section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

A) The guarantor must pay full satisfaction, up to the limits of coverage, whenever either of the following events has occurred with regard to liability for bodily injury or property damage to third parties caused by sudden or non-sudden accidental occurrences (or both) that arose from the operation of facilities covered by the corporate guarantee:

i) The owner or operator has failed to satisfy a judgment based on a determination of liability; or

ii) The owner or operator has failed to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage.

B) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the owner or operator that is adequate consideration to support the obligation of the guarantee relating to any liability.
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towards a third-party. "Applicable state law," as used in this subsection (g)(1)(B), means the laws of the State of Illinois and those of a sister state or foreign jurisdiction that are referred to in the applicable of subsection (g)(2)(A) or (g)(2)(B) of this Section.

BOARD NOTE: Any determination by the Agency pursuant to this subsection (g)(1)(B) is subject to Section 40 of the Act [415 ILCS 5/40]. This subsection (g)(1)(B) is derived from 40 CFR 264.141(h) and 265.141(h) (2009). Corresponding 40 CFR 261.147(g)(1) does not include a definition of "substantial business relationship." Rather, the USEPA standard form for a corporate guarantee at 40 CFR 261.151(g)(1) refers to the definition for this term codified at 40 CFR 264.141(h) and 265.141(h). These provisions correspond with 35 Ill. Adm. Code 724.241(h) and 725.241(h), respectively. Since the Board did not previously include the federal definition in the Illinois rules, the Board has added it here. The Board modified the language of the federal provisions for enhanced clarity.

2) Limitations on guarantee and documentation required.

A) When both the guarantor and the owner or operator are incorporated in the United States, a guarantee may be used to satisfy the requirements of this Section only if the Attorneys General or Insurance Commissioners of each of the following states have submitted a written statement to the Agency that a guarantee executed as described in this Section is a legally valid and enforceable obligation in that state:

i) The state in which the guarantor is incorporated (if other than the State of Illinois); and

ii) The State of Illinois (the state in which the facility covered by the guarantee is located).

B) When either the guarantor or the owner or operator is incorporated outside the United States, a guarantee may be used to satisfy the requirements of this Section only if both of the following have occurred:


C) The facility owner or operator and the guarantor must provide the Agency with all documents that are necessary and adequate to support an Agency determination that the required substantial business relationship exists adequate to support the guarantee.

BOARD NOTE: The Board added documentation to this subsection (g)(2)(C) to ensure that the owner and operator ensures all information necessary for an Agency determination is submitted to the Agency. The information required would include copies of any contracts and other documents that establish the nature, extent, and duration of the business relationship; any statements of competent legal opinion, signed by an attorney duly licensed to practice law in each of the jurisdictions referred to in the applicable of subsection (g)(2)(A) or (g)(2)(B) of this Section, that would support a conclusion that the business relationship is adequate consideration to support the guarantee in the pertinent jurisdiction; a copy of the documents required by subsection (g)(2)(A)(ii) or (g)(2)(B)(ii) of this Section; documents that identify the registered agent, as required by subsection (g)(2)(B)(i) of this Section; and any other documents requested by the Agency that are reasonably necessary to make a determination that a substantial business relationship exists, as such is defined in subsection (g)(1)(A) of this Section.
h) Letter of credit for liability coverage.

1) An owner or operator may fulfill the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (h) and submitting a copy of the letter of credit to the Agency.

2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

3) The wording of the letter of credit must be identical to the wording specified by the Agency pursuant to Section 721.251.

4) An owner or operator that uses a letter of credit to fulfill the requirements of this Section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust fund must be deposited by the issuing institution into the standby trust fund in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

5) The wording of the standby trust fund must be identical to the wording specified by the Agency pursuant to Section 721.251.

i) Surety bond for liability coverage.

1) An owner or operator may fulfill the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (i) and submitting a copy of the bond to the Agency.

2) The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties
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3) The wording of the surety bond must be identical to the wording specified by the Agency pursuant to Section 721.251.

4) A surety bond may be used to fulfill the requirements of this Section only if the Attorneys General or Insurance Commissioners of the following states have submitted a written statement to the Agency that a surety bond executed as described in this Section is a legally valid and enforceable obligation in that state:

   A) The state in which the surety is incorporated; and
   B) The State of Illinois (the state in which the facility covered by the surety bond is located).

i) Trust fund for liability coverage.

1) An owner or operator may fulfill the requirements of this Section by establishing a trust fund that conforms to the requirements of this subsection (i) and submitting an originally signed duplicate of the trust agreement to the Agency.

2) The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to fulfill the requirements of this Section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage that the owner or operator must provide, the owner or operator must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or the owner or operator must obtain other financial assurance that satisfies the requirements of this Section to cover the difference. When the owner or operator must either add sufficient funds...
NOTICE OF PROPOSED AMENDMENTS

or obtain other financial assurance, it must do so before the anniversary date of the establishment of the trust fund. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden or non-sudden occurrences that the owner or operator is required to provide pursuant to this Section, less the amount of financial assurance for liability coverage that the owner or operator has provided by other financial assurance mechanisms to demonstrate financial assurance.

4) The wording of the trust fund must be identical to the wording specified by the Agency pursuant to Section 721.251.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.248 Incapacity of Owners or Operators, Guarantors, or Financial Institutions

a) An owner or operator must notify the Agency by certified mail of the commencement of a voluntary or involuntary proceeding pursuant to Title 11 of the United States Code (Bankruptcy) that names the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee undertaken to satisfy the requirements of Section 721.243(e) must make such a notification if it is named as debtor, as required under the terms of the corporate guarantee.

b) An owner or operator that satisfies the requirements of Section 721.243 or 721.247 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or in the event of a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.249 Use of State-Required Mechanisms

This Section corresponds with 40 CFR 261.149, which pertains to USEPA approval of state-endorsed instruments for providing financial assurance. The Board directs attention to that
federal provision without duplicating its requirements here, since it is important to regulated entities in Illinois, although it does not impose requirements necessary as a matter of State law.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.250 State Assumption of Responsibility

This Section corresponds with 40 CFR 261.150, which pertains to USEPA approval of state financial assurance requirements and the assumption of responsibility by a state. The Board directs attention to that federal provision without duplicating its requirements here, since it is important to regulated entities in Illinois, although it does not impose requirements necessary as a matter of State law.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 721.251 Wording of the Instruments

The Agency must promulgate standardized forms for financial assurance instruments based on 40 CFR 261.151 (Wording of the Instruments), incorporated by reference in 35 Ill. Adm. Code 720.111(b), with such changes in wording as are necessary under Illinois law. Any owner or operator required to establish financial assurance under this Subpart H must do so only upon the standardized forms for financial assurance instruments promulgated by the Agency. The Agency must reject any financial assurance instrument that does not comport with the Agency-promulgated standardized forms.

(Source: Added at 34 Ill. Reg. _____, effective ____________
NOTICE OF PROPOSED AMENDMENTS

**Section 721.APPENDIX Y**  **Table to Section 721.138: Maximum Contaminant Concentration and Minimum Detection Limit Values for Comparable Fuel Specification**

The following table lists the maximum concentration limit and minimum analytical detection limit required for each contaminant for which USEPA has established a comparable fuel specification. This table supports the requirements of the excluded fuels rule of Section 721.138.

<table>
<thead>
<tr>
<th>Chemical name</th>
<th>CAS No</th>
<th>Composite value (mg/kg)</th>
<th>Heating value (BTU/lb)</th>
<th>Concentration limit (mg/kg at 10,000 Btu/lb)</th>
<th>Minimum required detection limit (mg/kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Nitrogen as N</td>
<td>NA</td>
<td>9,000</td>
<td>18,400</td>
<td>4,900</td>
<td></td>
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<tr>
<td>Total Halogens as Cl</td>
<td>NA</td>
<td>1,000</td>
<td>18,400</td>
<td>540</td>
<td></td>
</tr>
<tr>
<td>Total Organic Halogens as Cl</td>
<td>NA</td>
<td>=</td>
<td>=</td>
<td>(Note 1)</td>
<td></td>
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<tr>
<td>Polychlorinated biphenyls, total (Aroclors, Arocolors, total)</td>
<td>1336-36-3</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>1.4</td>
</tr>
<tr>
<td>Cyanide, total</td>
<td>57-12-5</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>1.0</td>
</tr>
</tbody>
</table>

**Metals:**

<table>
<thead>
<tr>
<th>Chemical name</th>
<th>CAS No</th>
<th>Composite value (mg/kg)</th>
<th>Heating value (BTU/lb)</th>
<th>Concentration limit (mg/kg at 10,000 Btu/lb)</th>
<th>Minimum required detection limit (mg/kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony, total</td>
<td>7440-36-0</td>
<td>ND</td>
<td>=</td>
<td>12</td>
<td></td>
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<tr>
<td>Arsenic, total</td>
<td>7440-38-2</td>
<td>ND</td>
<td>=</td>
<td>0.23</td>
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<tr>
<td>Barium, total</td>
<td>7440-39-3</td>
<td>ND</td>
<td>=</td>
<td>23</td>
<td></td>
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<tr>
<td>Beryllium, total</td>
<td>7440-41-7</td>
<td>ND</td>
<td>=</td>
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<td></td>
</tr>
<tr>
<td>Cadmium, total</td>
<td>7440-43-9</td>
<td>=</td>
<td>ND</td>
<td>1.2</td>
<td>1.2</td>
</tr>
<tr>
<td>Chromium, total</td>
<td>7440-47-3</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>Cobalt</td>
<td>7440-48-4</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>Lead, total</td>
<td>7439-92-1</td>
<td>57</td>
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<tr>
<td>Manganese</td>
<td>7439-96-5</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>Mercury, total</td>
<td>7439-97-6</td>
<td>ND</td>
<td>=</td>
<td>0.25</td>
<td></td>
</tr>
<tr>
<td>Nickel, total</td>
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<td>106</td>
<td>18,400</td>
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<tr>
<td>Selenium, total</td>
<td>7782-49-2</td>
<td>ND</td>
<td>=</td>
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<td></td>
</tr>
<tr>
<td>Silver, total</td>
<td>7440-22-4</td>
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### NOTIFICATION OF PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Substance</th>
<th>Code</th>
<th>nd</th>
<th>Lower Limit</th>
<th>Upper Limit</th>
<th>Average Limit</th>
</tr>
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<tbody>
<tr>
<td><strong>Thallium, total</strong></td>
<td>7440-28-0</td>
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<tr>
<td><strong>Hydrocarbons:</strong></td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Thallium, total</td>
<td>7440-28-0</td>
<td>ND</td>
<td>=</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td><strong>Benzo(a)anthracene</strong></td>
<td>56-55-3</td>
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<td></td>
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<tr>
<td><strong>Benzene</strong></td>
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<td><strong>Benzo(b)fluoranthene</strong></td>
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<td></td>
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<tr>
<td><strong>Benzo(k)fluoranthene</strong></td>
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<td><strong>Benzo(a)pyrene</strong></td>
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<td><strong>Chrysene</strong></td>
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<td><strong>Dibenzo(a,h)anthracene</strong></td>
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<tr>
<td><strong>7,12-Dimethylbenz(a)-anthracene</strong></td>
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<tr>
<td><strong>Fluoranthene</strong></td>
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<td><strong>Indeno(1,2,3-cd)pyrene</strong></td>
<td>193-39-5</td>
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<td></td>
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<td><strong>3-Methylcholanthrene</strong></td>
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<tr>
<td><strong>Naphthalene</strong></td>
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<td><strong>Toluene</strong></td>
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<td>36,000</td>
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<td></td>
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<td><strong>Acetophenone</strong></td>
<td>98-86-2</td>
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<td><strong>Acrolein</strong></td>
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<td><strong>Allyl alcohol</strong></td>
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<td><strong>Bis(2-ethylhexyl)-phthalate</strong></td>
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<tr>
<td><strong>Butyl benzyl phthalate</strong></td>
<td>85-68-7</td>
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<td></td>
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<tr>
<td><strong>o-Cresol (2-Methyl phenol)</strong></td>
<td>95-48-7</td>
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<tr>
<td><strong>m-Cresol (3-Methyl phenol) (3-M ethyl phenol)</strong></td>
<td>108-39-4</td>
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<tr>
<td><strong>p-Cresol (4-Methyl phenol)</strong></td>
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<tr>
<td><strong>Di-n-butyl phthalate</strong></td>
<td>84-74-2</td>
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<td>=</td>
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<tr>
<td><strong>Diethyl phthalate</strong></td>
<td>84-66-2</td>
<td>ND</td>
<td>=</td>
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<td></td>
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<tr>
<td><strong>2,4-Dimethylphenol</strong></td>
<td>105-67-9</td>
<td>ND</td>
<td>=</td>
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<td></td>
</tr>
</tbody>
</table>
### NOTICE OF PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Chemical</th>
<th>CAS Number</th>
<th>ND</th>
<th>=</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dimethyl phthalate</td>
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<td>Di-n-octyl phthalate</td>
<td>117-84-0</td>
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<td>Endothall</td>
<td>145-73-3</td>
<td>ND</td>
<td>=</td>
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<td>Ethyl methacrylate</td>
<td>97-63-2</td>
<td>ND</td>
<td>=</td>
<td>39</td>
</tr>
<tr>
<td>2-Ethoxyethanol</td>
<td>110-80-5</td>
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<td>100</td>
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<tr>
<td>Isobutyl alcohol</td>
<td>78-83-1</td>
<td>ND</td>
<td>=</td>
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<td>Isosafrole</td>
<td>120-58-1</td>
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<tr>
<td>Methyl ethyl ketone</td>
<td>78-93-3</td>
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<td>=</td>
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</tr>
<tr>
<td>Methyl methacrylate</td>
<td>80-62-6</td>
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<tr>
<td>1,4-Naphthoquinone</td>
<td>130-15-4</td>
<td>ND</td>
<td>=</td>
<td>2,400</td>
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<tr>
<td>Phenol</td>
<td>108-95-2</td>
<td>ND</td>
<td>=</td>
<td>2,400</td>
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<tr>
<td>Propargyl alcohol</td>
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<tr>
<td>Safrole</td>
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<td>Sulfonated Organics:</td>
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<td></td>
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<tr>
<td>Carbon disulfide</td>
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<tr>
<td>Disulfoton</td>
<td>298-04-4</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
</tr>
<tr>
<td>Ethyl methanesulfonate</td>
<td>62-50-0</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
</tr>
<tr>
<td>Methyl methanesulfonate</td>
<td>66-27-3</td>
<td>ND</td>
<td>=</td>
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<td>Phorate</td>
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<td>=</td>
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<tr>
<td>1,3-Propane sultone</td>
<td>1120-71-4</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>Tetraethylthiopyrophosphate</td>
<td>3689-24-5</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
</tr>
<tr>
<td>Thiophenol</td>
<td>108-98-5</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
</tr>
<tr>
<td>O,O,O-Triethyl phosphorothioate</td>
<td>126-68-1</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>Nitrogenated Organics:</td>
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<td></td>
<td></td>
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<tr>
<td>Acetonitrile (Methyl cyanide)</td>
<td>75-05-8</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
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<tr>
<td>2-Acetylaminofluorene (2-AAF)</td>
<td>53-96-3</td>
<td>ND</td>
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<tr>
<td>Acrylonitrile</td>
<td>107-13-1</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
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</table>
# POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Substance</th>
<th>CAS No.</th>
<th>Unit</th>
<th>Lower Limit</th>
<th>Upper Limit</th>
<th>Max Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>4-Aminobiphenyl</td>
<td>92-67-1</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>4-Aminopyridine</td>
<td>504-24-5</td>
<td>ND</td>
<td>=</td>
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<td>100</td>
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<tr>
<td>Aniline</td>
<td>62-53-3</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
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<tr>
<td>Benzidine</td>
<td>92-87-5</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>Dibenz(a,j)acridine</td>
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<tr>
<td>O,O-Diethyl O-pyrazinyl phosphorothioate (Thionazin)</td>
<td>297-97-2</td>
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<td>Dimethoate</td>
<td>60-51-5</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>p-(Dimethlamino)azo-benzene (4-Dimethylaminoazobenzene)</td>
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<tr>
<td>3,3'-Dimethylbenzidine</td>
<td>119-93-7</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>2,400</td>
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<tr>
<td>αααα-Dimethylphenethylamine</td>
<td>122-09-8</td>
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<td>=</td>
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<td>2,400</td>
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<tr>
<td>3,3'-Dimethoxybenzidine</td>
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<td>100</td>
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<td>4,6-Dinitro-o-cresol</td>
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<tr>
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<td>Dinoseb (2-sec-Butyl-4,6-dinitrophenol)</td>
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<tr>
<td>Diphenylamine</td>
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# Pollution Control Board

## Notice of Proposed Amendments

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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### POLLUTION CONTROL BOARD

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</table>
### NOTIFICATION OF AMENDMENTS

<table>
<thead>
<tr>
<th>Substance</th>
<th>CAS Number</th>
<th>ND</th>
<th>=</th>
<th>Std Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methyl iodide (Iodomethane)</td>
<td>74-88-4</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>Pentachlorobenzene</td>
<td>608-93-5</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>Pentachloroethane</td>
<td>76-01-7</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>Pentachloronitrobenzene (PCNB)</td>
<td>82-68-8</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>Pentachloronitrobenzene (Quintobenzene)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pentachloronitrobenzene (Quintozene)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pentachlorophenol</td>
<td>87-86-5</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>Pronamide</td>
<td>23950-58-5</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>Silvex (2,4,5-Trichlorophenoxypropionic acid)</td>
<td>93-72-1</td>
<td>ND</td>
<td>=</td>
<td>ND 7.0</td>
</tr>
<tr>
<td>2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)</td>
<td>1746-01-6</td>
<td>ND</td>
<td>=</td>
<td>ND 30</td>
</tr>
<tr>
<td>1,2,4,5-Tetrachlorobenzene</td>
<td>95-94-3</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>1,1,2,2-Tetrachloroethane</td>
<td>79-34-5</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>Tetrachloroethylene (Perchloroethylene)</td>
<td>127-18-4</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>2,3,4,6-Tetrachlorophenol</td>
<td>58-90-2</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>1,2,4-Trichlorobenzene</td>
<td>120-82-1</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane (Methyl chloroform)</td>
<td>71-55-6</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane (Vinyl trichloride)</td>
<td>79-00-5</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>79-01-6</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>Trichlorofluoromethane (Trichloromonofluoromethane)</td>
<td>75-69-4</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>2,4,5-Trichlorophenol</td>
<td>95-95-4</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>2,4,6-Trichlorophenol</td>
<td>88-06-2</td>
<td>ND</td>
<td>=</td>
<td>ND 2,400</td>
</tr>
<tr>
<td>1,2,3-Trichloropropane</td>
<td>96-18-4</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
<tr>
<td>Vinyl Chloride</td>
<td>75-01-4</td>
<td>ND</td>
<td>=</td>
<td>ND 39</td>
</tr>
</tbody>
</table>

**Notes to Table:**
"NA" means not applicable.

"ND" means nondetect.

Note 1 (to Total Organic Halogens as Cl): 25 (mg/kg at 10,000 Btu/lb) as organic halogen or as the individual halogenated organics listed in the table at the levels indicated.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 721.APPENDIX Z  Table to Section 721.102: Recycled Materials That Are Solid Waste

The following table lists the instances when a recycled secondary material is solid waste, based on the type of secondary material and the mode of material management during recycling. This table supports the requirements of the recycling provision of the definition of solid waste rule, at Section 721.102(c).

<table>
<thead>
<tr>
<th>Use constituting disposal</th>
<th>Burning for energy recovery or use to produce a fuel</th>
<th>Speculative accumulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicable Subsection of Section 721.102:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c)(1)</td>
<td>(c)(2)</td>
<td>(c)(3)</td>
</tr>
<tr>
<td>Spent materials</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Sludges (listed in Section 721.131 or 721.132)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Sludges exhibiting a characteristic of hazardous waste</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### POLLUTION CONTROL BOARD

#### NOTICE OF PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Category</th>
<th>Yes</th>
<th>Yes</th>
<th>No=</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>By-products (listed in Section 721.131 or 721.132)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By-products exhibiting a characteristic of hazardous waste</td>
<td>Yes</td>
<td>Yes</td>
<td>No=</td>
<td>Yes</td>
</tr>
<tr>
<td>Commercial chemical products listed in Section 721.133</td>
<td>Yes</td>
<td>Yes</td>
<td>No=</td>
<td>–</td>
</tr>
<tr>
<td>Scrap metal other than excluded scrap metal (see Section 721.101(c)(9))</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Yes – Defined as a solid waste**

**No – Not defined as a solid waste**

**BOARD NOTE:** Derived from Table 1 to 40 CFR 261.2 (2002). The terms "spent materials," "sludges," "by-products," "scrap metal," and "processed scrap metal" are defined in Section 721.101.

(Source: Amended at 34 Ill. Reg. _______, effective ____________)
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

1) **Heading of the Part:** Standards Applicable to Generators of Hazardous Waste

2) **Code Citation:** 35 Ill. Adm. Code 722

3) **Section Numbers:**
   - 722.110   Amend
   - 722.112   Amend
   - 722.121   Amend
   - 722.134   Amend
   - 722.187   Amend
   - 722.300   New Section
   - 722.301   New Section
   - 722.302   New Section
   - 722.303   New Section
   - 722.304   New Section
   - 722.305   New Section
   - 722.306   New Section
   - 722.307   New Section
   - 722.308   New Section
   - 722.309   New Section
   - 722.310   New Section
   - 722.311   New Section
   - 722.312   New Section
   - 722.313   New Section
   - 722.314   New Section
   - 722.315   New Section
   - 722.316   New Section

4) **Statutory Authority:** 415 ILCS 5/7.2, 22.4, and 27

5) **A Complete Description of the Subjects and Issues Involved:** The amendments to Part 722 are a single segment of the docket R09-16/R10-4 (consolidated) rulemaking that also affects 35 Ill. Adm. Code 703, 720, 721, 724, and 725, each of which is covered by a separate Notice in this issue of the *Illinois Register*. To save space, a more detailed description of the subjects and issues involved in the docket R09-16/R10-4 (consolidated) rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Proposed Amendment for 35 Ill. Adm. Code 703. A comprehensive description is contained in the Board's opinion and order of June 17, 2010, proposing amendments in
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS
docket R09-16/R10-4 (consolidated), which opinion and order is available from the address below.

Specifically, the amendments to Part 722 implement segments of the federal amendments of December 1, 2008 and June 25, 2009. The amendments add the alternative hazardous waste generator requirements for eligible academic entities. The amendments change appearances of "Office of Solid Waste" to "Office of Resource Conservation and Recovery".

Tables appear in the Board’s opinion and order of June 17, 2010 in docket R09-16/R10-4 (consolidated) that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 opinion and order in docket R09-16/R10-4 (consolidated).

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the IAPA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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

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

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

11) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

12) Time, Place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-16/R10-4 (consolidated) and be addressed to:

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
State of Illinois Center, Suite 11-500  
100 W. Randolph St.  
Chicago, IL 60601

Please direct inquiries to the following person and reference docket R09-16/R10-4 (consolidated):

Michael J. McCambridge  
Staff Attorney  
Illinois Pollution Control Board  
100 W. Randolph 11-500  
Chicago, IL 60601

Phone: 312/814-6924  
E-mail: mccambm@ipcb.state.il.us

Request copies of the Board's opinion and order at 312/814-3620, or download a copy from the Board's Website at http:\\www.ipcb.state.il.us.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.
NOTICE OF PROPOSED AMENDMENTS

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

14) Regulatory agenda on which this rulemaking was summarized: July 2009 and January 2010

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 722
STANDARDS APPLICABLE TO
GENERATORS OF HAZARDOUS WASTE

SUBPART A: GENERAL

Section
722.110 Purpose, Scope, and Applicability
722.111 Hazardous Waste Determination
722.112 USEPA Identification Numbers
722.113 Electronic Reporting

SUBPART B: THE MANIFEST

Section
722.120 General Requirements
722.121 Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests
722.122 Number of Copies
722.123 Use of the Manifest
722.127 Waste Minimization Certification

SUBPART C: PRE-TRANSPORT REQUIREMENTS

Section
722.130 Packaging
722.131 Labeling
722.132 Marking
722.133 Placarding
722.134 Accumulation Time

SUBPART D: RECORDKEEPING AND REPORTING

Section
722.140 Recordkeeping
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722.141 Annual Reporting
722.142 Exception Reporting
722.143 Additional Reporting
722.144 Special Requirements for Generators of between 100 and 1,000 kilograms per month

SUBPART E: EXPORTS OF HAZARDOUS WASTE

Section
722.150 Applicability
722.151 Definitions
722.152 General Requirements
722.153 Notification of Intent to Export
722.154 Special Manifest Requirements
722.155 Exception Report
722.156 Annual Reports
722.157 Recordkeeping
722.158 International Agreements

SUBPART F: IMPORTS OF HAZARDOUS WASTE

Section
722.160 Imports of Hazardous Waste

SUBPART G: FARMERS

Section
722.170 Farmers

SUBPART H: TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD

Section
722.180 Applicability
722.181 Definitions
722.182 General Conditions
722.183 Notification and Consent
722.184 Tracking Document
722.185 Contracts
POLLUTION CONTROL BOARD

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722.186 Provisions Relating to Recognized Traders
722.187 Reporting and Recordkeeping
722.189 OECD Waste Lists

**SUBPART K: ALTERNATIVE REQUIREMENTS FOR HAZARDOUS WASTE DETERMINATION AND ACCUMULATION OF UNWANTED MATERIAL FOR LABORATORIES OWNED BY ELIGIBLE ACADEMIC ENTITIES**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>722.300</td>
<td>Definitions</td>
</tr>
<tr>
<td>722.301</td>
<td>Applicability</td>
</tr>
<tr>
<td>722.302</td>
<td>Opting into the Subpart K Requirements</td>
</tr>
<tr>
<td>722.303</td>
<td>Notice of Election into the Subpart K Requirements</td>
</tr>
<tr>
<td>722.304</td>
<td>Notice of Withdrawal from the Subpart K Requirements</td>
</tr>
<tr>
<td>722.305</td>
<td>Summary of the Requirements of this Subpart K</td>
</tr>
<tr>
<td>722.306</td>
<td>Container Standards in the Laboratory</td>
</tr>
<tr>
<td>722.307</td>
<td>Personnel Training</td>
</tr>
<tr>
<td>722.308</td>
<td>Removing Unwanted Material from the Laboratory</td>
</tr>
<tr>
<td>722.309</td>
<td>Hazardous Waste Determination and Removal of Unwanted Material from the Laboratory</td>
</tr>
<tr>
<td>722.310</td>
<td>Hazardous Waste Determination in the Laboratory</td>
</tr>
<tr>
<td>722.311</td>
<td>Hazardous Waste Determination at an On-Site Central Accumulation Area</td>
</tr>
<tr>
<td>722.312</td>
<td>Hazardous Waste Determination at an On-Site Treatment, Storage, or Disposal Facility</td>
</tr>
<tr>
<td>722.313</td>
<td>Laboratory Clean-Outs</td>
</tr>
<tr>
<td>722.314</td>
<td>Laboratory Management Plan</td>
</tr>
<tr>
<td>722.315</td>
<td>Unwanted Material That Is Not Solid Waste or Hazardous Waste</td>
</tr>
<tr>
<td>722.316</td>
<td>Non-Laboratory Hazardous Waste Generated at an Eligible Academic Entity</td>
</tr>
</tbody>
</table>

722.APPENDIX A  Hazardous Waste Manifest

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SUBPART A: GENERAL

Section 722.110 Purpose, Scope, and Applicability

a) This Part establishes standards for generators of hazardous waste.

b) A generator must use 35 Ill. Adm. Code 721.105(c) and (d) to determine the applicability of provisions of this Part that are dependent on calculations of the quantity of hazardous waste generated per month.

c) A generator that treats, stores, or disposes of a hazardous waste on-site must comply only with the following Sections of this Part with respect to that waste: Section 722.111, for determining whether or not the generator has a hazardous waste; Section 722.112, for obtaining an USEPA identification number; Section 722.140(c) and (d), for recordkeeping; Section 722.143, for additional reporting; and Section 722.170, for farmers, if applicable.

d) Any person that exports or imports hazardous waste that is subject to the hazardous waste manifesting requirements of this Part or the universal waste management standards of 35 Ill. Adm. Code 733, to or from countries listed in
Section 722.158(a)(1) for recovery, must comply with Subpart H of this Part.

e) Any person that imports hazardous waste into the United States must comply with the generator standards of this Part.

f) A farmer that generates waste pesticides that are hazardous waste and which complies with Section 722.170 is not required to comply with other standards in this Part or 35 Ill. Adm. Code 702, 703, 724 through 728, 733, or 739 with respect to such pesticides.

g) A person that generates a hazardous waste, as defined by 35 Ill. Adm. Code 721, is subject to the compliance requirements and penalties prescribed in Title VIII and XII of the Environmental Protection Act if that person does not comply with this Part.

h) An owner or operator that initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this Part.

i) A person responding to an explosives or munitions emergency in accordance with 35 Ill. Adm. Code 724.101(g)(8)(A)(iv) or (g)(8)(D) or 35 Ill. Adm. Code 725.101(c)(11)(A)(iv) or (c)(11)(D) and 35 Ill. Adm. Code 703.121(a)(4) or (c) is not required to comply with the standards of this Part.

j) This subsection corresponds with 40 CFR 262.10(j), a provision that relates only to facilities in the Commonwealth of Massachusetts. This statement maintains structural consistency with USEPA rules.

k) This subsection corresponds with 40 CFR 262.10(k), a provision that relates only to facilities in the Commonwealth of Massachusetts. This statement maintains structural consistency with USEPA rules.

l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Subpart K of this Part are not subject to the requirements set forth in subsections (l)(1) and (l)(2) of this Section, except as specifically otherwise provided in Subpart K of this Part. For purposes of this subsection (l), the terms "laboratory" and "eligible academic entity" shall have the meanings given them in Section 722.300.
POLLUTION CONTROL BOARD

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1) The requirements of Section 722.111, for a large quantity generator, or Section 722.134(c), for a small quantity generator; and


BOARD NOTE: The provisions of Section 722.134 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section 722.134 only apply to an owner or operator that is shipping hazardous waste which it generated at that facility. A generator that treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in 35 Ill. Adm. Code 702, 703, 724 through 728, 733, and 739.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

Section 722.112 USEPA Identification Numbers

a) A generator must not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received a USEPA identification number from USEPA.

b) A generator that has not received a USEPA identification number may obtain one by applying to USEPA Region 5 Administrator using USEPA Form 8700-12. The generator must obtain a copy of the form from the Agency, Bureau of Land (217-782-6762), and submit a completed copy of the form to the Bureau of Land, in addition to any notification directly to USEPA. Upon receiving the request USEPA will assign a USEPA identification number to the generator.

c) A generator must not offer its hazardous waste to transporters or to treatment, storage or disposal facilities that have not received a USEPA identification number.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

SUBPART B: THE MANIFEST

Section 722.121 Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests

a) USEPA approval of manifest.
POLLUTION CONTROL BOARD

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1) A registrant may not print the manifest or have the manifest printed for use or distribution, unless it has received approval from the USEPA Director of the Office of Resource Conservation and Recovery Solid Waste to do so pursuant to 40 CFR 262.21(c) and (e), as described in subsections (c) and (e) of this Section.

2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of 40 CFR 262.21, as described in this Section. The registrant is responsible for assigning manifest tracking numbers to its manifests.

b) A registrant must submit an initial application to the USEPA Director of the Office of Resource Conservation and Recovery Solid Waste that contains the following information:

1) The name and mailing address of registrant;

2) The name, telephone number, and email address of contact person;

3) A brief description of registrant's government or business activity;

4) The USEPA identification number of the registrant, if applicable;

5) A description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including the following:

A) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house (i.e., using its own printing establishments) or through a separate (i.e., unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (e.g., prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of
POLLUTION CONTROL BOARD

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each company. It also must provide the name and telephone number of the contact person at each company;

B) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of 40 CFR 262.21, as described in this Section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be preprinted on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application must also indicate how the printer will pre-print a unique number on each form (e.g., crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time; and

C) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public (e.g., for purchase);

6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so (e.g., corporate brochures, product samples, customer references, documentation of ISO certification), so long as such information pertains to the establishments or company being proposed to print the manifest;

7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to pre-print a unique manifest tracking number on each manifest; and
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8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of 40 CFR 262.21, as described in this Section and that it will notify the Agency and the USEPA Director of the Office of Resource Conservation and Recovery Solid Waste of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

c) USEPA will review the application submitted under subsection (b) of this Section and either approve it or request additional information or modification before approving it.

d) Submission of document samples.

1) Upon USEPA approval of the application pursuant to 40 CFR 262.21(c), as described in subsection (c) of this Section, USEPA will provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in 40 CFR 262.21(d)(3), as described in subsection (d)(3) of this Section. The registrant's samples must meet all of the specifications in 40 CFR 262.21(f), as described in subsection (f) of this Section, and be printed by the company that will print the manifest as identified in the application approved by USEPA pursuant to 40 CFR 262.21(c), as described in subsection (c) of this Section.

2) The registrant must submit a description of the manifest samples as follows:

A) The paper type (i.e., manufacturer and grade of the manifest paper);

B) The paper weight of each copy;

C) The ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and
NOTICE OF PROPOSED AMENDMENTS

D) The method of binding the copies.

3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

e) USEPA will evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. USEPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until USEPA approves them. An approved registrant must print the manifest and continuation sheet according to its application approved by USEPA pursuant to 40 CFR 262.21(c), as described in subsection (e) of this Section and the manifest specifications in 40 CFR 262.21(f), as described in subsection (f) of this Section. It also must print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

f) Paper manifests and continuation sheets must be printed according to the following specifications:

1) The manifest and continuation sheet must be printed with the exact format and appearance as USEPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be preprinted on the manifest form.

2) A unique manifest tracking number assigned in accordance with a numbering system approved by USEPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three-letter suffix following nine digits.

3) The manifest and continuation sheet must be printed on 8½ x 11-inch white paper, excluding common stubs (e.g., top- or side-bound stubs). The paper must be durable enough to withstand normal use.

4) The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.
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5) The manifest and continuation sheet must be printed as six-copy forms. Copy-to-copy registration must be exact within 1/32 inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

A) Page 1 (top copy): "Designated facility to destination State (if required)."

B) Page 2: "Designated facility to generator State (if required)."

C) Page 3: "Designated facility to generator."

D) Page 4: "Designated facility's copy."

E) Page 5: "Transporter's copy."

F) Page 6 (bottom copy): "Generator's initial copy."

7) The instructions in the appendix to 40 CFR 262 (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)), incorporated by reference in 35 Ill. Adm. Code 720.111(b), must appear legibly on the back of the copies of the manifest and continuation sheet as provided in 40 CFR 262.21(f), as described in this subsection (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

A) Manifest Form 8700-22.

i) The "Instructions for Generators" on Copy 6;

ii) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and
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iii) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

B) Manifest Form 8700-22A.

i) The "Instructions for Generators" on Copy 6;

ii) The "Instructions for Transporters" on Copy 5; and

iii) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

g) Use of approved manifests.

1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from USEPA to print the manifest pursuant to 40 CFR 262.21(c) and (e), as described in subsections (c) and (e) of this Section. A registered source may be any of the following:

A) A state agency;

B) A commercial printer;

C) A hazardous waste generator, transporter, or treatment, storage, or disposal facility; or

D) A hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

2) The waste generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under these states' authorized programs. The generator must also determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.
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h) Manifest revisions.

1) If an approved registrant would like to update any of the information provided in its application approved by USEPA pursuant to 40 CFR 262.21(c), as described in subsection (c) of this Section (e.g., to update a company phone number or name of contact person), the registrant must revise the application and submit it to the USEPA Director of the Office of Resource Conservation and RecoverySolid Waste, along with an indication or explanation of the update, as soon as practicable after the change occurs. The USEPA will either approve or deny the revision. If USEPA denies the revision, it will explain the reasons for the denial, and it will contact the registrant and request further modification before approval.

2) If the registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the USEPA Director of the Office of Resource Conservation and RecoverySolid Waste, along with the reason for requesting it. USEPA will either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval by USEPA pursuant to 40 CFR 262.21(e), as described in this subsection (e) of this Section, then the registrant must submit three samples of the revised form for USEPA review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. USEPA will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. USEPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until USEPA approves them.

i) If, subsequent to its approval by USEPA pursuant to 40 CFR 262.21(e), as described in subsection (e) of this Section, a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by USEPA, it must submit three samples of the manifest or continuation sheet to the
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registry for approval. USEPA will evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. USEPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until USEPA approves them.

j) USEPA may exempt a registrant from the requirement to submit form samples pursuant to 40 CFR 262.21(d) or (h)(3), as described in subsection (d) or (h)(3) of this Section, if USEPA is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision (e.g., a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions, and binding method of the form samples approved for some other registrant). A registrant may request an exemption from USEPA by indicating why an exemption is warranted.

k) An approved registrant must notify USEPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

l) If, subsequent to approval of a registrant by USEPA pursuant to 40 CFR 262.21(e), as described in subsection (e) of this Section, USEPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, USEPA will contact the registrant and require modifications to the form.

m) Effects of non-compliance.

1) USEPA may suspend and, if necessary, revoke printing privileges if we find that the registrant has done either of the following:

A) The registrant has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

B) The registrant exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.
2) USEPA will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come into compliance by the specified date, USEPA will send a second letter notifying the registrant that USEPA has suspended or revoked its printing privileges. An approved registrant must provide information on its printing activities to the Agency and USEPA if requested.

(Source: Amended at 34 Ill. Reg. _____, effective ____________)

SUBPART C: PRE-TRANSPORT REQUIREMENTS

Section 722.134 Accumulation Time

a) Except as provided in subsection (d), (e), (f), (g), (h), or (i) of this Section, a generator is exempt from all the requirements in Subparts G and H of 35 Ill. Adm. Code 725, except for 35 Ill. Adm. Code 725.211 and 725.214, and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the following conditions are fulfilled:

1) The waste is placed in or on one of the following types of units, and the generator complies with the applicable requirements:

   A) In containers, and the generator complies with Subparts I, AA, BB, and CC of 35 Ill. Adm. Code 725;

   B) In tanks, and the generator complies with Subparts J, AA, BB, and CC of 35 Ill. Adm. Code 725, except 35 Ill. Adm. Code 725.297(c) and 725.300;

   C) On drip pads, and the generator complies with Subpart W of 35 Ill. Adm. Code 725 and maintains the following records at the facility:

      i) A description of the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

      ii) Documentation of each waste removal, including the
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quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; or

D) In containment buildings, and the generator complies with Subpart DD of 35 Ill. Adm. Code 725 (has placed its Professional Engineer (PE) certification that the building complies with the design standards specified in 35 Ill. Adm. Code 725.1101 in the facility's operating record prior to the date of initial operation of the unit).

The owner or operator must maintain the following records at the facility:

i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respect to the 90 day limit, and documentation that the procedures are complied with; or

ii) Documentation that the unit is emptied at least once every 90 days;

BOARD NOTE: The Board placed the "in addition" hanging subsection that appears in the federal rules after 40 CFR 262.34(a)(1)(iv)(B) in the introduction to subsection (a) of this Section.

2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and


b) A generator that accumulates hazardous waste for more than 90 days is an operator of a storage facility. Such a generator is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 702, 703, and 705, unless the generator has been granted an extension of the 90-
day period. If hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances, the generator may seek an extension of up to 30 days by means of a variance or provisional variance, pursuant to Sections 35(b), 36(c), and 37(b) of the Environmental Protection Act [415 ILCS 5/35(b), 36(c), and 37(b)] and 35 Ill. Adm. Code 180 (Agency procedural regulations).

c) Accumulation near the point of generation.

1) A generator may accumulate as much as 55 gallons (208 ℓ) of hazardous waste or one quart of acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in containers at or near any point of generation where wastes initially accumulate that is under the control of the operator of the process generating the waste without a permit or interim status and without complying with subsection (a) of this Section, provided the generator does the following:

A) The generator complies with 35 Ill. Adm. Code 725.271, 725.272, and 725.273(a); and

B) The generator marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

2) A generator that accumulates either hazardous waste or acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in excess of the amounts listed in subsection (c)(1) of this Section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this Section or other applicable provisions of this Chapter. During the three day period the generator must continue to comply with subsection (c)(1) of this Section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

d) A generator that generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the following conditions are fulfilled:
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1) The quantity of waste accumulated on-site never exceeds 6,000 kilograms;

2) The generator complies with the requirements of Subpart I of 35 Ill. Adm. Code 725 (except 35 Ill. Adm. Code 725.276 and 725.278);

3) The generator complies with the requirements of 35 Ill. Adm. Code 725.301;

4) The generator complies with the requirements of subsections (a)(2) and (a)(3) of this Section, Subpart C of 35 Ill. Adm. Code 725, and 35 Ill. Adm. Code 728.107(a)(5); and

5) The generator complies with the following requirements:

A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subsection (d)(5)(D) of this Section. The employee is the emergency coordinator.

B) The generator must post the following information next to the telephone:

i) The name and telephone number of the emergency coordinator;

ii) Location of fire extinguishers and spill control material and, if present, fire alarm; and

iii) The telephone number of the fire department, unless the facility has a direct alarm.

C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

D) The emergency coordinator or designee must respond to any
emergencies that arise. The following are applicable responses:

i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

ii) In the event of a spill, contain the flow of hazardous waste to the extent possible and, as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil; and

iii) In the event of a fire, explosion, or other release that could threaten human health outside the facility, or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number 800-424-8802).

E) A report to the National Response Center pursuant to subsection (d)(5)(D)(iii) of this Section must include the following information:

i) The name, address, and USEPA identification number (Section 722.112 of this Part) of the generator;

ii) The date, time, and type of incident (e.g., spill or fire);

iii) The quantity and type of hazardous waste involved in the incident; the extent of injuries, if any; and

iv) The estimated quantity and disposition of recoverable materials, if any.


e) A generator that generates greater than 100 kilograms but less than 1,000
kilograms of hazardous waste in a calendar month and that must transport the waste or offer the waste for transportation over a distance of 200 miles or more for off-site treatment, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that the generator complies with the requirements of subsection (d) of this Section.

f) A generator that generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and that accumulates hazardous waste in quantities exceeding 6,000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if the generator must transport the waste or offer the waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 703, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period. If hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances, the generator may seek an extension of up to 30 days by means of variance or provisional variance pursuant to Sections 35(b), 36(c), and 37(b) of the Environmental Protection Act [415 ILCS 5/35(b), 36(c), and 37(b)].

g) A generator that generates 1,000 kilograms or greater of hazardous waste per calendar month which also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days, without a permit or without having interim status provided that the generator fulfills the following conditions:

1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

2) The F006 waste is legitimately recycled through metals recovery;

3) No more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and
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4) The F006 waste is managed in accordance with the following conditions:

A) The F006 waste is placed in one of the following containing devices:

i) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of 35 Ill. Adm. Code 725;

ii) In tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of 35 Ill. Adm. Code 725, except 35 Ill. Adm. Code 725.297(c) and 725.300; or

iii) In containment buildings, and the generator complies with Subpart DD of 35 Ill. Adm. Code 725 and has placed its professional engineer certification that the building complies with the design standards specified in 35 Ill. Adm. Code 725.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the records listed in subsection (g)(4)(F) of this Section at the facility;

B) In addition, such a generator is exempt from all the requirements in Subparts G and H of 35 Ill. Adm. Code 725, except for 35 Ill. Adm. Code 725.211 and 725.214;

C) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

D) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste";


F) Required records for a containment building:
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i) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

ii) Documentation that the unit is emptied at least once every 180 days.

BOARD NOTE: The Board has codified 40 CFR 262.34(g)(4)(i)(C)(1) and (g)(4)(i)(C)(2) as subsections (g)(4)(F)(i) and (g)(4)(F)(ii) because Illinois Administrative Code codification requirements do not allow the use of a fifth level of subsection indents.

h) A generator that generates 1,000 kilograms or greater of hazardous waste per calendar month, which also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, and which must transport this waste or offer this waste for transportation over a distance of 200 miles or more for off-site metals recovery may accumulate F006 waste on-site for more than 90 days, but not more than 270 days, without a permit or without having interim status if the generator complies with the requirements of subsections (g)(1) through (g)(4) of this Section.

i) A generator accumulating F006 in accordance with subsections (g) and (h) of this Section that accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste or offer this waste for transportation over a distance of 200 miles or more) or which accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility, and such a generator is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 702 and 703, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit.

1) On a case-by-case basis, the Agency must grant a provisional variance that allows an extension of the accumulation time up to an additional 30 days pursuant to Sections 35(b), 36(c), and 37(b) of the Act [415 ILCS 5/35(b),
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36(c), and 37(b)] if it finds that the F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances.

2) On a case-by-case basis, the Agency must grant a provisional variance pursuant to Sections 35(b), 36(c), and 37(b) of the Act [415 ILCS 5/35(b), 36(c), and 37(b)] that allows an exception to the 20,000 kilogram accumulation limit if the Agency finds that more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances.

3) A generator must follow the procedure of 35 Ill. Adm. Code 180 (Agency procedural rules) when seeking a provisional variance under subsection (i)(1) or (i)(2) of this Section.

j) A member of the federal National Environmental Performance Track program that generates 1,000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that the following conditions are fulfilled:

1) The generator accumulates the hazardous waste for no more than 180 days, or for no more than 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility;

2) The generator first notifies USEPA Region 5 and the Agency in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this Section. Such advance notice must include the following information:

A) The name and USEPA identification number of the facility and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this Section;

B) A description of the types of hazardous wastes that will be accumulated for extended periods of time and the units that will be used for such extended accumulation;
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C) A statement that the facility has made all changes to its operations; procedures, including emergency preparedness procedures; and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

D) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under 35 Ill. Adm. Code 702 and 703, federal 40 CFR 270, or the corresponding regulations of a sister state to receive these wastes is not available within 200 miles of the generating facility;

3) The waste is managed in the following types of units:


   B) Tanks, in accordance with the requirements of Subparts J, AA, BB, and CC of 35 Ill. Adm. Code 725, except for Sections 725.297(c) and Section 725.300;

   C) Drip pads, in accordance with Subpart W of 35 Ill. Adm. Code 725; or

   D) Containment buildings, in accordance with Subpart DD of 35 Ill. Adm. Code 725;

4) The quantity of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg;

5) The generator maintains the following records at the facility for each unit used for extended accumulation times:

   A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable), a description of the waste generation and
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management practices at the facility showing that they are consistent with the extended accumulation time limit, and documentation that the procedures are complied with; or

B) Documentation that the unit is emptied at least once every 180 days (or 270 days, if applicable);

6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words "Hazardous Waste," and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection;


8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and

9) The generator includes the following information with its federal National Environmental Performance Track Annual Performance Report, which must be submitted to the USEPA Region 5 and the Agency:

A) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods;

B) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (e.g., recycling, treatment, storage, or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this Section;
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C) Information for the previous year on any hazardous waste spills or accidents occurring at extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

D) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under 35 Ill. Adm. Code 702 and 703, federal 40 CFR 270, or the corresponding regulations of a sister state to receive these wastes is not available within 200 miles of the generating facility.

BOARD NOTE: The National Environmental Performance Track program is operated exclusively by USEPA. USEPA established the program in 2000 (see 65 Fed. Reg. 41655 (July 6, 2000)) and amended it in 2004 (see 69 Fed. Reg. 27922 (May 17, 2004)). USEPA confers membership in the program on application of interested and eligible entities. Information about the program is available from a website maintained by USEPA:  www.epa.gov/performancetrack.

k) If the Agency finds that hazardous wastes must remain on-site at a federal National Environmental Performance Track member facility for longer than the 180 days (or 270 days, if applicable) allowed under subsection (j) of this Section due to unforeseen, temporary, and uncontrollable circumstances, it must grant an extension to the extended accumulation time period of up to 30 days on a case-by-case basis by a provisional variance pursuant to Sections 35(b), 36(c), and 37(b) of the Act [415 ILCS 5/35(b), 36(c), and 37(b)].

l) If a generator that is a member of the federal National Environmental Performance Track program withdraws from the National Environmental Performance Track program or if USEPA Region 5 terminates a generator's membership, the generator must return to compliance with all otherwise applicable hazardous waste regulations as soon as possible, but no later than six months after the date of withdrawal or termination.

m) A generator that sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and which later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of 35 Ill. Adm. Code
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724.172 or 725.172 may accumulate the returned waste on-site in accordance with subsections (a) and (b) or (d), (e), and (f) of this Section, depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must sign the appropriate of the following:

1) Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

2) Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(Source: Amended at 34 Ill. Reg. ______, effective ____________)

SUBPART H: TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD

Section 722.187 Reporting and Recordkeeping

a) Annual reports. For all waste movements subject to this Subpart H, persons (e.g., notifiers, recognized traders, etc.) that meet the definition of primary exporter in Section 722.151 must file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460 and the Illinois Environmental Protection Agency, Bureau of Land, Division of Land Pollution Control, P.O. Box 19276, Springfield, IL 62794, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subpart H, the person filing may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate Section). Such reports must include the following information:

1) The USEPA identification number, name, and mailing and site address of the notifier filing the report;

2) The calendar year covered by the report;
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3) The name and site address of each final recovery facility;

4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the USEPA hazardous waste number (from Subpart C or D of 35 Ill. Adm. Code 721); the designation of waste types from the OECD waste list and applicable waste code from the OECD lists, as described in the annex to OECD Council Decision C(88)90/Final, as amended by C(94)152/Final, incorporated by reference in 35 Ill. Adm. Code 720.111(a); USDOT hazard class; the name and USEPA identification number (where applicable) for each transporter used; the total amount of hazardous waste shipped pursuant to this Subpart H; and number of shipments pursuant to each notification;

5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kilograms (kg) but less than 1,000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to Section 722.141:

A) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

B) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

6) A certification signed by the person acting as primary exporter that states as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

b) Exception reports. Any person that meets the definition of primary exporter in Section 722.151 must file with USEPA and the Agency an exception report in lieu
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of the requirements of Section 722.142 if any of the following occurs:

1) The person has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States within 45 days from the date it was accepted by the initial transporter;

2) Within 90 days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received; or

3) The waste is returned to the United States.

c) Recordkeeping.

1) Persons that meet the definition of primary exporter in Section 722.151 must keep the following records:

A) A copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries, for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

B) A copy of each annual report, for a period of at least three years from the due date of the report; and

C) A copy of any exception reports and a copy of each confirmation of delivery (i.e., tracking documentation) sent by the recovery facility to the notifier, for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

2) The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by USEPA or the Agency.

(Source: Amended at 34 Ill. Reg. ______, effective _____________)

SUBPART K: ALTERNATIVE REQUIREMENTS FOR HAZARDOUS WASTE DETERMINATION AND ACCUMULATION OF UNWANTED MATERIAL FOR LABORATORIES OWNED BY ELIGIBLE ACADEMIC ENTITIES

Section 722.300 Definitions

The following definitions apply for the purposes of this Subpart K:

"Central accumulation area" means an on-site hazardous waste accumulation area subject to Section 722.134(a), for a large quantity generator; Section 722.134(d) through (f), for a small quantity generator; or Section 722.134(j) and (k) for a Performance Track member. A central accumulation area at an eligible academic entity that chooses to be subject to this Subpart K must also comply with Section 722.311 when accumulating unwanted material or hazardous waste.

"College or University" means a private or public post-secondary degree-granting academic institution that is accredited by an accrediting agency listed annually by the U.S. Department of Education.
BOARD NOTE: The Department of Education maintains on-line lists of accrediting agencies on the Internet at the following address: www.ed.gov/admins/finaid/accred/accreditation_pg6.html#NationallyRecognized.

"Eligible academic entity" means a college or university, a non-profit research institute that is owned by or that has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or that has a formal written affiliation agreement with a college or university.

"Formal written affiliation agreement" for a non-profit research institute means a written document that establishes a relationship between institutions for the purposes of research or education and that is signed by an authorized representative, as that term is defined in 35 Ill. Adm. Code 720.110, from each institution. A relationship that exists on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. "Formal written affiliation agreement" for a teaching hospital means a "master affiliation agreement" and "program letter of agreement", as these terms are defined in the document entitled "Accreditation Council for Graduate Medical Education: Glossary of Terms", incorporated by reference in 35 Ill. Adm. Code 720.111, with an accredited medical program or medical school.
"Laboratory" means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are laboratories within the meaning of this definition. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories (or diagnostic laboratories at teaching hospitals) are also laboratories within the meaning of this definition.

"Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (e.g., at the end of a semester or academic year) or as a result of a renovation, relocation, or change in laboratory supervisor or occupant. A regularly scheduled removal of unwanted material, as required by Section 722.308, does not qualify as a laboratory clean-out within the meaning of this definition.

"Laboratory worker" means a person who handles chemicals or unwanted material in a laboratory. This may include, but is not limited to, any member of faculty or staff, a post-doctoral fellow, an intern, a researcher, a technician, a supervisor or manager, or a principal investigator. A person does not need to be paid or otherwise compensated for his or her work in the laboratory to be considered a laboratory worker. An undergraduate or graduate student in a supervised classroom setting is not a laboratory worker.

"Non-profit research institute" means an organization that conducts research as its primary function and that files as a nonprofit organization under the federal tax code (26 USC 501(c)(3)).

"Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in 35 Ill. Adm. Code 721.133(e) for reactivity.

"Teaching hospital" means a hospital that trains students to become physicians, nurses, or other health or laboratory personnel.
"Trained professional" means a person who has completed the applicable RCRA training requirements of 35 Ill. Adm. Code 725.116, for a large quantity generator, or who is knowledgeable about normal operations and emergencies in accordance with Section 722.134(d)(5)(C), for a small quantity generator or conditionally exempt small quantity generator. A trained professional may be an employee of the eligible academic entity or a contractor or vendor who meets the requisite training requirements.

"Unwanted material" means any chemical, mixtures of chemicals, products of experiments, or other material from a laboratory that is no longer needed, wanted, or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted material includes reactive acutely hazardous unwanted material, material that may eventually be determined not to be solid waste pursuant to 35 Ill. Adm. Code 721.102, or a hazardous waste pursuant to 35 Ill. Adm. Code 721.103. If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material", as allowed by Section 722.306(a)(1)(A), the equally effective term will have the same meaning, and the material designated by that term will be subject to the same requirements as "unwanted material" under this Subpart K.

"Working container" means a small container (i.e., two gallons (7.6 ℓ) or less) that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

(Source: Added at 34 Ill. Reg. ______, effective ____________)

Section 722.301 Applicability

a) Large quantity generators and small quantity generators. This Subpart K provides alternative requirements to the requirements set forth in Sections 722.111 and 722.134(c) for determination of hazardous waste and accumulation of hazardous waste in a laboratory owned by an eligible academic entity that chooses to be subject to this Subpart K, provided that the academic entity fulfills the notification requirements of Section 722.303.

b) Conditionally exempt small quantity generators. This Subpart K provides alternative requirements to the conditional exemption set forth in 35 Ill. Adm. Code 721.105(b) for the accumulation of hazardous waste in a laboratory owned by an eligible academic entity that chooses to be subject to this Subpart K.
provided that the academic entity fulfills the notification requirements of Section 722.303.

(Source: Added at 34 Ill. Reg. ______, effective ____________)

Section 722.302 Opting into the Subpart K Requirements

a) Large quantity generators and small quantity generators. An eligible academic entity has the option of complying with this Subpart K with respect to its laboratories, as an alternative to complying with the requirements set forth in Sections 722.111 and 722.134(c).

b) Conditionally exempt small quantity generators. An eligible academic entity has the option of complying with this Subpart K with respect to its laboratories, as an alternative to complying with the conditional exemption of 35 Ill. Adm. Code 721.105(b).

(Source: Added at 34 Ill. Reg. ______, effective ____________)

Section 722.303 Notice of Election into the Subpart K Requirements

a) If an eligible academic entity elects to become subject to the requirements of this Subpart K, it must notify the Agency of this election in writing using the RCRA Subtitle C Site Identification Form (USEPA Form 8700-12) for all the laboratories that the eligible academic entity owns or operates under the same USEPA identification number. If the eligible academic entity is a conditionally exempt small quantity generator (CESQG) that does not have a USEPA identification number, the CESQG must notify the Agency that it has made this choice for all the laboratories that the eligible academic entity owns or operates that are onsite, as defined by 35 Ill. Adm. Code 720.110. If the eligible academic entity has multiple USEPA identification numbers, or if it is a CESQG with multiple sites, it must submit a separate notification (using USEPA Form 8700-12) for each USEPA identification number (or site, for a CESQG) that it elects to become subject to the requirements of this Subpart K. The eligible academic entity must submit USEPA Form 8700-12 to the Agency before it begins operating under this Subpart K.

BOARD NOTE: Corresponding 40 CFR 262.203(a) requires the use of the "RCRA Subtitle C Site Identification Form (EPA Form 8700-12)". This is the
title that appears on the face of the form. The title on the pre-pended instructions for USEPA Form 8700-12, however, is "Notification of RCRA Subtitle C Activity". USEPA Form 8700-12 is available from the Agency, Bureau of Land (217-782-6762). It is also available on-line for download in PDF file format: www.epa.gov/osw/inforesources/data/form8700/8700-12.pdf. Only the November 2009 version of USEPA Form 8700-12 includes a segment relating to the alternative standards for eligible academic entities.

b) When submitting USEPA Form 8700-12, the eligible academic entity must, at a minimum, fill out each of the following fields on the form:

"1. Reason for Submittal"

"2. Site EPA ID Number" (except for a conditionally exempt small quantity generator)

"3. Site Name"

"4. Site Location Information"

"5. Site Land Type"

"6. North American Industry Classification System (NAICS) Code or Codes for the Site"


"7. Site Mailing Address"

"8. Site Contact Person"

"9. Operator and Legal Owner of the Site"

"10. Type of Regulated Waste Activity"

"13. Certification"
c) An eligible academic entity must keep a copy of USEPA Form 8700-12, as filed with the Agency pursuant to subsection (a) of this Section, on file at the eligible academic entity for as long as its laboratories are subject to this Subpart K.

d) A teaching hospital that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to this Subpart K.

e) A non-profit research institute that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the non-profit research institute for as long as its laboratories are subject to this Subpart K.

(Source: Added at 34 Ill. Reg. ______, effective ____________)

Section 722.304  Notice of Withdrawal from the Subpart K Requirements

a) If an eligible academic entity elects to no longer remain subject to the requirements of this Subpart K for all the laboratories that the eligible academic entity owns or operates under the same USEPA identification number, it elects to instead comply with the requirements set forth in Sections 722.111 and 722.134(c), which are the generally applicable standards for small quantity generators and large quantity generators. An eligible academic entity must notify the Agency in writing of this election using the USEPA Form 8700-12. If the eligible academic entity is a CESQG that does not have a USEPA identification number, it must notify the Agency that it has elected to withdraw from the requirements of this Subpart K for all of the laboratories that it owns or operates that are on-site. The eligible academic entity that is a CESQG that makes this election must comply with the conditional exemption in 35 Ill. Adm. Code 721.105(b). If the eligible academic entity has multiple USEPA identification numbers, or if it is a CESQG with multiple sites, it must submit a separate notification (using USEPA Form 8700-12) for each USEPA identification number (or site, for a CESQG) that it elects to withdraw from the requirements of this Subpart K. The eligible academic entity that chooses to withdraw from the requirements of this Subpart K must submit USEPA Form 8700-12 to the Agency before it begins operating under the requirements set forth in Sections 722.111 and 722.134(c), which are the generally applicable standards for small quantity generators and large quantity generators, or 35 Ill. Adm. Code 721.105(b), which
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are the generally applicable standards for conditionally exempt small quantity generators.

BOARD NOTE: Corresponding 40 CFR 262.204(a) requires the use of the "RCRA Subtitle C Site Identification Form (EPA Form 8700-12)". This is the title that appears on the face of the form. The title on the pre-pended instructions for USEPA Form 8700-12, however, is "Notification of RCRA Subtitle C Activity". USEPA Form 8700-12 is available from the Agency, Bureau of Land (217-782-6762). It is also available on-line for download in PDF file format: www.epa.gov/osw/inforesources/data/form8700/8700-12.pdf. Only the November 2009 version of USEPA Form 8700-12 includes a segment relating to the alternative standards for eligible academic entities.

b) When submitting USEPA Form 8700-12, the eligible academic entity must, at a minimum, fill out each of the following fields on the form:

"1. Reason for Submittal"

"2. Site EPA ID Number" (except for a conditionally exempt small quantity generator)

"3. Site Name"

"4. Site Location Information"

"5. Site Land Type"

"6. North American Industry Classification System (NAICS) Code or Codes for the Site"


"7. Site Mailing Address"

"8. Site Contact Person"

"9. Operator and Legal Owner of the Site"

"10. Type of Regulated Waste Activity"
"13. Certification"

c) An eligible academic entity must keep a copy of USEPA Form 8700-12, as filed with the Agency pursuant to subsection (a) of this Section, on file at the eligible academic entity for three years after the date of the notification of withdrawal.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 722.305 Summary of the Requirements of this Subpart K

An eligible academic entity that chooses to become subject to the requirements of this Subpart K is not required to have interim status or a RCRA Part B permit for the accumulation of unwanted material and hazardous waste in its laboratories, provided the laboratories comply with the provisions of this Subpart K and the eligible academic entity has a Laboratory Management Plan (LMP) that complies with Section 722.314 that describes how the laboratories owned by the eligible academic entity will comply with the requirements of this Subpart K.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 722.306 Container Standards in the Laboratory

An eligible academic entity must manage containers of unwanted material while in the laboratory in accordance with the requirements in this Section.

a) Labeling: The eligible academic entity must label containers of unwanted material as follows:

1) The following information must be affixed or attached to the container:

A) The words "unwanted material", or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan; and

B) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to, the following:
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i) The name of the chemicals; or

ii) The type or class of chemicals, such as organic solvents or halogenated organic solvents.

2) The following information may be affixed or attached to the container, but must be associated with the container if not attached to it:

A) The date on which the unwanted material first began accumulating in the container; and

B) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid waste and a hazardous waste and to assign the proper hazardous waste codes to the material, pursuant to Section 722.111. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid waste and hazardous waste include, but are not limited to, the following:

i) The name or description of the chemical contents or the composition of the unwanted material or, if known, the product of the chemical reaction;

ii) Whether the unwanted material has been used or is unused; and

iii) A description of the manner in which the chemical was produced or processed, if applicable.

b) Management of Containers in the Laboratory. An eligible academic entity must properly manage containers of unwanted material in the laboratory in a way that assures safe storage of the unwanted material and that prevents leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following actions:

1) Containers must be maintained and kept in good condition, and damaged containers must be replaced, overpacked, or repaired;
2) Containers must be compatible with their contents, in order to avoid reactions between the contents and the container; and they must be made of, or lined with, material that is compatible with the unwanted material, so that the container's integrity is not impaired; and

3) Containers must be kept closed at all times, except under the following circumstances:

   A) A container may be open when adding, removing, or consolidating unwanted material;

   B) A working container may be open until the end of the procedure, until the end of the work shift, or until it is full, whichever comes first, at which time either the working container must be closed or its contents emptied into a separate container that is then closed; or

   C) A container may be open when venting of a container is necessary for either of the following reasons:

      i) It is necessary for the proper operation of laboratory equipment, such as with inline collection of unwanted materials from high performance liquid chromatographs; or

      ii) It is necessary to prevent dangerous situations, such as a build-up of extreme pressure.

(Source: Added at 34 Ill. Reg. _______, effective ___________)

Section 722.307 Personnel Training

An eligible academic entity must provide training to all individuals working in its laboratory, as follows:

   a) It must provide training for laboratory workers and students that is commensurate with their duties, so that the workers and students understand the requirements of this Subpart K and can implement them.

   b) An eligible academic entity may provide training for laboratory workers and students in a variety of ways, including, but not limited to, any of the following:
1) Instruction by the professor or laboratory manager before or during an experiment;

2) Formal classroom training;

3) Electronic or written training;

4) On-the-job training; or

5) Written or oral exams.

c) An eligible academic entity that is a large quantity generator (see Section 722.127) must maintain for the durations specified in 35 Ill. Adm. Code 725.116(e) documentation that is sufficient to demonstrate that training for all laboratory workers has occurred. Examples of documentation that demonstrates that training has occurred can include, but are not limited to, the following:

1) Sign-in or attendance sheets for training sessions;

2) Syllabi for training sessions;

3) Certificates of training completion; or

4) Test results.

d) A trained professional is required for either of the following tasks:

1) A trained professional must accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory; and

2) A trained professional must make the hazardous waste determination for unwanted material, pursuant to Section 722.111.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 722.308 Removing Unwanted Material from the Laboratory
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a) Removing containers of unwanted material on a regular schedule. An eligible academic entity must do either of the following:

1) It must remove all containers of unwanted material from each laboratory on a regular interval, not to exceed six months; or

2) It must remove containers of unwanted material from each laboratory within six months after each container's accumulation start date.

b) The eligible academic entity must specify in Part I of its Laboratory Management Plan whether it will comply with subsection (a)(1) or (a)(2) of this Section for the regular removal of unwanted material from its laboratories.

c) The eligible academic entity must specify in Part II of its Laboratory Management Plan how it will comply with subsection (a)(1) or (a)(2) of this Section and how the eligible academic entity will develop a schedule for regular removals of unwanted material from its laboratories.

d) Removing containers of unwanted material when volumes are exceeded.

1) If a laboratory accumulates a total volume of unwanted material (including reactive acutely hazardous unwanted material) in excess of 55 gallons (208 ℓ) before the regularly scheduled removal, the eligible academic entity must ensure that the following requirements are fulfilled for all containers of unwanted material in the laboratory (including reactive acutely hazardous unwanted material):

A) The containers are marked on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) with the date on which 55 gallons (208 ℓ) was exceeded; and

B) The containers are removed from the laboratory within 10 calendar days after the date on which 55 gallons (208 ℓ) was exceeded, or on the date of the next regularly scheduled removal, whichever comes first.

2) If a laboratory accumulates more than one quart (0.946 ℓ) of reactive acutely hazardous unwanted material before the regularly scheduled
removal, then the eligible academic entity must ensure that the following requirements are fulfilled for all containers of reactive acutely hazardous unwanted material:

A) The containers are marked on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) with the date on which one quart (0.946 ℓ) was exceeded; and

B) The containers are removed from the laboratory within 10 calendar days after the date on which one quart (0.946 ℓ) was exceeded, or at the next regularly scheduled removal, whichever comes first.

(Source: Added at 34 Ill. Reg. ______, effective ____________)

Section 722.309  Hazardous Waste Determination and Removal of Unwanted Material from the Laboratory

a) Large quantity generators and small quantity generators. An eligible academic entity that is a large quantity generator or a small quantity generator must ensure that a trained professional makes a hazardous waste determination, pursuant to Section 722.111, for unwanted material in any of the following areas within the time given for that area:

1) In the laboratory, before the unwanted material is removed from the laboratory, in accordance with Section 722.310;

2) At an on-site central accumulation area, within four calendar days after the waste arrives in the area, in accordance with Section 722.311; or

3) At an on-site interim status or permitted treatment, storage, or disposal facility, within four calendar days after the waste arrives in the facility, in accordance with Section 722.312.

b) Conditionally exempt small quantity generators. An eligible academic entity that is a conditionally exempt small quantity generator must ensure that a trained professional makes a hazardous waste determination, pursuant to Section 722.111, for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with Section 722.310.
Section 722.310 Hazardous Waste Determination in the Laboratory

When an eligible academic entity makes the hazardous waste determination, pursuant to Section 722.111, for unwanted material in the laboratory, it must fulfill the following requirements:

a) A trained professional must make the hazardous waste determination, pursuant to Section 722.111, before the unwanted material is removed from the laboratory.

b) If an unwanted material is a hazardous waste, the eligible academic entity must do the following:

1) It must write the words "hazardous waste" on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory;

2) It must write the appropriate hazardous waste codes on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste is transported off-site; and

3) It must count the hazardous waste toward the amount used to determine the eligible academic entity's generator status, pursuant to 35 Ill. Adm. Code 721.105(c) and (d), in the calendar month that the hazardous waste determination was made.

c) A trained professional must accompany all hazardous waste that is transferred from the laboratory to an on-site central accumulation area or on-site interim status or permitted treatment, storage, or disposal facility.

d) When hazardous waste is removed from the laboratory, the following requirements apply:

1) An eligible academic entity that is a large quantity generator or a small quantity generator must ensure that its hazardous waste is taken directly from the laboratory to an on-site central accumulation area or to an on-site
interim status or permitted treatment, storage, or disposal facility, or the waste is transported off-site.

2) An eligible academic entity that is a conditionally exempt small quantity generator must ensure that its hazardous waste is taken directly from the laboratory to any of the types of facilities listed in 35 Ill. Adm. Code 721.105(f)(3), for acute hazardous waste, or 35 Ill. Adm. Code 721.105(g)(3), for hazardous waste.

e) An unwanted material that is a hazardous waste is subject to all applicable hazardous waste regulations after it has been removed from the laboratory.

(Source: Added at 34 Ill. Reg. _____, effective ____________)
e) If the unwanted material is a hazardous waste, the eligible academic entity must fulfill the following requirements:

1) It must write the words "hazardous waste" on the container label that is affixed or attached to the container, within four calendar days after the unwanted material has arrived at the on-site central accumulation area and before the hazardous waste may be removed from that area;

2) It must write the appropriate hazardous waste codes on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste may be treated or disposed of on-site or transported offsite;

3) It must count the hazardous waste toward the amount used to determine the eligible academic entity's generator status, pursuant to 35 Ill. Adm. Code 721.105(c) and (d), in the calendar month that the hazardous waste determination was made; and

4) It must manage the hazardous waste according to all applicable hazardous waste regulations.

(Source: Added at 34 Ill. Reg. ______, effective ____________)

Section 722.312 Hazardous Waste Determination at an On-Site Treatment, Storage, or Disposal Facility

When an eligible academic entity makes the hazardous waste determination, pursuant to Section 722.111, for unwanted material at an on-site interim status or permitted treatment, storage, or disposal facility, it must fulfill the following requirements:

a) A trained professional must accompany all unwanted material that is transferred from the laboratory to an on-site interim status or permitted treatment, storage, or disposal facility;

b) All unwanted material removed from the laboratory must be taken directly from the laboratory to the on-site interim status or permitted treatment, storage, or disposal facility:
e) The unwanted material becomes subject to the terms of the eligible academic entity's hazardous waste permit or interim status as soon as it arrives at the on-site treatment, storage, or disposal facility;

d) A trained professional must determine, pursuant to Section 722.111, if the unwanted material is a hazardous waste within four calendar days after the unwanted material has arrived at an on-site interim status or permitted treatment, storage or disposal facility; and

e) If the unwanted material is a hazardous waste, the eligible academic entity must fulfill the following requirements:

1) It must write the words "hazardous waste" on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) within four calendar days after the unwanted material has arrived at the on-site interim status or permitted treatment, storage, or disposal facility and before the hazardous waste may be removed from that facility;

2) It must write the appropriate hazardous waste codes on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the hazardous waste may be treated or disposed of on-site or transported off-site;

3) It must count the hazardous waste toward the amount used to determine the eligible academic entity's generator status, pursuant to 35 Ill. Adm. Code 721.105(c) and (d) in the calendar month that the hazardous waste determination was made; and

4) It must manage the hazardous waste according to all applicable hazardous waste regulations.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 722.313 Laboratory Clean-Outs

a) Once in any 12-month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of this Subpart K, except that the following limitations apply:
1) If the volume of unwanted material in the laboratory exceeds 55 gallons (208 ℓ) (or one quart (0.946 ℓ) of reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days after exceeding 55 gallons (208 ℓ) (or one quart (0.946 ℓ) of reactive acutely hazardous unwanted material), as required by Section 722.308. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within 30 calendar days after the start of the laboratory clean-out;

2) For the purposes of on-site accumulation, an eligible academic entity is not required to count toward its hazardous waste generator status, pursuant to 35 Ill. Adm. Code 721.105(c) and (d), a hazardous waste that is an unused commercial chemical product (one that is listed in Subpart D of 35 Ill. Adm. Code 721 or that exhibits one or more of the characteristics set forth in Subpart C of 35 Ill. Adm. Code 721) that is solely generated during the laboratory clean-out. An unwanted material that is generated prior to the beginning of the laboratory clean-out and that is still in the laboratory at the time the laboratory clean-out commences must be counted toward hazardous waste generator status, pursuant to 35 Ill. Adm. Code 721.105(c) and (d), if it is determined to be hazardous waste;

3) For the purposes of off-site management, an eligible academic entity must count all of its hazardous waste, regardless of whether the hazardous waste was counted toward generator status under subsection (a)(2) of this Section, and if the eligible academic entity generates more than one kg per month of acute hazardous waste or more than 100 kg per month of hazardous waste (i.e., the conditionally exempt small quantity generator limits of 35 Ill. Adm. Code 721.105), the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off-site; and

4) An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out began and ended, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity must maintain these records for a period of three years from the date on which the clean-out ended.
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b) For all other laboratory clean-outs conducted during the same 12-month period, an eligible academic entity is subject to all the applicable requirements of this Subpart K, including, but not limited to the following:

1) The requirement to remove all unwanted materials from the laboratory within 10 calendar days after exceeding 55 gallons (208 ℓ) (or one quart (0.946 ℓ) of reactive acutely hazardous unwanted material), as required by Section 722.308; and

2) The requirement to count all hazardous waste, including unused hazardous waste, that is generated during the laboratory clean-out toward its hazardous waste generator status, pursuant to 35 Ill. Adm. Code 721.105(c) and (d).

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 722.314 Laboratory Management Plan

An eligible academic entity must develop and retain a written Laboratory Management Plan, or revise an existing written plan. The Laboratory Management Plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with this Subpart K. An eligible academic entity may write one Laboratory Management Plan for all of the laboratories that it owns that have opted into this Subpart K, even if the laboratories are located at sites with different USEPA identification numbers. The Laboratory Management Plan must contain two parts, with a total of the nine elements identified in subsections (a) and (b) of this Section. In Part I of its Laboratory Management Plan, an eligible academic entity must describe its procedures for each of the elements listed in subsection (a) of this Section. An eligible academic entity must implement and comply with the specific provisions that it develops to address the elements in Part I of its Laboratory Management Plan. In Part II of its Laboratory Management Plan, an eligible academic entity must describe its best management practices for each of the elements listed in subsection (b) of this Section. The specific actions taken by an eligible academic entity to implement each element in Part II of its Laboratory Management Plan may vary from the procedures described in the eligible academic entity's Laboratory Management Plan, without constituting a violation of this Subpart K. An eligible academic entity may include additional elements and best management practices in Part II of its Laboratory Management Plan if it so chooses.

a) The eligible academic entity must implement and comply with the specific provisions of Part I of its Laboratory Management Plan. In Part I of its
Laboratory Management Plan, an eligible academic entity must include the following information:

1) Part I must describe procedures for container labeling in accordance with Section 722.306(a) that includes the following:

   A) Identification whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identification of an equally effective term that the eligible academic entity will consistently use in lieu of "unwanted material". The equally effective term, if used, has the same meaning as the term "unwanted material", and the material is subject to the same requirements as if it were called "unwanted material"; and

   B) Identification of the manner in which information that is "associated with the container" will be imparted.

2) Identification whether the eligible academic entity will comply with Section 722.308(a)(1) or (a)(2) for regularly scheduled removals of unwanted material from the laboratory.

b) In Part II of its Laboratory Management Plan, an eligible academic entity must include the following information:

1) Description of its intended best practices for container labeling and management, including how the eligible academic entity will manage containers used for in-line collection of unwanted materials, such as with high performance liquid chromatographs and other laboratory equipment (see the required standards at Section 722.306);

2) Description of its intended best practices for providing training for laboratory workers and students commensurate with their duties (see the required standards at Section 722.307(a));

3) Description of its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals (see the required standards at Section 722.307(d)(1));
POLLUTION CONTROL BOARD

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4) Description of its intended best practices for removing unwanted material from the laboratory, including the following:

   A) For regularly scheduled removals, a regular schedule for identifying and removing unwanted materials from its laboratories (see the required standards at Section 722.308(a)(1) and (a)(2));

   B) For removals when maximum volumes are exceeded, the following:

      i) Description of the eligible academic entity's intended best practices for removing unwanted materials from the laboratory within 10 calendar days after the date on which unwanted materials have exceeded their maximum volumes (see the required standards at Section 722.308(d)); and

      ii) Description of its intended best practices for communicating that unwanted materials have exceeded their maximum volumes;

5) Description of its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process (see the required standards at Sections 722.111 and 722.309 through 722.312);

6) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in Section 722.313, including the following:

   A) Procedures for conducting laboratory clean-outs (see the required standards at Section 722.313(a)(1) through (3)); and

   B) Procedures for documenting laboratory clean-outs (see the required standards at Section 722.313(a)(4));

7) Description of the eligible academic entity's intended best practices for emergency prevention, including the following:
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A) Procedures for emergency prevention, notification, and response that are appropriate to the hazards in the laboratory;

B) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date or as they degrade;

C) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date or as they degrade; and

D) Procedures for the timely characterization of unknown chemicals.

c) An eligible academic entity must make its Laboratory Management Plan available to laboratory workers, students, or any others at the eligible academic entity who may request it.

d) An eligible academic entity must review and revise its Laboratory Management Plan as needed.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 722.315 Unwanted Material That Is Not Solid Waste or Hazardous Waste

a) If an unwanted material does not meet the definition of solid waste in 35 Ill. Adm. Code 721.102, it is no longer subject to the requirements of this Subpart K or to the RCRA hazardous waste regulations of 35 Ill. Adm. Code 702, 703, 705, and 720 through 728.

b) If an unwanted material does not meet the definition of hazardous waste in 35 Ill. Adm. Code 721.103, it is no longer subject to this Subpart K or to the RCRA hazardous waste regulations, but must be managed in compliance with any other applicable regulations or conditions.

(Source: Added at 34 Ill. Reg. _____, effective ____________)

Section 722.316 Non-Laboratory Hazardous Waste Generated at an Eligible Academic Entity
An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under this Subpart K, and either of the following is true of the waste:

a) That hazardous waste remains subject to the generator requirements of Sections 722.111 and 722.134(c) for a large quantity generator or a small quantity generator (if the hazardous waste is managed in a satellite accumulation area), and all other applicable generator requirements of 40 CFR 722; or

b) That hazardous waste remains subject to the conditional exemption of 35 Ill. Adm. Code 721.105(b) for a conditionally exempt small quantity generator.

(Source: Added at 34 Ill. Reg. _____, effective ___________ )
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1) **Heading of the Part**: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

2) **Code Citation**: 35 Ill. Adm. Code 724

3) **Section Number**: Proposed Action:
   724.152   Amend

4) **Statutory Authority**: 415 ILCS 5/7.2, 22.4, and 27.

5) **A Complete Description of the Subjects and Issues Involved**: The amendment to Part 724 is a single segment of the docket R09-16/R10-4 (consolidated) rulemaking that also affects 35 Ill. Adm. Code 703, 720, 721, 722, and 725, each of which is covered by a separate Notice in this issue of the *Illinois Register*. To save space, a more detailed description of the subjects and issues involved in the docket R09-16/R10-4 (consolidated) rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Proposed Amendment for 35 Ill. Adm. Code 703. A comprehensive description is contained in the Board’s opinion and order of June 17, 2010, proposing amendments in docket R09-16/R10-4 (consolidated), which opinion and order is available from the address below.

Specifically, the amendment to Part 724 implements segments of the federal amendments of June 25, 2009. The amendment changes appearances of "Office of Solid Waste" to "Office of Resource Conservation and Recovery."

Tables appear in the Board's opinion and order of June 17, 2010 in docket R09-16/R10-4 (consolidated) that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 opinion and order in docket R09-16/R10-4 (consolidated).

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the IAPA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).
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6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

7) Will this rulemaking replace any emergency amendment currently in effect? No.

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

9) Does this rulemaking contain incorporations by reference? No. Although the existing text of Part 724 includes incorporations by reference, the present amendment does not affect those segments of the text.

11) Are there any other proposed rulemakings on this Part? No

10) Statement of statewide policy objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

12) Time, Place and manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-16/R10-4 (consolidated) and be addressed to:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference docket R09-16/R10-4 (consolidated):

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601

312-814-6924
E-mail: mccambm@ipcb.state.il.us

Request copies of the Board's opinion and order at 312-814-3620, or download a copy from the Board's Website at http:\www.ipcb.state.il.us.

13) Initial regulatory flexibility analysis:

   A) Types of small businesses, small municipalities, and not-for-profit corporations affected:

   This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.

   B) Reporting, bookkeeping or other procedures required for compliance:

   The existing rules and proposed amendment require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.

   C) Types of professional skills necessary for compliance:

   Compliance with the existing rules and proposed amendment may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

14) Regulatory agenda on which this rulemaking was summarized: July 2009 and January 2010

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

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POLLUTION CONTROL BOARD

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AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].


SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section 724.152 Content of Contingency Plan
POLLUTION CONTROL BOARD

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a) The contingency plan must describe the actions facility personnel must take to comply with Sections 724.151 and 724.156 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

b) If the owner or operator has already prepared a Spill Prevention Control and Countermeasures (SPCC) Plan in accordance with federal 40 CFR 112 or 300, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator may develop one contingency plan that meets all regulatory requirements. USEPA has recommended that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (One Plan). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.


c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services pursuant to Section 724.137.

d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Section 724.155), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. For new facilities, this information must be supplied to the Agency at the time of certification, rather than at the time of permit application.

e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this
equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities.

f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes and alternative evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(Source: Amended at 34 Ill. Reg. ______, effective ____________)
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1) **Heading of the Part:** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

2) **Code Citation:** 35 Ill. Adm. Code 725

3) **Section Number:** Proposed action:
   725.152 Amend

4) **Statutory Authority:** 415 ILCS 5/7.2, 22.4, and 27

5) **A Complete Description of the Subjects and Issues Involved:** The amendments to Part 725 are a single segment of the docket R09-16/R10-4 (consolidated) rulemaking that also affects 35 Ill. Adm. Code 703, 720, 721, 722, and 724, each of which is covered by a separate Notice in this issue of the *Illinois Register*. To save space, a more detailed description of the subjects and issues involved in the docket R09-16/R10-4 (consolidated) rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Proposed Amendment for 35 Ill. Adm. Code 703. A comprehensive description is contained in the Board's opinion and order of June 17, 2010, proposing amendments in docket R09-16/R10-4 (consolidated), which opinion and order is available from the address below.

Specifically, the amendment to Part 725 implements segments of the federal amendments of June 25, 2009. The amendment changes appearances of "Office of Solid Waste" to "Office of Resource Conservation and Recovery."

Tables appear in the Board's opinion and order of June 17, 2010 in docket R09-16/R10-4 (consolidated) that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 opinion and order in docket R09-16/R10-4 (consolidated).

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the IAPA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).
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6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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

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

9) Does this rulemaking contain incorporations by reference? No. Although the existing text of Part 725 includes incorporations by reference, the present amendment does not affect those segments of the text.

11) Are there any other proposed rulemakings pending on this Part? No

10) Statement of statewide policy objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

12) Time, Place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R09-16/R10-4 (consolidated) and be addressed to:

   John T. Therriault, Assistant Clerk
   Illinois Pollution Control Board
   State of Illinois Center, Suite 11-500
   100 W. Randolph St.
   Chicago, IL 60601

   Please direct inquiries to the following person and reference docket R09-16/R10-4 (consolidated):

   Michael J. McCambridge
   Staff Attorney
   Illinois Pollution Control Board
   100 W. Randolph 11-500
   Chicago, IL 60601

   Phone: 312/814-6924
   E-mail: mccambm@ipcb.state.il.us
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

Request copies of the Board's opinion and order at 312-814-3620, or download a copy from the Board's Website at http:\www.ipcb.state.il.us.

13) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendment require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendment may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

14) Regulatory agenda on which this rulemaking was summarized: July 2009 and January 2010

The full text of the Proposed Amendment begins on the next page:
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NOTICE OF PROPOSED AMENDMENT  

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS  

PART 725  
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES  

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SUBPART C: PREPAREDNESS AND PREVENTION  

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AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

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SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section 725.152 Content of Contingency Plan

a) The contingency plan must describe the actions facility personnel must take to comply with Sections 725.151 and 725.156 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.
b) If the owner or operator has already prepared a federal Spill Prevention Control and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or 300, or some other emergency or contingency plan, it needs only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator may develop one contingency plan that meets all regulatory requirements. USEPA has recommended that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (One Plan). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.


c) The plan must describe arrangements agreed to by local police department, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Section 725.137.

d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Section 725.155), and this list must be kept up to date. Where more than one person is listed one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment) where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities.

f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to
be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(Source: Amended at 34 Ill. Reg. _____, effective ____________)
CAPITAL DEVELOPMENT BOARD

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1) **Heading of the Part:** Community Heath Center Construction

2) **Code Citation:** 71 Ill. Adm. Code 42

3) **Section Numbers:** Adopted Action:
   - 42.100 New
   - 42.110 New
   - 42.200 New
   - 42.210 New
   - 42.220 New
   - 42.230 New
   - 42.240 New
   - 42.250 New
   - 42.260 New
   - 42.270 New

4) **Statutory Authority:** Implemented and authorized by the Community Health Center Construction Act [30 ILCS 766]

5) **Effective Date of Rules:** July 26, 2010

6) **Do these rules contain an automatic repeal date?** No

7) **Do these rules contain incorporations by reference?** Yes

8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** 34 Ill. Reg. 3166; March 12, 2010

10) **Has JCAR issued a Statement of Objection to this rulemaking?** No

11) **Differences between proposal and final version:** Minor clarifications, amendments to definitions and references, and grammatical/spelling revisions were made to the final version of the proposed rulemaking, including:

In Section 42.100, defining "HHS" as "Health and Human Services" for consistency.
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In Section 42.100, changing references from "health center sites" to "community health center sites" for consistency.

In Section 42.220(a)(2), changing references from "health center structures" to "community health center structures" for consistency.

In Sections 42.230(b)(3) and 42.240(b)(3), changing references from "health center" to "community health center" for consistency.

In Section 42.240(d)(3), clarifying language to effectuate the intent of the provision, which is to state that grants would be awarded evenly (on a geographic basis) throughout Illinois.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: Part 42 administers the Community Health Center Construction Act (Public Act 96-37), which established a grant program to provide additional support to Community Health Centers throughout the State in the form of grants for facilities and/or equipment. The rules include definitions, incorporated and referenced materials, grant requirements, sustainability funding guidelines, eligibility requirements, use of grant moneys, reporting obligations and public comment requirements.

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

   Ngozi C. Okorafor
   Capital Development Board
   James R. Thompson Center
   100 West Randolph Street
   Suite 14-600
   Chicago, Illinois 60601

   312/814-6037
   ngozi.okorafor@illinois.gov

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

NOTICE OF ADOPTED RULES

TITLE 71: PUBLIC BUILDINGS, FACILITIES, AND REAL PROPERTY
CHAPTER I: CAPITAL DEVELOPMENT BOARD
SUBCHAPTER a: RULES

PART 42
COMMUNITY HEALTH CENTER CONSTRUCTION

SUBPART A: GENERAL PROVISIONS

Section 42.100 Definitions
42.110 Incorporated and Referenced Materials

SUBPART B: GRANTS TO FUND
COMMUNITY HEALTH CENTER CAPITAL PROJECTS

Section 42.200 Grants
42.210 Eligibility for Grant
42.220 Program Requirements
42.230 Use of Grant Moneys
42.240 Application Evaluation Process
42.250 Grant Award Process
42.260 Reporting
42.270 Payment Schedules

AUTHORITY: Implementing and authorized by the Community Health Center Construction Act [30 ILCS 766].


SUBPART A: GENERAL PROVISIONS

Section 42.100 Definitions

"Act" means the Community Health Center Construction Act [30 ILCS 766].

"Acquire a new physical location" means acquisition through leasing arrangements, purchase of real property or construction of existing or new space
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for the purpose of delivering primary health care services. (Section 10-20(2) of the Act)

"Board" means the Capital Development Board. (Section 10-5 of the Act)

"Community health center" or "CHC" means migrant health centers or community health centers or health care programs for the homeless or for residents of public housing supported under section 330 of the federal Public Health Service Act and Federally Qualified Health Centers, including Look-Alikes, as designated by the Secretary of HHS, that operate at least one federally designated primary health care delivery site in the State of Illinois.

"Community health center site" or "CHC site" means a new or existing physical site where a community health center will provide primary health care services either to a medically underserved population or area or to the uninsured population of this State. (Section 10-5 of the Act)

"Community provider" means a Federally Qualified Health Center or FQHC Look-Alike (community health center or health center), designated as such by the Secretary of the United States Department of Health and Human Services, that operates at least one federally designated primary health care delivery site in the State of Illinois. (Section 10-5 of the Act)

"Department" means the Illinois Department of Public Health. (Section 10-5 of the Act)

"Equipment" means initial movable equipment, including all items of initial equipment, other than built-in equipment, that is necessary and appropriate for the functioning of a particular facility for its specific purpose, and that will be used solely or primarily in the rooms or areas covered in the subject project. Further, equipment is defined as manufactured items that have an extended useful life, are not affixed to a building and capable of being moved or relocated from room to room or building to building, are not consumed in use, and have an identity and function that will not be lost through incorporation into a more complex unit. The following guidelines should be applied in defining durable movable equipment:

• No commodities will be purchased from bond funds.

• Office/household equipment and furniture will be bondable.
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- Machinery, implements and major tools will be bondable.
- Scientific instruments and apparatus will be bondable with the exception of those items that are subject to a short useful life, i.e., glassware, tubing, crockery, light bulbs, etc.
- Library books, maps and paintings are not bondable.
- Livestock, for any use, is not bondable.
- Rolling stock, including cars, trucks and boats and related items, are not bondable.
- Spare and replacement parts are not bondable.
- Transportation costs and installation costs incurred with an outside source will be considered as part of the equipment cost.
- Computer hardware meeting the requirements of this list is considered bondable.

"Federally Qualified Health Center" or "FQHC" means a health center funded under section 330 of the Public Health Service Act.

"FQHC Look-Alike" means an organization that meets the requirements for receiving a grant under section 330 of the Public Health Service Act, but does not receive federal grants under that authority.

"Grant" refers to funds awarded to a Community Health Center under the Act for the purpose of purchasing equipment; acquiring a new physical location for the purpose of delivering primary health care services; and/or constructing or renovating new or existing community health center sites. (Section 10-20 of the Act)

"Grantee" refers to a community health center that is the recipient of a capital grant under the Act.

"HHS" means the United States Department of Health and Human Services.
"Medically underserved area" or "MUA" means an urban or rural area designated by the Secretary of the United States Department of Health and Human Services as an area with a shortage of personal health services. (Section 10-5 of the Act)

"Medically underserved population" or "MUP" means the population of an urban or rural area designated by the Secretary of the United States Department of Health and Human Services as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of those services. (Section 10-5 of the Act)

"Primary health care services" means the following:

Basic health services consisting of the following:

- Health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and, if appropriate, physician assistants, nurse practitioners, and nurse midwives.

- Diagnostic laboratory and radiologic services.

Preventive health services, including the following:

- Prenatal and perinatal services.

- Screenings for breast, ovarian, and cervical cancer.

- Well-child services.

- Immunizations against vaccine-preventable diseases.

- Screenings for elevated blood lead levels, communicable diseases, and cholesterol.

- Pediatric eye, ear, and dental screenings to determine the need for vision and hearing correction and dental care.
Voluntary family planning services.

Preventive dental services.

Emergency medical services.

Pharmaceutical services as appropriate for particular health centers.

Referrals to providers of medical services and other health related services (including substance abuse and mental health services).

Patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to federal, State, and local programs that provide or financially support the provision of medical, social, educational, or other related services.

Services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the individuals in the population are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of those individuals).

Education of patients and the general population served by the health center regarding the availability and proper use of health services.

Additional health services consisting of services that are appropriate to meet the health needs of the population served by the health center involved and that may include the following:

Environmental health services, including the following:

Detection and alleviation of unhealthful conditions associated with water supply.

Sewage treatment.

Solid waste disposal.
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Detection and alleviation of rodent and parasite infestation.

Field sanitation.

Housing.

Other environmental factors related to health.

Special occupation-related health services for migratory and seasonal agricultural workers, including the following:

Screening for and control of infectious diseases, including parasitic diseases.

Injury prevention programs, which may include prevention of exposure to unsafe levels of agricultural chemicals, including pesticides. (Section 10-5 of the Act)

"Project" means a capital plan to:

- acquire a new physical location, which may include necessary construction, renovations and/or real property or equipment purchases, to establish a new community health center site to provide primary health care services to medically underserved populations or areas or to provide primary health care services to the uninsured population of Illinois; or

renovate existing community health center sites; purchase equipment to expand the services of an existing CHC site to provide primary health care services to medically underserved populations or areas or to provide primary health care services to the uninsured population of Illinois; or prevent or reverse the deterioration of existing health center structures or mechanical operations to prevent life, health or safety concerns for health center staff and patients.

"Rural" means any geographic area not located in a U.S. Bureau of the Census Metropolitan Statistical Area, a county located within a Metropolitan Statistical Area but having a population of 60,000 or less, or a community located within a Metropolitan Statistical Area but having a population of 2,500 or less.
"Service area" is the geographic area composed of the Medically Underserved Area or Medically Underserved Population.

"Uninsured population" means persons who do not own private health care insurance, are not part of a group insurance plan, and are not eligible for any State or federal government-sponsored health care program. (Section 10-5 of the Act)

"Urban" means any geographic area not designated as a rural area.

Section 42.110  Incorporated and Referenced Materials

a) The following Illinois statutes and rules are referenced in this Part:

1) Community Health Center Construction Act [30 ILCS 766]

2) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)

3) Illinois Grant Funds Recovery Act [30 ILCS 705]

b) The following federal statute is referenced in this Part:

Public Health Service Act (42 USC Ch. 6A)

c) The following federal guidelines are incorporated in this Part:

1) "Defining Scope of Project and Policy for Requesting Changes" (Policy Information Notice (PIN) number 2008-01), December 31, 2007, U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care Policy, Office of Grants Management, 4350 East West Highway, Bethesda, Maryland 20814

2) "Federally Qualified Health Center Look-Alike Guidelines and Application" (PIN number 2009-06), September 22, 2009, U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care Policy, Office of
The following federal regulation is incorporated in this Part:

Grants for Community Health Services (42 CFR 51c, October 1, 2007)

e) All incorporations by reference of federal regulations and guidelines refer to materials on the date specified and do not include any subsequent amendments or editions.

SUBPART B: GRANTS TO FUND COMMUNITY HEALTH CENTER CAPITAL PROJECTS

Section 42.200 Grants

a) The Board shall establish a Community Health Center Construction Grant Program and may make grants to eligible community providers subject to appropriations for that purpose. The grants shall be for the purpose of:

1) Purchasing equipment;

2) Acquiring a new physical location for the purpose of delivering health care services; or

3) Constructing or renovating new or existing community health center sites.

b) A recipient of a grant to establish a new community health center site must add each such site to the recipient's established service area for the purpose of extending federal FQHC or FQHC Look-Alike status to the new site in accordance with federal regulations (see 42 CFR 51c). (Section 10-10 of the Act) Failure to comply with this Part or any other State regulation may result in the recovery of grant funds as described in the Illinois Grant Funds Recovery Act.

c) The Department and Board will provide notice that the grant application process is open on the Board's website and through other venues. The notice shall include a deadline for receiving applications and details of the application process.

Section 42.210 Eligibility for Grant
To be eligible for a grant under the Act and this Part, a recipient must be a community provider as defined in Section 10-5 of the Act. (Section 10-15 of the Act)

a) Applicants shall meet the following requirements:

1) Be an FQHC or FQHC Look-Alike;
2) Serve, in whole or in part, a designated MUA or MUP;
3) Meet requirements for FQHC grantees and Look-Alikes under section 330 of the Public Health Service Act; and
4) Offer primary health care services.

b) Applicants may only submit one application for funding per application period under the Act; however, one application may request funding for multiple community health center sites.

c) Letter of Intent
At least 30 days prior to the application submission deadline, the applicant shall send a letter of intent to apply for grant funds to the Department and the Board that includes the following:

1) The proposed grant project description, location and applicant.
2) The proposed users of the primary health care services and service area, including identification of any MUA or MUP designations.
3) Issues creating a high need for primary health care services, including any significant or unique barriers to care.
4) Other providers of care in the service area, including any other FQHCs under section 330 of the Public Health Service Act.
5) All primary health care services to be provided, including mental health, substance abuse and oral health care services, as well as the mechanism for providing each service (e.g., direct service, referral).
CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED RULES

6) Project stage of development and the ability of the applicant to meet the requirements of this Part for program compliance.

7) Readiness to receive funding, including the ability of the facility and providers at the new access point or expanded facility to be operational upon completion of the capital portion of the project.

d) Notification Process

Upon sending the Letter of Intent, the prospective applicant shall send a copy of the "Notification of Application for State Funding of Community Health Center Construction" to other FQHCs and FQHC Look-Alikes in the service area. The application packet submitted to the Department and the Board shall include a copy of the completed notification form, as well as the names and addresses of individuals to whom the forms were sent, the organizations that the individuals represent, and the date of the notification.

e) Application

The application format shall include, but not be limited to:

1) A summary of the applicant's plan of action to address the goals of either:

   A) Establishing a new CHC site to provide primary health care services to MUP or MUA or to provide primary health care services to the uninsured population of Illinois; or

   B) Expanding the services of an existing CHC site to provide primary health care services to MUP or MUA or primary health care services to the uninsured population of Illinois; or

   C) Preventing or reversing the deterioration of an existing health center structure or its mechanical operations to prevent life, health or safety concerns for health center staff and patients.

2) A project narrative that shall include the following information:

   A) Proposed service area and applicant description;

   B) Statement of need for the project;
C) Project objectives;
D) Plan of operation;
E) Project timeline;
F) Budget; and
G) Plan to include project in applicant's federal scope of project.

Section 42.220 Program Requirements

a) Projects shall be for the purpose of:

1) Acquiring a new physical location, which may include necessary construction, renovation and/or real property or equipment purchases, to establish a new community health center site to provide primary health care services to medically underserved populations or areas or to provide primary health care services to the uninsured population of Illinois; or

2) Renovating existing sites or purchasing equipment to expand the services of an existing CHC site to provide primary health care services to medically underserved populations or areas or to provide primary health care services to the uninsured population of Illinois, or to prevent or reverse the deterioration of existing community health center structures or mechanical operations to address life, health or safety concerns for health center staff and patients. (Section 10-10 of the Act)

b) All projects awarded under the Act must be added to the applicant's federal scope of project according to HHS Policy Information Notice (PIN) Number 2008-01 "Defining Scope of Project and Policy for Requesting Changes" or submit an application for section 330 funding.

c) Projects that are managed by FQHC Look-Alikes shall comply with HHS Policy Information Notice (PIN) Number 2009-06 "Federally Qualified Health Center Look-Alike Guidelines and Application".

d) Projects that include construction, renovation or equipment for leased property shall include a long-term lease agreement of a minimum of 10 years.
Section 42.230  Use of Grant Moneys

a)  A recipient of a grant under the Act and this Part may use the grant moneys to do any one or more of the following:

1)  Purchase equipment.

2)  Acquire a new physical location for the purpose of delivering primary health care services.

3)  Construct or renovate new or existing community health center sites.
   (Section 10-20 of the Act)

b)  Grant funds shall not be used for the following:

1)  To offset existing debt;

2)  To supplant existing funds that support a service, program or activity for which grant support is requested; or

3)  To fund expenses associated with the operations of the community health center.

Section 42.240  Application Evaluation Process

The Department, in consultation with the Board, will review applications for eligibility. Applications meeting all eligibility requirements will be forwarded to a review committee. Those applications that are determined to be ineligible will be returned to the applicant and will not be eligible for review.

a)  The review committee will consist of volunteers who have worked with uninsured populations or MUA or MUP and, when possible, have prior grant review experience and who represent different geographic areas in the State.

b)  The review committee will review the grant applications based upon the following:

1)  Documented need for the project.
2) Ability to successfully complete project objectives described in the grant application.

3) Ability to implement and sustain the community health center's new operations upon completion of the capital project including the plan to include the project in the applicant's federal scope of project.

c) Applications will be submitted to the Board for analysis of the project based on the realistic budget and timeline for the completion of the project, including a detailed description of additional funds to be used toward the applicant's financial contribution if applicable and the readiness of the project to begin once the funds are awarded.

d) Upon completion of the review committee's evaluation, the Department and the Board will give preference:

   1) To applicants who demonstrate the project will result in increased access to health care for new service area residents.

   2) To applicants who have never been a grantee of the Community Health Center Construction Grant program under a Public Act that initially appropriates or re-appropriates capital funds for this program.

   3) To applicants when the opportunity to distribute the grants geographically from the Chicago area, downstate urban, and rural areas can occur.

Section 42.250 Grant Award Process

a) Grants will be awarded by the Board based on the combined scores of the review committee, the Department and the Board.

b) Applicants may apply for up to $3 million per application period and must demonstrate their ability to obtain balance of funds for projects totaling more than $3 million.

c) Grants will be awarded based on the availability of funding within a given application period.
Section 42.260 Reporting

a) The grant recipient must submit a progress report to the Board and the Department. The Department may assist each grant recipient in meeting the goals and objectives stated in the original grant proposal submitted by the recipient, and may assist the grant recipient in ensuring that grant moneys are being used for appropriate purposes, and that residents of the community are being served by the new community health center sites established with grant moneys. (Section 10-25 of the Act)

b) For grants in excess of $25,000, the grant recipient must submit quarterly reports to the Board and the Department describing the progress of the program, project, or use and the expenditure of the related grant funds.

Section 42.270 Payment Schedules

Grant funds will be disbursed as agreed to in the grant agreement.
NOTICE OF ADOPTED AMENDMENTS

1) **Heading of the Part:** Illinois Energy Conservation Code

2) **Code Citation:** 71 Ill. Adm. Code 600

3) **Section Numbers:**

   - 600.100  Amended
   - 600.110  Amended
   - 600.210  Amended
   - 600.300  Amended
   - 600.320  Amended
   - 600.340  Amended
   - 600.400  New
   - 600.410  New
   - 600.420  New
   - 600.430  New
   - 600.440  New

4) **Statutory Authority:** Implementing and authorized by the Capital Development Board Act [20 ILCS 3105] and the Energy Efficient Commercial Building Act [20 ILCS 3125]

5) **Effective Date of Amendments:** July 26, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** 34 Ill. Reg. 2383; February 16, 2010

10) **Has JCAR issued a Statement of Objection to this rulemaking?** No

11) **Differences between proposal and final version:** The definition section was put into alphabetical order. The effective date of Subpart D of these rules was changed from January 9, 2010 to January 29, 2010, which is the effective date of emergency amendments that were a companion rulemaking, and minor grammatical changes were made.
CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes


14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: Clarifies the application of the Illinois Energy Conservation Code to State, commercial and residential buildings. Further, outlines the compliance mechanisms for each type of construction, as well as the variance process.

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

Lisa Mattingly
Administrator, Professional Services
Capital Development Board
401 South Spring Street
3rd Floor Stratton Building
Springfield, Illinois 62706

217/524-6408 (office)
217/524-4208 (fax)

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

NOTICE OF ADOPTED AMENDMENTS

TITLE 71: PUBLIC BUILDINGS, FACILITIES, AND REAL PROPERTY
CHAPTER I: CAPITAL DEVELOPMENT BOARD
SUBCHAPTER d: ENERGY CODES

PART 600
ILLINOIS ENERGY CONSERVATION CODE

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SUBPART A: GENERAL

Section 600.100 Definitions

Definitions of terms in the International Energy Conservation Code, incorporated by reference in Subpart C of this Part, apply, as do the following definitions:

"Act" means the Capital Development Board Act [20 ILCS 3105].

"Authority Having Jurisdiction" or "AHJ" means the organization, office or individual responsible for approving equipment, materials, an installation or procedure.

"CDB" means the Illinois Capital Development Board.

"Commercial Facility" means any building except a building that is classified as a residential building. [20 ILCS 3125/10]

"Council" means the Illinois Energy Conservation Advisory Council appointed under Subpart B of this Part.

"EEBEECB Act" means the Energy Efficient Commercial Building Act [20 ILCS 3125].
"IECC" means the International Energy Conservation Code.

"Professional Services Agreement" means the contract for services entered into by CDB and design professionals.

"Using Agency" means the State agency using facilities described in Section 4.01 of the Act.

"Illinois Energy Conservation Code" or "Code" means:

With respect to the State facilities covered by Subpart B:

This Part, all additional requirements incorporated within Subpart B (including ASHRAE 90.1 Standards), and any statutorily authorized adaptations to the incorporated standards adopted by CDB; and

With respect to the privately funded commercial facilities covered by Subpart C:

This Part, all additional requirements incorporated within Subpart C (including the 2009 International Energy Conservation Code, excluding published supplements, which encompasses ASHRAE 90.1), and any statutorily authorized adaptations to the incorporated standards adopted by CDB; and

With respect to the residential buildings covered by Subpart D:

This Part, all additional requirements incorporated within Subpart D (including the 2009 International Energy Conservation Code, excluding published supplements) and any statutorily authorized adaptations to the incorporated standards adopted by CDB.

"IECC" means the International Energy Conservation Code.

"Municipality" means any city, village or incorporated town. [20 ILCS 3125/10]
"Professional Services Agreement" means the contract for services entered into by CDB and design professionals.

"Residential Building" means a detached one-family or 2-family dwelling or any building that is 3 stories or less in height above grade that contains multiple dwelling units, in which the occupants reside on a primarily permanent basis, such as a townhouse, a row house, an apartment house, a convent, a monastery, a rectory, a fraternity or sorority house, a dormitory, and a rooming house; provided, however, that when applied to a building located within the boundaries of a municipality having a population of 1,000,000 or more, the term "residential building" means a building containing one or more dwelling units, not exceeding 4 stories above grade, where occupants are primarily permanent. [20 ILCS 3125/10]

"Residential Building" means a detached one-family or 2-family dwelling or any building three stories or less above grade level that contains multiple dwelling units, in which the occupants reside on a primarily permanent basis (i.e., townhouse, row house, apartment house, convent, monastery, rectory, fraternity or sorority house, dormitory or rooming house). [20 ILCS 3125/10]

"State Funded Building" means and includes buildings under the jurisdiction of each officer, department, board, commission, institution and body politic and corporate of the State, including the Illinois Building Authority, school districts, and any other person expending or encumbering State or federal funds by virtue of an appropriation or other authorization by the General Assembly or federal authorization or grant. This includes State funded housing, hospitals, penitentiaries, laboratories, educational facilities, administrative facilities, recreational facilities, environmental equipment and parking facilities [20 ILCS 3105/4.01].

"Using Agency" means the State agency using facilities described in Section 4.01 of the Act.

(Source: Amended at 34 Ill. Reg. 11398, effective July 26, 2010)

Section 600.110 Adoption and Modification of the Code

a) The purpose of the Illinois Energy Conservation Code is to implement Section 10.09-5 of the Capital Development Board Act [20 ILCS 3105/10.09-5], which
requires CDB to adopt rules implementing a statewide Energy Code. Additionally, Section 15 of the Energy Efficient Commercial Building Act [20 ILCS 3125/15] requires CDB to officially adopt, as a minimum requirement, the 2009 International Energy Conservation Code, excluding any published supplements, to apply that Code to all commercial structures in Illinois, and to assist local code officials with enforcing the requirements of the Code.

b) This Code as described in Subpart B (State facilities) is effective July 26, 2004. This Code as described in Subpart C (privately-funded commercial facilities) is effective April 8, 2007. The Code as described in Subpart D (residential buildings) is effective January 29, 2010.

c) Application of the Code

1) State Facilities. The Code as described in Subpart B of this Part applies to all State facilities for which money has been appropriated or authorized by the General Assembly.

2) Privately Funded Commercial Facilities and Residential Buildings. The Code as described in Subparts C and D of this Part applies to any new commercial building or structure in this State for which a building permit application is received by a municipality or county. In the case of any addition, alteration, renovation or repair to any existing commercial structure, the Code applies only to the portions of that structure that are being added, altered, renovated or repaired. [20 ILCS 3125/20]

A) Additions, alterations, renovations or repairs to an existing building, building system or portion thereof shall conform to the provisions of the Code as they relate to new construction without requiring the unaltered portion of the existing building or building system to comply with the Code. [20 ILCS 3125/20(c)]

B) All exceptions listed in the Code related to additions, alterations, renovations or repairs to an existing building are acceptable provided the energy use of the building is not increased.

d) This Code, together with the standards incorporated by reference in this Part, has the force of a building code and is administrative law applicable in the State of Illinois.
CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 34 Ill. Reg. 11398, effective July 26, 2010)

SUBPART B: STATE FUNDED FACILITIES

Section 600.210 Request for Variance

a) Who May File a Request for Variance

1) Any architect or engineer under contract with CDB to provide professional services for the proposed project.

2) The using agency's chief executive officer or his or her designated representative.


b) Consideration of Request for Variance

A variance from any requirement of the Code as described in this Subpart will be granted by CDB for one or more of the following reasons only:

1) Compliance would not be technically feasible.

2) Compliance would compromise the health, welfare or safety of building occupants.

3) Compliance would prevent the building from serving its intended purpose.

4) Compliance would violate another State or federal law or code.

5) Compliance would increase the energy consumption of the building.

6) Compliance would require the use of inferior products or materials.

c) Submitting the Request for Variance

1) The request shall be submitted to the CDB Project Manager.
CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

2) Requests should be submitted as early in the project as there is cause, but no later than 75 days prior to the anticipated bid date. Approval or denial of a variance shall be no cause for delay in the project unless the request for variance was filed by CDB or the using agency for which the project is being constructed.

3) The following shall be submitted when requesting a variance:

   A) A letter from the petitioner stating the specific provisions of the Code from which the variance is requested and a detailed explanation of how compliance with the Code would result in one or more of the conditions described in subsection (b).

   B) The request shall include supporting data, calculations, analysis, etc.

d) CDB Action

   1) Upon receipt of the Request for Variance, the CDB Project Manager will review the request and make a recommendation to CDB's Professional Services Unit within 7 calendar days.

   2) Professional Services Unit will evaluate the Request for Variance within 30 days after CDB's receipt of the Request and make a determination.

   3) If it is determined that the Request for Variance would cause one of the conditions stated in subsection (b), the variance shall be approved by CDB.

   4) If it is determined that the Request for Variance would not cause one of the conditions stated in subsection (b), the Agency may:

      A) Deny the Request for Variance.

      B) Approve the Request for Variance subject to specific conditions determined by CDB.

e) Modifications and Revisions
CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

The petitioner may, in writing, request that the original Request for Variance be modified and resubmit the Request for Variance.

f) Revocation
CDB may revoke any variance if:

1) it is determined that the variance was obtained through fraud or deceit;

2) the petitioner has violated the specific conditions on which the variance was approved; or

3) the variance was issued in error.

g) Appeals

1) Any person whose Request for Variance is denied or approved with conditions may appeal CDB's initial determination. The appeal shall be submitted in writing and must be received within 10 days after the initial CDB action is received by the requestor. The request shall be submitted to the Chairman of the Advisory Council.

2) The Chairman of the Advisory Council will review the request with the Advisory Council, as deemed necessary by the Chairman, within 14 days after receipt and take one of the following actions:

   A) Uphold CDB's initial determination.

   B) Reverse CDB's initial determination and issue the variance.

   C) Change the conditions applied to the variance granted by CDB.

(Source: Amended at 34 Ill. Reg. 11398, effective July 26, 2010)

SUBPART C: PRIVATELY FUNDED COMMERCIAL FACILITIES

Section 600.300 Standards for Privately Funded Commercial Facilities

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

Avenue NW, 6th Floor, Washington DC 20001, phone: 1-888-ICC-SAFE (422-7233), is hereby incorporated into the Illinois Energy Conservation Code, as described in this Subpart as applicable to privately funded commercial facilities, with the modifications outlined in subsection (c).

b) All incorporations by reference in this Section are of the cited standards as they existed on the date specified. These incorporations include no later editions or amendments.

c) Modifications to IECC

Under Section 15 of the EEBECB Act, when applying the Code to privately funded commercial facilities, CDB may modify the incorporated standards to respond to the unique economy, population distribution, geography and climate of Illinois, as long as the objectives of the Act are maintained pursuant to that statutory authority.

(Source: Amended at 34 Ill. Reg. 11398, effective July 26, 2010)

Section 600.320 Local Jurisdiction

a) Construction projects involving privately funded commercial facilities and for which a municipality or county requires a building permit must comply with the Illinois Energy Conservation Code if the project involves new construction, addition, alteration, renovation or repair. In the case of any addition, alteration, renovation or repair to an existing commercial structure, the Code as described by this Subpart C applies only to the portions of that structure that are being added, altered, renovated or repaired. [20 ILCS 3125/20(a)]

b) The local authority having jurisdiction (AHJ) shall establish its own procedures for enforcement of the Illinois Energy Conservation Code. The AHJ is authorized to enforce a building code that differs with the Code as described in this Subpart C, but any standards applied by an AHJ must be at least as stringent as the Code as described in this Subpart C.

c) A unit of local government that does not regulate energy efficient building standards is not required to adopt, enforce or administer the Code; however, any energy efficient building standards adopted by a unit of local government must comply with the Act. If a unit of local government does not regulate energy
efficient building standards, any construction, renovation or addition to buildings or structures is subject to the provisions contained in the Act.

(Source: Amended at 34 Ill. Reg. 11398, effective July 26, 2010)

Section 600.340 Application to Home Rule Units

No unit of local government, including any home rule unit, may apply energy efficient building standards to privately funded commercial facilities in a manner that is less stringent than the Code as described in this Subpart C. However, nothing in the EEB Act or this Subpart prevents a unit of local government from adopting an energy efficiency code or standards that are more stringent than this Code. [20 ILCS 3125/45]

(Source: Amended at 34 Ill. Reg. 11398, effective July 26, 2010)

SUBPART D: RESIDENTIAL BUILDINGS

Section 600.400 Standards for Residential Buildings

a) The 2009 International Energy Conservation Code (IECC), excluding published supplements, available from the International Code Council at 500 New Jersey Avenue NW, 6th Floor, Washington DC 20001, phone: 1-888-ICC-SAFE (422-7233), is hereby incorporated into the Illinois Energy Conservation Code, as described in this Subpart as applicable to residential buildings, with the modifications outlined in subsection (c).

b) All incorporations by reference in this Section are of the cited standards as they existed on the date specified. These incorporations include no later editions or amendments.

c) Modifications to IECC

Under Section 15 of the EEB Act, when applying the Code to residential buildings, CDB may modify the incorporated standards to respond to the unique economy, population distribution, geography and climate of Illinois, as long as the objectives of the Act are maintained pursuant to that statutory authority.

(Source: Added at 34 Ill. Reg. 11398, effective July 26, 2010)

Section 600.410 Exemptions
a) The following buildings are exempt from the Code:

1) Buildings otherwise exempt from the provisions of a locally adopted building code and buildings that do not contain a conditioned space;

2) Buildings that do not use either electricity or fossil fuel for comfort conditioning;

3) Historic buildings listed on the National Register of Historic Places or the Illinois Register of Historic Places, and those buildings that are designated by authorized personnel as historically significant;

4) Other buildings specified as exempt by the IECC. [20 ILCS 3125/20]

b) For the purposes of determining whether an exemption authorized under subsection (a)(2) applies, a building will be presumed to be heated by electricity, even in the absence of equipment used for electric comfort heating, whenever the building is provided with electrical service in excess of 100 amps, unless the code enforcement official determines that this electrical service is necessary for purposes other than providing electric comfort heating. [20 ILCS 3125/20(b)(2)]

(Source: Added at 34 Ill. Reg. 11398, effective July 26, 2010)

Section 600.420 Local Jurisdiction

a) Construction projects involving residential buildings and for which a municipality or county requires a building permit must comply with the Illinois Energy Conservation Code if the project involves new construction, addition, alteration, renovation or repair. In the case of any addition, alteration, renovation or repair to an existing commercial structure, the Code as described by this Subpart D applies only to the portions of that structure that are being added, altered, renovated or repaired. [20 ILCS 3125/20(a)]

c) No unit of local government, including any home rule unit, may regulate energy efficient building standards for residential buildings in a manner that is either less or more stringent than the standards established pursuant to this Subpart D.

1) However, the following entities may regulate energy efficient building standards for residential buildings in a manner that is more stringent than the provisions contained in this Subpart D:

i) a unit of local government, including a home rule unit, that has, on or before May 15, 2009, adopted or incorporated by reference energy efficient building standards for residential buildings that are equivalent to or more stringent than the 2006 International Energy Conservation Code;

ii) a unit of local government, including a home rule unit, that has, on or before May 15, 2009, provided to the Capital Development Board, as required by Section 55 of the Illinois Building Commission Act, an identification of an energy efficient building code or amendment that is equivalent to or more stringent than the 2006 International Energy Conservation Code; and

iii) a municipality with a population of 1,000,000 or more.

2) No unit of local government, including any home rule unit or unit of local government that is subject to State regulation under the Code as provided in 20 ILCS 3125/15 may enact any annexation ordinance or resolution, or require or enter into any annexation agreement, that imposes energy efficient building standards for residential buildings that are either less or more stringent than the energy efficiency standards in effect, at the time of construction, throughout the unit of local government.

(Source: Added at 34 Ill. Reg. 11398, effective July 26, 2010)

Section 600.430 Compliance

a) Compliance with the Illinois Energy Conservation Code as described by this Subpart D (applicable to residential buildings) shall be determined by the local AHJ.
b) Minimum compliance shall be demonstrated by submission of:

1) Compliance Certificates generated by the U.S. Department of Energy's REScheck code compliance tool; or

2) Other comparable compliance materials that meet or exceed, as determined by the AHJ, U.S. Department of Energy's REScheck code compliance tool; or


(Source: Added at 34 Ill. Reg. 11398, effective July 26, 2010)

Section 600.440 Application to Home Rule Units

No unit of local government, including any home rule unit, may regulate energy efficient building standards for residential buildings in a manner that is less or more stringent than the standards established in this Subpart D. [20 ILCS 3125/45(a)]

(Source: Added at 34 Ill. Reg. 11398, effective July 26, 2010)
DEPARTMENT OF HUMAN RIGHTS

NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part:** Procedures of the Department of Human Rights

2) **Code Citation:** 56 Ill. Adm. Code 2520

3) **Section Number:** 2520.570

4) **Statutory Authority:** Implementing Articles 1 through 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 1 through 7B] and the Intergovernmental Cooperation Act [5 ILCS 220], and authorized by Sections 7-101(A) and 7-105(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(A) and 7-105(A)]

5) **Effective Date of Amendment:** July 20, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** April 30, 2010; 34 Ill. Reg. 5946

10) **Has JCAR issued a Statement of Objection to this amendment?** No

11) **Differences between proposal and final version:** None

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** No changes were necessary.

13) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and Purpose of Amendment:** The amendment clarifies the Department's statutory time limit for investigating charges. Upon the Department's issuance of a Notice of Default, the Department's statutory time limit for completing its investigation of a charge tolls.
DEPARTMENT OF HUMAN RIGHTS

NOTICE OF ADOPTED AMENDMENT

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

David T. Rothal
Staff Attorney
Illinois Department of Human Rights – Legal Division
100 W. Randolph St., Ste. 10-100
Chicago, IL 60601

312/814-6257 or 217/785-5125 (TTY)

The full text of the Adopted Amendment begins on the next page:
DEPARTMENT OF HUMAN RIGHTS

NOTICE OF ADOPTED AMENDMENT

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER II: DEPARTMENT OF HUMAN RIGHTS

PART 2520
PROCEDURES OF THE DEPARTMENT OF HUMAN RIGHTS

SUBPART A: INTERPRETATIONS

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AUTHORITY: Implementing Articles 1 through 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 1 through 7B] and the Intergovernmental Cooperation Act [5 ILCS 220], and authorized by Sections 7-101(A) and 7-105(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(A) and 7-105(A)].

SUBPART E: ADMINISTRATIVE CLOSURE, DISMISSAL AND DEFAULT

Section 2520.570  Default

Prior to the entry of a default against a respondent pursuant to Sections 7A-102(B) or 7A-102(C) of the Act and Section 2520.440(d) of this Part, the Department will afford that party written notice and a period of at least fifteen days to show good cause in writing why default may not be appropriate [775 ILCS 5/7A-102(B) and 5/7A-102(C)]. A Notice of Default shall be construed as a "report" pursuant to Section 7A-102(G) of the Act.

(Source: Amended at 34 Ill. Reg. 11413, effective July 20, 2010)
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1) **Heading of the Part**: Physical Fitness Facility Medical Emergency Preparedness Code

2) **Code Citation**: 77 Ill. Adm. Code 527

3) **Section Numbers** | **Adopted Action**
--- | ---
527.100 | Amended
527.200 | Amended
527.300 | Amended
527.400 | Amended
527.500 | Amended
527.600 | Amended
527.800 | Amended

4) **Statutory Authority**: Physical Fitness Facility Medical Emergency Preparedness Act [210 ILCS 74]

5) **Effective Date of Rulemaking**: July 21, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** Yes

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposed Amendments Published in Illinois Register**: 33 Ill. Reg. 10947; July 24, 2009

10) **Has JCAR issued a Statement of Objection to this rulemaking?** No

11) **Differences between proposal and final version**: The following changes were made in response to comments received during the first notice or public comment period:

1. In Section 527.100, the following definitions were added:

   "Cardiovascular exertion -- *physical exercise that uses large muscle groups and that substantially increases the heart rate.* (Section 5.25(b) of the Act)"
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"Staffed Business Hours – those times when facilities are utilized and the owner or agent of the owner or an employee is present, other than maintenance or security personnel acting in those capacities."

2. In the definition of “Supervising” in Section 527.100, "coaching, judging, refereeing," was added after "inspecting".

3. In Section 527.300(a), "or outdoor" was deleted.

4. In Section 527.300(a)(2), "subsection (c)" was changed to "subsection (3)".

5. In Section 527.300(a)(3), after "to", "the following indoor facilities:," was inserted.

6. In Section 527.300, a new subsection (b) was added as follows and subsequent subsections were re-labeled:

   "b) For the purposes of this Part, "physical fitness facility" or "facility" includes any of the following outdoor facilities that is:

   1) Owned by a municipality, township or other unit of local government, including a home rule unit, or by a public or private elementary school, college, university, or technical or trade school and.

   2) Is supervised by one or more persons, other than maintenance or security personnel, employed by the unit of local government, school, college, or university for the purpose of directly supervising the physical fitness activities taking place at any of these facilities: a swimming pool; athletic field; football stadium; soccer field; baseball diamond; track and field facility; tennis court; basketball court; volleyball court; golf course; or any other outdoor establishment focusing primarily on cardiovascular exertion where participants engage in relatively continuous active physical exercise that uses large muscle groups and that substantially increases the heart rate. (Section 5.25 of the Act)"

7. In subsection 527.300(c) (re-labeled from "(b)"), "primarily" was deleted.

8. In subsection 527.300(d)(1) (re-labeled from "(c)(1)"), the following was inserted after "year": "For purposes of the Act and this Part, "individuals" includes only those persons actively engaged in physical exercise that uses large muscle groups and that substantially increases the heart rate. (Section 5.25 of the Act)"
9. In Section 527.300(d)(5), after "training," "coaching, refereeing, judging," was inserted.

10. In Section 527.300(d)(6), after "where", "and when" was inserted.

11. In Section 527.300(d), a new subsection (7) was added as follows:

"7) Any facility during any activity or program organized by a private or not-for-profit organization and organized and supervised by a person or persons other than the employees of the unit of local government, school, college, or university. (Section 5.25 of the Act)"

12. In Section 527.400(b), "promptly" was inserted after "shall".

13. In Section 527.600, a new subsection (d) was added as follows and subsequent Subsections were re-labeled:

"d) Facilities described in paragraph (1.5) of Section 5.25 of the Act must have an AED on site as well as a trained AED user available only during activities or events sponsored and conducted or supervised by a person or persons employed by the unit of local government, school, college, or university. (Section 15 of the Act)"

14. In Section 527.600(e), "both" was changed to "multiple" and "as long" was changed to "so long".

15. In Section 527.600(e), "from each facility" was added after "unimpeded".

16. In Section 527.600(g), "compliance with the Act" was stricken and "and" was deleted.

17. In Section 527.800(a), "and present during all physical fitness activities" was changed to "during staffed business hours".

18. In Section 527.800(c), "should" was stricken and "shall" was added.

19. In Section 527.800(d), "non-employee judge, non-employee referee," was added after "instructor,".
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The following changes were made in response to comments and suggestions of JCAR:

In Sections 527.300(f) and 527.400(a), the address of the Division of EMS and Highway Safety was changed to "422 S. 5th St., 3rd Floor".

In addition, various typographical, grammatical, and form changes were made in response to the comments from JCAR.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: Part 527 implements the Physical Fitness Facility Medical Emergency Preparedness Act (Act), which requires every physical fitness facility, as defined in the Act, to have at least one automated external defibrillator (AED) on the facility premises. This rulemaking implements Public Act 95-0712, which amended the Act to include outdoor facilities such as football stadiums, soccer fields, and baseball diamonds. The Public Act excludes facilities that are owned or operated by park districts organized under the Park District Code, the Chicago Park District Act, or the Metro-East Park and Recreation District, or any facility owned or operated by a forest preserve district organized under the Downstate Forest Preserve District Act or the Cook County Forest Preserve District Act or a conservation district organized under the Conservation District Act. The Department is required to define “outdoor facilities” by rule and to adopt rules that would encourage anticipated rescuers to complete a course of instruction for qualification as a trained AED user. The rulemaking also implements Public Act 95-0447, which amended the Automated External Defibrillator Act to remove the requirement that AEDs be registered

with an EMS System hospital. During the First Notice period, Public Act 96-748 and Public Act 96-873 became effective. Language from these two Acts was added to the rules in response to issues raised in public comments, including a requirement that a trained user be on staff "during staffed business hours" and an exclusion for any facility that is owned or operated by a unit of local government, school, college, or university during any activity or program organized by a private or not-for-profit organization and organized and supervised by a person or persons other than the facility’s employees.
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16) Information and questions regarding these adopted amendments shall be directed to:

    Susan Meister
    Division of Legal Services
    Department of Public Health
    535 West Jefferson, 5th Floor
    Springfield, Illinois 62761
    e-mail: dph.rules@illinois.gov

The full text of the Adopted Amendments begins on the next page:
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NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER f: EMERGENCY SERVICES AND HIGHWAY SAFETY

PART 527
PHYSICAL FITNESS FACILITY MEDICAL EMERGENCY PREPAREDNESS CODE

Section 527.100 Definitions

527.100 Definitions

527.200 Incorporated and Referenced Materials

527.300 Indoor Physical Fitness Facility

527.400 Medical Emergency Plan

527.500 Coordination with Local Emergency Medical Services Systems

527.600 Automated External Defibrillators Required

527.700 Maintenance and Testing of Automated External Defibrillators

527.800 Training

527.900 Complaints and Inspections

527.1000 Violations

527.1100 Hearings

AUTHORITY: Implementing and authorized by the Physical Fitness Facility Medical Emergency Preparedness Act [210 ILCS 74].


**Section 527.100 Definitions**

Act – the Physical Fitness Facility Medical Emergency Preparedness Act [210 ILCS 74].

**Assistance** – any act that aids or supports an individual who is engaging in physical fitness activities, including, but not limited to, instruction on the use of equipment and creation of personal fitness plans.

**Automated External Defibrillator** or **AED**(AED) – a medical device heart monitor and defibrillator that:
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Has received approval of its pre-market notification, filed pursuant to 21 USC 360(k), from the United States Food and Drug Administration;

Is capable of recognizing the presence or absence of ventricular fibrillation and rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed;

Upon determining that defibrillation should be performed, either automatically charges and delivers an electrical impulse to an individual, or charges and delivers an electrical impulse at the command of the operator; and

In the case of a defibrillator that may be operated in either an automatic or manual mode, is set to operate in the automatic mode. (Section 10 of the Automated External Defibrillator Act)

"Cardiovascular exertion – physical exercise that uses large muscle groups and that substantially increases the heart rate. (Section 5.25(b) of the Act)

Defibrillation – administering an electrical impulse to an individual in order to stop ventricular fibrillation or rapid ventricular tachycardia. (Section 10 of the Automated External Defibrillator Act)

Department – the Department of Public Health. (Section 5.15 of the Act)

Director – the Director of Public Health. (Section 5.10 of the Act)

Emergency Medical Services (EMS) System or System – an organization of hospitals, vehicle service providers and personnel approved by the Department in a specific geographic area, which coordinates and provides pre-hospital and inter-hospital emergency care and non-emergency medical transports at a BLS (basic life support), ILS (intermediate life support) and/or ALS (advanced life support) level pursuant to a System Program Plan submitted to and approved by the Department and pursuant to the EMS Regional Plan adopted for the EMS Region in which the System is located. (Section 3.20 of the Emergency Medical Services (EMS) Systems Act)
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Gaming – a competitive activity involving skill, chance or endurance on the part of two or more persons.

Hospital – has the meaning ascribed to that term in Section 3 of the Hospital Licensing Act [210 ILCS 85].

Medical emergency – the occurrence of a sudden, serious, and unexpected sickness or injury that would lead a reasonable person, possessing an average knowledge of medicine and health, to believe that the sick or injured person requires urgent or unscheduled medical care. (Section 5.20 of the Act)

9-1-1 – an emergency answer and response system in which the caller need only dial 9-1-1 on a telephone to obtain emergency services, including police, fire, medical ambulance and rescue.

Person – an individual, partnership, association, corporation, limited liability company, or organized group of persons (whether incorporated or not).

Physical fitness facility or facility – has the meaning ascribed to that term in Section 527.300.

Resource Hospital – the hospital with the authority and responsibility for an EMS System.

Staffed Business Hours – those times when facilities are utilized and the owner or agent of the owner or an employee is present, other than maintenance or security personnel acting in those capacities.

Supervising – directing, inspecting, coaching, judging, refereeing, or being in charge of individuals while those individuals are engaging in physical fitness activities.

Third party operator – an individual or organization that has an agreement to use a physical fitness facility that the individual or organization does not own.

Trained AED user – a person who has successfully completed a course of instruction in cardiopulmonary resuscitation that includes an AED component in accordance with the standards of a nationally recognized organization such as the American Red Cross or the American Heart Association or a course of
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*instruction in accordance* with the Automated External Defibrillator Code (77 Ill. Adm. Code 525) *to use an automated external defibrillator, or who is licensed to practice medicine in all its branches in this State.* (Section 10 of the Automated External Defibrillator Act)

(Source: Amended at 34 Ill. Reg. 11419, effective July 21, 2010)

**Section 527.200 Incorporated and Referenced Materials**

a) The following private and professional organization standards are incorporated in this Part:

1) **2005 AHA Guidelines for CPR and ECC**
   
   American Heart Association
   
   208 South LaSalle St.
   
   Suite 900
   
   Chicago, Illinois 60604-1197

   A) **Heartsaver AED for the Lay Rescuer and First Responder (1998)**
   
   B) **Heartsaver First Aid with CPR and AED (2002)**
   
   C) **Heartsaver AED (2003)**
   
   D) **Heartsaver Facts (1999)**
   
   E) **Fundamentals of BLS for Healthcare Providers (2001)**
   
   F) **BLS for Healthcare Providers (2001)**
   
   G) **Heartsaver CPR and AED for Heartsaver CPR (2002)**
   
   H) **Heartsaver AED and Heartsaver Pediatric CPR (2002)**
   

2) **American Red Cross First Aid/CPR/AED for the Workplace (2006)**
   
   American Red Cross
   
   311 W. John Gwynn Avenue
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Peoria, Illinois 61605-2566

American Red Cross First Aid/CPR/AED Program Manual:

A) Section 12 Adult CPR/AED (2001)
B) Section 3 Standard First Aid with AED (2001)
C) AED Essentials (2001)

b) All incorporations by reference of the standards of nationally recognized organizations refer to the standards on the date specified and do not include any subsequent amendments or editions.

c) The following State of Illinois statutes are referenced in this Part:
1) Automated External Defibrillator Act [410 ILCS 4]
2) Emergency Medical Services (EMS) Systems Act [210 ILCS 50]
3) Hospital Licensing Act [210 ILCS 85]
4) Illinois Administrative Procedure Act [5 ILCS 100]
5) Park District Code [70 ILCS 1205]
6) Chicago Park District Act [70 ILCS 1505]
7) Metro-East Park and Recreation District Act [70 ILCS 1605]
8) Downstate Forest Preserve District Act [70 ILCS 805]
9) Cook County Forest Preserve District Act [70 ILCS 810]
10) Conservation District Act [70 ILCS 410]

d) The following State of Illinois rules are referenced in this Part:
Section 527.300 Indoor Physical Fitness Facility

a) For the purposes of this Part, the term "physical fitness facility" or "facility" includes any indoor establishment that meets all of the following requirements:

1) In whole or in part, is owned or operated by a private person or by a park district, municipality, or other unit of local government, including a home rule unit, or by a public or private elementary or secondary school, college, university, or technical or trade school.

2) Is supervised by one or more persons, other than maintenance or security personnel, employed by the private person, unit of local government, school, college, or university for the purpose of directly supervising the physical fitness activities taking place at any of the indoor facilities listed in this subsection (a)(3)(a). (Section 5.25 of the Act)

3) Serves a total of 100 or more individuals.

The number of individuals served by a facility shall be determined by the greater of: the seating capacity; the capacity of the facility under applicable fire code, pool, or similar standards; or the number of members of the facility. The number of members of the facility includes the complete facility membership, whether or not these members are present at the facility at the same time.

3) Includes, but is not limited to, the following indoor facilities: a swimming pool; stadium; athletic field; football stadium; soccer field; baseball diamond; track and field facility; tennis court; basketball court; volleyball court; aerobics studio; dance studio; boxing gym; martial-arts or self-defense studio; wrestling gym; weight-lifting facility; treadmill or stationary bicycle facility; velodrome; racquetball court; gymnastics facility; or any other indoor establishment focusing primarily on cardiovascular exertion where participants engage in relatively continuous
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active physical exercise that uses large muscle groups and that substantially increases the heart rate.  (Section 5.25 of the Act)

b) For the purposes of this Part, "physical fitness facility" or "facility" includes any of the following outdoor facilities that is:

1) Owned by a municipality, township or other unit of local government, including a home rule unit, or by a public or private elementary school, college, university, or technical or trade school; and

2) Is supervised by one or more persons, other than maintenance or security personnel, employed by the unit of local government, school, college, or university for the purpose of directly supervising the physical fitness activities taking place at any of these facilities: a swimming pool; athletic field; football stadium; soccer field; baseball diamond; track and field facility; tennis court; basketball court; volleyball court; golf course; or any other outdoor establishment focusing primarily on cardiovascular exertion where participants engage in relatively continuous active physical exercise that uses large muscle groups and that substantially increases the heart rate.  (Section 5.25 of the Act)

c) Except as provided in subsection (d) of this Section, a physical fitness facility also includes any other indoor or outdoor establishment, whether public or private, that provides services or facilities focusing on cardiovascular exertion or gaming.  (Section 5.25 of the Act)

d) For the purposes of this Part, the term "physical fitness facility" or "facility" does not include:

1) A facility that serves fewer than 100 individual participants over the course of a calendar year.  For purposes of the Act and this Part, "individuals" includes only those persons actively engaged in physical exercise that uses large muscle groups and that substantially increases the heart rate.  (Section 5.25 of the Act) A facility relying on this subsection (d)(1) shall maintain adequate documentation for every year that the facility relies on this subsection. Such documentation shall be preserved by the facility for not less than three years and be provided to the Department upon request; A facility serving less than a total of 100 individuals:
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2) *Any* outdoor facility owned or operated by a park district organized under the Park District Code, the Chicago Park District Act, or the Metro-East Park and Recreation District Act;

3) *Any* facility owned or operated by a forest preserve district organized under the Downstate Forest Preserve District Act or the Cook County Forest Preserve District Act or a conservation district organized under the Conservation District Act;

4) A facility located in a hospital or in a hotel or motel;

5) *Any* facility that does not employ any persons to provide instruction, training, coaching, refereeing, judging, or assistance for persons using the facility (Section 5.25 of the Act);

6) Yoga studios; driving ranges; bowling lanes; putting greens; batting cages; or other facilities where participants do not focus primarily on cardiovascular exertion by engaging in relatively continuous active physical exercise that uses large muscle groups and that substantially increases the heart rate;

7) *Any* facility during any activity or program organized by a private or not-for-profit organization and organized and supervised by a person or persons other than the employees of the unit of local government, school, college, or university. (Section 5.25 of the Act)

(Source: Amended at 34 Ill. Reg. 11419, effective July 21, 2010)

Section 527.400 Medical Emergency Plan

a) The operator of a facility shall adopt and implement a plan for responding to a medical emergency at the facility. The plan *shall* encompass the use of an AED and shall provide a timely, proper response to the occurrence of any other sudden, serious, and unexpected sickness or injury that would lead a reasonable person, possessing an average knowledge of medicine and health, to believe that the sick or injured person requires urgent or unscheduled medical care. The plan *shall* also designate office contacts for the specific facility staff to be notified
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in the event of a medical emergency. The plan shall be filed with the Department by submitting a copy to the following address:

Illinois Department of Public Health
Division of EMS & Highway Safety
422 S. 5th St. − 3rd Floor
500 East Monroe − 8th Floor
Springfield IL 62701

b) Facility staff shall ensure that 9-1-1 is called immediately for medical emergencies, including each time an AED is used at the facility. Third party or other authorized users of the facility shall promptly notify the facility operator if the AED is used.

c) The plan shall be updated with the Department after a change in the facility that affects the ability to comply with a medical emergency such as, but not limited to, facility closure for more than 45 days, inoperable AED for more than 45 days, or lack of trained staff for more than 45 days.

(Source: Amended at 34 Ill. Reg. 11419, effective July 21, 2010)

Section 527.500 Coordination with Local Emergency Medical Services Systems

a) Each use of an AED shall be reported by the facility to the local EMS System Resource Hospital for the vicinity according to Section 525.500 of the Automated External Defibrillator Code. Third party or other authorized users of the facility shall notify the facility operator if the AED is used.
b) The AED must be registered with the applicable EMS System Resource Hospital for the area in which the AED is located. The EMS System Resource Hospital shall oversee use of the AED and shall ensure that training and maintenance requirements are met. 1) The owner of the AED shall provide a list of trained users at the site to the Resource Hospital. 2) The owner of the AED shall provide a copy of the manufacturer's guidelines for maintenance and training, and documentation confirming that these guidelines were met as requested.
c) A facility possessing an AED shall notify an agent of the local emergency communications or vehicle dispatch center of the existence, location, and type of the automated external defibrillator. (Section 20(b) of the Automated External Defibrillator Act) shall notify an agent of the local emergency communications or vehicle dispatch center of the existence, location, and type of the AED.

(Source: Amended at 34 Ill. Reg. 11419, effective July 21, 2010)

Section 527.600 Automated External Defibrillators Required
a) By the compliance dates specified in Section 50 of the Act, each facility **shall** have at least one operational AED on the premises at all times. **If the AED becomes inoperable, the facility shall replace or repair the AED within 45 days.** The AED must be mobile and accessible at all times. All facilities required to have an AED pursuant to the Act must have, posted at the main entrance, a notice stating that an AED is located on the premises.

b) **If the AED becomes inoperable, the facility shall replace or repair the AED within 30 days. The AED shall be mobile and accessible at all times.**

c) **In the case of an outdoor physical fitness facility, the AED must be housed in a building, if any, that is within 300 feet of the outdoor facility where an event or activity is being conducted. If there is such a building within the required distance, the building must provide unimpeded and open access to the housed AED during the time the event or activity is being conducted.** The building's entrances shall provide marked directions to the housed AED. **If there is no such building, the person responsible for supervising the event or activity at the outdoor physical fitness facility shall ensure that an AED is available at the outdoor facility during the time that the event or activity at the facility is being conducted.** (Section 15(b-10) of the Act)

d) **Facilities described in paragraph (1.5) of Section 5.25 of the Act must have an AED on site as well as a trained AED user available only during activities or events sponsored and conducted or supervised by a person or persons employed by the unit of local government, school, college, or university.** (Section 5.25 of the Act)

e) **If multiple facilities are located on the same floor of a building, one AED can be used for multiple facilities so long as the AED is located not more than 300 feet from each facility and access to the AED is unimpeded from each facility.**

f) **Facility owners/operators may enter into written contracts with third party operators to ensure that a proper number of AEDs and trained AED users are present during all third party sponsored activities that are not otherwise supervised by the owners/operators of the facility.**

g) **Questions concerning this Part compliance with the Act shall be directed to the following address:**
Illinois Department of Public Health  
Division of EMS & Highway Safety  
422 S. 5th St. – 3rd Floor  
500 East Monroe – 8th Floor  
Springfield IL 62701

h) Entities requesting a formal Department determination on the application of the Act shall be subject to inspection under Section 527.900.

(Source: Amended at 34 Ill. Reg. 11419, effective July 21, 2010)

Section 527.800 Training

a) Physical fitness facility staff shall be trained in cardiopulmonary resuscitation and the use of an AED according to Sections 525.300 and 525.400 of the Automated External Defibrillator Code when the facility has an AED according to the compliance dates of the Act. The facility shall have at least one trained AED user on staff during staffed business hours at all times, and also shall ensure that appropriate numbers of facility staff and applicable supervisors are trained to avoid lapses in compliance with this Part.

b) Each member of the facility staff shall be trained concerning the location of the AED and the requirements of the facility's medical emergency plan. Third party operators and authorized users of the facility shall also be informed, by postings or other notifications, of the location of the AED and of the emergency plan.

c) The facility staff shall take reasonable measures to ensure that the AED is operated only by trained AED users for the intended purposes of the AED. This provision shall not be construed to prohibit, however, the use of the AED by others in the event of a medical emergency requiring the use of the AED.

d) Any non-employee coach, non-employee instructor, non-employee judge, non-employee referee, or other similarly situated non-employee anticipated rescuer who uses a physical fitness facility in conjunction with the supervision of physical fitness activities is encouraged to complete a course of instruction that would qualify such a person as a trained AED user, as defined in Section 10 of the Automated External Defibrillator Act and Section 527.100 of this Part. (Section 15(b-5) of the Act)
DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 34 Ill. Reg. 11419, effective July 21, 2010)
Illinois Racing Board

Notice of Adopted Amendments

1) Heading of the Part: Trifecta

2) Code Citation: 11 Ill. Adm. Code 306

3) Section Numbers: Adopted Action:
   306.20  Repeal
   306.30  Amend

4) Statutory Authority: 230 ILCS 5/9(b)

5) Effective Date of Rulemaking: July 22, 2010

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's central office and is available for public inspection.


10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the letter issued by JCAR? No changes were necessary.

13) Will this rulemaking replace any emergency amendments currently in effect? No

14) Are there any other proposed amendments pending in this Part? No

15) Summary and purpose of Rulemaking: This adopted rulemaking amends Section 306.30, Minimum Fields, by reducing the minimum field size for thoroughbred racing to carding 5 and scratching down to 4. The minimum field size for standardbreds remains card 6 and scratch down to 5. The minimum field size in both breeds applies to all races including stakes races. Section 306.20, Entries, is repealed to simplify the trifecta rule and also be more comparable to other racing jurisdictions.
16) Information and questions regarding these adopted amendments shall be directed to:

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

312/814-5017

The full text of the Adopted Amendments begins on the next page:
NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER a: GENERAL RULES

PART 306
TRIFECTA

Section 306.10 Definition
Section 306.20 Entries (Repealed)
Section 306.30 Minimum Fields
Section 306.40 Pool Distribution
Section 306.50 Dead Heats
Section 306.60 Scratches

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


Section 306.20 Entries (Repealed)

a) Entries, either coupled or uncoupled, shall be allowed in a trifecta race under the following conditions:

1) one entry requires at least six betting interests at the start of the race, except, in the event of a scratch, Section 306.30(a) applies.

2) two entries requires at least seven betting interests at the start of the race.

3) more than two entries shall require approval from the Stewards.
b) For stakes races with a minimum purse of $20,000, entries, either coupled or uncoupled, shall be allowed and there shall be no restrictions on minimum betting interests.

c) For stakes races with a minimum purse of $100,000, common owner entries, either coupled or uncoupled, shall be allowed and there shall be no restrictions on minimum betting interests.

d) This Section shall not apply to races that are permitted for simulcasting under Section 26(g) of the Act [230 ILCS 5/26(g)] or for uncoupled entries permitted in 11 Ill. Adm. Code 1413.114(c) when there are thoroughbred stakes races with purses of $250,000 or more.

(Source: Repealed at 34 Ill. Reg. 11436, effective July 22, 2010)

Section 306.30 Minimum Fields

a) Trifecta wagering shall not be scheduled on a thoroughbred race unless at least five six betting interests are carded. In the event of a scratch, trifecta wagering on a thoroughbred race in which four five betting interests remain is permissible, provided there are no uncoupled entries.

b) Trifecta wagering shall not be scheduled on a standardbred race unless at least six betting interests are carded. In the event of a scratch, trifecta wagering on a standardbred race in which five betting interests remain is permissible. This Section shall not be applicable to Stakes Races.

(Source: Amended at 34 Ill. Reg. 11436, effective July 22, 2010)
ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Superfecta

2) Code Citation: 11 Ill. Adm. Code 311

3) Section Numbers: Adopted Action:
   311.35    Amend
   311.40    Repeal

4) Statutory Authority: 230 ILCS 5/9(b)

5) Effective Date of Rulemaking: July 22, 2010

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's central office and is available for public inspection.


10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the letter issued by JCAR? No changes were necessary.

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

14) Are there any other proposed amendments pending in this Part? No

15) Summary and purpose of rulemaking: This adopted rulemaking amends Section 311.35, Minimum Fields, by reducing the minimum field size for thoroughbred racing to carding 6 and scratching down to 5. The minimum field size for standardbreds remains card 7 and scratch down to 6. The minimum field size in both breeds applies to all races including stakes races. Section 311.40, Entries, is repealed to simplify the superfecta rule and also be more comparable to other racing jurisdictions.
ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

16) Information and questions regarding these adopted amendments shall be directed to:
Mickey Ezzo
Illinois Racing Board
100 West Randolph, Suite 7-701
Chicago, Illinois 60601
312/814-5017

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

NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER a: GENERAL RULES

PART 311
SUPERFECTA

Section
311.10 Superfecta
311.20 Pool Distribution
311.25 Scratches
311.30 Dead Heats
311.35 Minimum Fields
311.40 Entries (Repealed)

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


Section 311.35 Minimum Fields

a) Superfecta wagering shall not be scheduled on a thoroughbred race unless at least sixseven betting interests are carded. In the event of a scratch, superfecta wagering on a thoroughbred race in which fivesix betting interests remain is permissible, provided there are no uncoupled entries.

b) Superfecta wagering shall not be scheduled on a standardbred race unless at least
NOTICE OF ADOPTED AMENDMENTS

seven betting interests are carded. In the event of a scratch, superfecta wagering on a standardbred race in which six betting interests remain is permissible. This Section shall not be applicable to stakes races.

(Source: Amended at 34 Ill. Reg. 11440, effective July 22, 2010)

Section 311.40 Entries (Repealed)

a) Entries, either coupled or uncoupled, shall be allowed in a superfecta race under the following conditions:

1) one entry requires at least seven betting interests at the start of the race except, in the event of a scratch, superfecta wagering on a race in which six betting interests remain is permissible, provided there are no uncoupled entries.

2) two entries require at least eight betting interests at the start of the race.

3) more than two entries shall require approval from the Stewards.

b) For stakes races with a minimum purse of $20,000, entries, either coupled or uncoupled, shall be allowed and there shall be no restrictions on minimum betting interests.

c) For stakes races with a minimum purse of $100,000, common owner entries, either coupled or uncoupled, shall be allowed and there shall be no restrictions on minimum betting interests.

d) This Section shall not apply to races that are permitted for simulcasting under Section 26(g) of the Act [230 ILCS 5/26(g)] or for uncoupled entries permitted in 11 Ill. Adm. Code 1413.114(c) when there are thoroughbred stakes races with purses of $250,000 or more.

(Source: Repealed at 34 Ill. Reg. 11440, effective July 22, 2010)
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part:** Regional Transportation Authority Retailers' Occupation Tax

2) **Code Citation:** 86 Ill. Adm. Code 320

3) **Section Number:** 320.101
   **Adopted Action:** Amendment

4) **Statutory Authority:** Public Acts 95-708 and 95-723

5) **Effective Date of Amendment:** July 26, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** 33 Ill. Reg. 17309; December 28, 2009

10) **Has JCAR issued a Statement of Objection to this amendment?** No

11) **Differences between proposal and final version:** None

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR?** No agreements were necessary.

13) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and Purpose of Amendment:** Public Act 95-708 authorized the Board of Directors of the Regional Transportation Authority (RTA) to increase the rate of the Retailers' Occupation and Service Occupation Tax it imposes in the metropolitan region (the Counties of Cook, DuPage, Kane, Lake, McHenry and Will). In Cook County, the authorized rate increased by 0.25%. In DuPage, Kane, Lake, McHenry and Will Counties, the authorized rate increased by 0.5%. Public Act 95-723 clarified that "selling price" does not include any local occupation tax administered by the Illinois Department of Revenue (see changes in subsections (b) and (c)).
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

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

   Samuel J. Moore
   Associate Counsel
   Illinois Department of Revenue
   Legal Services Office
   101 West Jefferson
   Springfield, Illinois 62794

   217/782-2844

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

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 320
REGIONAL TRANSPORTATION AUTHORITY
RETAILERS' OCCUPATION TAX

Section
320.101  Nature of the Regional Transportation Authority Retailers' Occupation Tax
320.105  Registration and Returns
320.110  Claims to Recover Erroneously Paid Tax
320.115  Jurisdictional Questions
320.120  Incorporation of the Retailers' Occupation Tax Regulations by Reference
320.125  Penalties, Interest and Procedures
320.130  Effective Date

AUTHORITY:  Authorized by and implementing Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03].


Section 320.101  Nature of the Regional Transportation Authority Retailers' Occupation Tax

a)  Authority to Impose Tax

The Board of Directors of the Regional Transportation Authority is authorized to impose a tax on persons engaged in the business of selling tangible personal property at retail within the metropolitan region as defined in Section 1.03 of the Regional Transportation Authority Act [70 ILCS 3615/1.03][Ill. Rev. Stat. 1989, ch. 111⅔, pars. 701.01 et seq.], at a rate of 1.25% 1% of the gross receipts from sales, within the County of Cook, of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics, and 1% of the gross receipts from other taxable sales made in the course of such business within the County of Cook and 0.75% of the gross receipts
DEPARTMENT OF REVENUE

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from all taxable sales made in the course of such business within the Counties of DuPage, Kane, Lake, McHenry and Will. [70 ILCS 3615/4.03(e) (Ill. Rev. Stat. 1989, ch. 111 ⅔, par. 704.03(e))]

b) Passing on the Tax
The legal incidence of the Regional Transportation Authority Retailers' Occupation Tax is on the seller. Nevertheless, the General Assembly has authorized persons subject to this tax to reimburse themselves for their sellers' Regional Transportation Authority Retailers' Occupation Tax liability by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act [35 ILCS 105] (Ill. Rev. Stat. 1989, ch. 120, pars. 439.1 et seq.) and the additional charge authorized under the provisions of the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1] (Ill. Rev. Stat. 1989, ch. 24, par. 8-11-1), the Non-Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1.3], (Ill. Rev. Stat. 1989, ch. 24, par. 8-11-1.3 or the Home Rule County Retailers' Occupation Tax Act [55 ILCS 5/5-1006], or any other local retailers' occupation tax administered by the Department (Ill. Rev. Stat. 1989, ch. 34, par. 5-1006) pursuant to such bracket schedules as the Department has prescribed. (See, 86 Ill. Adm. Code 150.Table A.)

c) Exclusion From "Gross Receipts"
Any amount added to the selling price of tangible personal property by the seller because of a Regional Transportation Authority Retailers' Occupation Tax, or because of the Retailers' Occupation Tax [35 ILCS 120] (Ill. Rev. Stat. 1989, ch. 120, pars. 440 et seq.), or because of the Home Rule Municipal Retailers' Occupation Tax, the Non-Home Rule Municipal Retailers' Occupation Tax, or the Home Rule County Retailers' Occupation Tax, or any other local retailers' occupation tax administered by the Department, or as Illinois Use Tax, and collected from the purchaser, shall not be regarded as a part of the seller's gross receipts that are subject to such Regional Transportation Authority Retailers' Occupation Tax.

(Source: Amended at 34 Ill. Reg. 11444, effective July 26, 2010)
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

1) Heading of the Part: Regional Transportation Authority Service Occupation Tax

2) Code Citation: 86 Ill. Adm. Code 330

3) Section Number: Adopted Action:
   330.101 Amendment

4) Statutory Authority: Public Acts 95-708, 95-723, and 96-339

5) Effective Date of Amendment: July 26, 2010

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: 33 Ill. Reg. 17313; December 28, 2009

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this rulemaking replace any emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendment: Public Act 95-708 authorized the Board of Directors of the Regional Transportation Authority (RTA) to increase the rate of the Retailers' Occupation and Service Occupation Tax it imposes in the metropolitan region (the Counties of Cook, DuPage, Kane, Lake, McHenry and Will). In Cook County, the authorized rate increased by 0.25%. In DuPage, Kane, Lake, McHenry and Will Counties, the authorized rate increased by 0.5%. Public Act 96-339 added a cross-
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

reference in the RTA Service Occupation Tax provisions to the MR/DD Community Care Act. Public Act 95-723 clarified that “selling price” does not include any local occupation tax administered by the Illinois Department of Revenue (see change in subsection (c)).

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

   Samuel J. Moore
   Associate Counsel
   Illinois Department of Revenue
   Legal Services Office
   101 West Jefferson
   Springfield, Illinois 62794

   217/782-2844

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

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 330
REGIONAL TRANSPORTATION AUTHORITY
SERVICE OCCUPATION TAX

Section
330.101 Nature of the Regional Transportation Authority Service Occupation Tax
330.105 Registration and Returns
330.110 Claims to RecoverErroneously Paid Tax
330.115 Jurisdictional Questions
330.120 Incorporation of Service Occupation Tax Regulations by Reference
330.125 Penalties, Interest and Procedures
330.130 Effective Date

AUTHORITY: Authorized by and implementing Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03].


Section 330.101 Nature of the Regional Transportation Authority Service Occupation Tax

a) Authority to Impose Tax
The Board of Directors of the Regional Transportation Authority is authorized to impose tax on persons engaged in the business of making sales of service within the metropolitan region as defined in Section 1.03 of the Regional Transportation Authority Act [70 ILCS 3615/1.03]. (Ill. Rev. Stat. 1989, ch. 111 ⅔, pars. 701.03)
The tax rate shall be: 1.25% of the serviceman's cost price of food prepared for immediate consumption and transferred incident to a sale of service subject to the service occupation tax by an entity licensed under the Hospital Licensing Act [210 ILCS 85], the Nursing Home Care Act [210 ILCS 45], or the MR/DD Community Care Act [210 ILCS 47] that is located in the metropolitan region; 1.25% of the selling price of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing
mometes, syringes and needles used by diabetics; and 13/4% of the selling
price from other taxable sales of tangible personal property transferred as an
incident to the sale of service within the County of Cook and 0.75% of the
selling price of tangible personal property transferred as an incident to
the sale of service within the Counties of DuPage, Kane, Lake, McHenry and
Will. This tax imposed pursuant to this subsection and all civil penalties that
may be assessed as an incident thereof shall be collected and enforced by the
Illinois Department of Revenue (Department). [70 ILCS 3615/4.03(f)]

b) Passing on the Tax
Servicemen are required to collect the Regional Transportation Authority Service
Occupation Tax [70 ILCS 3615/4.03](Ill. Rev. Stat. 1989, ch. 111 2/3, par. 704.03),
when applicable, from purchasers of service in conformance with the
requirements of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140).
The legal incidence of the Regional Transportation Authority Service Occupation
Tax is on the serviceman. Nevertheless, the General Assembly has authorized
persons subject to this tax to reimburse themselves for their serviceman's
Regional Transportation Authority Service Occupation Tax liability by separately
stating that tax as an additional charge that, which charge may be stated in
combination, in a single amount, with State tax which servicemen are authorized
120, pars. 439.31 et seq.), pursuant to such bracket schedules as the Department
has prescribed. (See 86 Ill. Adm. Code 150.Table A.)

c) Exclusion from "Cost Prices"
Any amount added by a serviceman to the selling price of tangible personal
property sold to a serviceman for retransfer as an incident to service because of
Regional Transportation Authority Service Occupation Tax, or because of the
439.101 et seq.), and reimbursing amounts collected pursuant to the Home Rule
County Service Occupation Tax Act [55 ILCS 5/5-1007](Ill. Rev. Stat. 1979
1989, ch. 34, par. 5-1007), Home Rule Municipal Service Occupation Tax Act
[65 ILCS 5/8-11-5](Ill. Rev. Stat. 1989, ch. 24, par. 8-11-5), and Non-Home Rule
Municipal Service Occupation Tax Act [65 ILCS 5/8-11-1.4], or any other local
24, par. 8-11-1.4) and collected from the purchasing serviceman, shall not be
regarded as a part of the selling prices that are subject to the Regional
Transportation Authority Service Occupation Tax.
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

(Source: Amended at 34 Ill. Reg. 11448, effective July 26, 2010)
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part:** Regional Transportation Authority Use Tax

2) **Code Citation:** 86 Ill. Adm. Code 340

3) **Section Number:** 340.101  
   **Adopted Action:** Amendment

4) **Statutory Authority:** Public Act 95-708

5) **Effective Date of Amendment:** July 26, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) **A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.**

9) **Notice of Proposal Published in Illinois Register:** 33 Ill. Reg. 17318; December 28, 2009

10) **Has JCAR issued a Statement of Objection to these Amendments?** No

11) **Differences between proposal and final version:** None

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR?** No agreements were necessary.

13) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and Purpose of Amendment:** Public Act 95-708 authorized the Board of Directors of the Regional Transportation Authority (RTA) to increase the rate of the Use Tax it imposes on titled and registered property purchased outside of the metropolitan region but registered to an address within the metropolitan region (the Counties of Cook, DuPage, Kane, Lake, McHenry and Will). In Cook County, the authorized rate increased by 0.25%. In DuPage, Kane, Lake, McHenry and Will Counties, the authorized rate increased by 0.5%.
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

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

    Samuel J. Moore
    Associate Counsel
    Illinois Department of Revenue
    Legal Services Office
    101 West Jefferson
    Springfield, Illinois  62794

    217/782-2844

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

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 340
REGIONAL TRANSPORTATION AUTHORITY USE TAX

Section
340.101 Nature and Rate of the Tax
340.105 Items Covered
340.110 Incorporation of Use Tax Regulations by Reference
340.115 Penalties, Interest and Procedures
340.120 Effective Date

AUTHORITY: Authorized by and implementing Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3716/4.03].


Section 340.101 Nature and Rate of the Tax

If a Regional Transportation Authority Retailers' Occupation Tax is imposed, the Board of Directors of the Regional Transportation Authority may impose a tax upon the privilege of using, in the metropolitan region, any item of tangible personal property which is purchased outside the metropolitan region at retail from a retailer, and which is titled or registered with an agency of this State's government, at a rate of 1% of the selling price of such tangible personal property within the county of Cook, and 0.75% of the selling price of such tangible personal property within the counties of DuPage, Kane, Lake, McHenry and Will, as "selling price" is defined in the "Use Tax Act" [35 ILCS 105/2][Ill. Rev. Stat. 1989, ch. 120, pars. 439.13 et seq.], approved July 14, 1955, as now or hereafter amended. Such tax shall be collected from persons whose Illinois address for titling or registration purposes is given as being in the metropolitan region. Such tax shall be collected by the Department of Revenue for the Regional Transportation Authority. Such tax must be paid to the State, or an exemption determination must be obtained from the Department of Revenue before the title or Certificate of Registration for the property may be issued. The tax or proof of exemption may be transmitted to the Department by way of the State agency with which, or State officer with whom, the tangible personal property must be titled or registered if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or
DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

registration. [70 ILCS 3615/4.03](Ill. Rev. Stat. 1989, ch. 111 2/3, par. 704.03.)

(Source: Amended at 34 Ill. Reg. 11453, effective July 26, 2010)
NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Public Information, Rulemaking and Organization

2) Code Citation: 2 Ill. Adm. Code 225

3) Section Numbers: Adopted Action:
   225.10    Repealed
   225.110   Repealed
   225.210   Repealed

4) Statutory Authority: Section 3 (h) of the Freedom of Information Act [5 ILCS 140/ 3 (h)]
   and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15]

5) Effective Date of Repealer: August 13, 2010

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

7) Does this rulemaking contain incorporations by reference? No

8) The adopted repealer, including any material incorporated by reference, is on file at the
   Auditor General's Springfield office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 19, 2010; 34 Ill. Reg. 3370

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the
    agreements issued by JCAR? No agreements were necessary.

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

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: The rules previously set forth in this Part were
    either addressed in other rules or statute, outdated, or both. Section 225.10, Public
    Information, is addressed in rules adopted by the Office of the Auditor General at 2 Ill.
    Adm. Code Part 601; Section 225.110, Rulemaking Procedure, was outdated by Section 2
AUDITOR GENERAL

NOTICE OF ADOPTED REPEALER

of Public Act 84-345, effective January 1, 1986; and Section 225.210, Membership of the Board, is set forth in the State Finance Act at 30 ILCS 105/12-1.

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

Becky Patton, Legal Counsel
Office of the Auditor General
740 E. Ash St.
Springfield, IL  62703

217/782-6046
888/261-2887 (TTY)
AUDITOR GENERAL

NOTICE OF ADOPTED AMENDMENTS

1) **Heading of the Part:** Freedom of Information

2) **Code Citation:** 2 Ill. Adm. Code 601

3) **Section Numbers:**

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4) **Statutory Authority:** Section 3 (h) of the Freedom of Information Act [5 ILCS 140/3 (h)] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15]

5) **Effective Date of Amendments:** August 13, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file at the Auditor General's Springfield office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** March 19, 2010; 34 Ill. Reg. 3374

10) **Has JCAR issued a Statement of Objection to this rulemaking?** No
AUDITOR GENERAL

NOTICE OF ADOPTED AMENDMENTS

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were necessary.

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

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: The rules are amended to conform to changes made by Public Act 96-542 to the Freedom of Information Act. Significant changes include shortening the timeframe for responding to a request for records from seven to five business days, updating fees for copies of public records to conform to the amended law, identifying materials that are immediately available on our web site, and setting forth recourse in the even a request for records is denied.

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

   Becky Patton, Legal Counsel
   Office of the Auditor General
   740 E. Ash St.
   Springfield, IL  62703

   217/782-6046
   888/261-2887 (TTY)

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

NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE C: CONSTITUTIONAL OFFICERS
CHAPTER V: AUDITOR GENERAL

PART 601
FREEDOM OF INFORMATION

SUBPART A: INTRODUCTION

Section
601.100 Summary and Purpose
601.110 Definitions

SUBPART B: PROCEDURES FOR REQUESTING PUBLIC RECORDS

Section
601.200 Person to Whom Requests are Submitted
601.210 Form and Content of Requests

SUBPART C: PROCEDURES FOR RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section
601.300 Time for Response
601.310 Types of Responses

SUBPART D: PROCEDURES FOR APPEAL OF A DENIAL

Section
601.400 Appeal of a Denial (Repealed)
601.410 Auditor General's Response to Appeal (Repealed)

SUBPART E: PROCEDURES FOR PROVIDING PUBLIC RECORDS TO REQUESTERS

Section
601.500 Inspection of Records
601.510 Copies of Public Records
601.520 General Materials Immediately Available From the Freedom of Information Officer
# NOTICE OF ADOPTED AMENDMENTS

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**AUTHORITY:** Implementing and authorized by Section 3(g) of the Freedom of Information Act [5 ILCS 140/3(g)] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].


## SUBPART A: INTRODUCTION

### Section 601.110 Definitions

Terms used in these rules shall have the same meaning as in the Freedom of Information Act.

"FOIA" means the Freedom of Information Act [5 ILCS 140].

"Freedom of Information Officer" or "FOI Officer" means an individual responsible for receiving and responding to requests for public records and, in the Office of the Auditor General, the OAG Librarian (or other person designated by the Auditor General in case of vacancy in that position).

"OAG" means Office of the Auditor General.

"Requester" means a person who submits a request for public records in accordance with these rules.

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)
Section 601.200  Person to Whom Requests are Submitted

Requests for public records shall be submitted to the Freedom of Information Officer of the Office of the Auditor General. Requests for public records may be submitted by mail, e-mail, hand delivery or facsimile, directed to the FOI Officer, as follows:

FOI Librarian/FOIA Officer
Office of the Auditor General
Iles Park Plaza
740 East Ash
Springfield, Illinois 62703-3154
(217)782-6698 (phone) 782-1055
(888)261-2887 (TTY)
(217)785-8222 (facsimile)
auditor@mail.state.il.us

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)

Section 601.210  Form and Content of Requests

a) Requests must be made in accordance with FOIA. Such requests may be submitted on FOIA request forms provided by the Office of the Auditor General. (See Appendix A to these rules.)

b) The requester shall provide the following information in a request for public records:

1) The requester's full name, address and phone number;

12) A description of the public records sought, being as specific as possible;

23) Whether the request is for inspection of public records, copies of public records, or both; and

3) Whether the public record is being obtained for a commercial purpose.

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)
SUBPART C: PROCEDURES FOR RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section 601.300  Time for Response

a) OAG shall respond to a written request for public records within five business seven (7) working days after the receipt of the such request.

b) OAG may give notice of an extension of time to respond not exceeding an additional five business seven (7) working days. An Such an extension is allowable if written notice is provided within the original seven (7) working day time limit for the reasons provided in Section 3(e) of FOIA. The Such notice of extension shall state the reasons why the extension is necessary and the date by which the records will be made available or denial will be forthcoming.

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)

Section 601.310  Types of Responses

a) OAG shall respond to a request for public records in one of three ways:

1) Approve the request;

2) Approve in part and deny in part;

3) Deny the request.

b) Upon approval of a request for public records, OAG may either make available the materials, give notice that the material shall be made available upon payment of allowable costs, or give notice of the time and place for inspection of records.

be) A denial of a request for public records shall be made in writing. It shall state the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, in accordance with either Section 3(f) or Section 7 of FOIA and the names and titles or positions of individuals responsible for the decision. It shall also give notice of the requester's right to review by the Public Access Counselor established in the Office of the Attorney General and the requester's right to judicial review under Section 11 of FOIA appeal to the Auditor General.
AUDITOR GENERAL

NOTICE OF ADOPTED AMENDMENTS

d) Categorical requests creating an undue burden upon OAG shall be denied only after extending to the requester an opportunity to confer in an attempt to reduce the request to manageable proportions in accordance with FOIA Section 3(f).

e) Failure to respond to a written request within five business seven (7) working days after receipt will be considered by the requester a denial of the request.

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)

SUBPART D: PROCEDURES FOR APPEAL OF A DENIAL

Section 601.400 Appeal of a Denial (Repealed)

a) A requester whose request has been denied by the Freedom of Information Officer may appeal the denial to the Auditor General. The notice of appeal shall be made in writing and sent to:

The Auditor General
Iles Park Plaza
740 East Ash
Springfield, Illinois 62703-3154

b) The notice of appeal shall include a copy of the original request, a copy of the denial received by the receiver, and a statement of the reasons why the appeal should be granted.

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)

Section 601.410 Auditor General's Response to Appeal (Repealed)

The Auditor General shall respond to an appeal within seven (7) working days after receiving notice thereof. The Auditor General shall either affirm the denial or provide access to the requested public records.

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)

SUBPART E: PROCEDURES FOR PROVIDING PUBLIC RECORDS TO REQUESTERS

Section 601.500 Inspection of Records
AUDITOR GENERAL

NOTICE OF ADOPTED AMENDMENTS

a) The inspection of records shall normally occur at the office of the Freedom of Information Officer during usual working hours (8:30-4:30 M-F). Either OAG or the requester may request that inspection take place in another location, but OAG may deny a requester's request if inconvenient to the production of records.

b) Documents which the requester wishes to have copied shall be segregated during the course of the inspection. Generally, all copying shall be done by employees of the Office of the Auditor General.

c) An OAG employee may be present throughout the inspection. A requester may be prohibited from bringing bags, brief cases or other containers into the inspection room.

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)

Section 601.510 Copies of Public Records

a) Copies of public records not exempt from disclosure under FOIA will be provided unless the requester makes arrangements to personally inspect the public records as provided in Section 601.500. The first 50 pages are provided free of charge. The OAG reserves the right to charge fees to reimburse its actual cost for reproducing public records exceeding 50 pages, as allowed by FOIA shall be provided to the requester only upon payment of any charges which are due.

b) If the OAG incurs extraordinary shipping expenses for sending copies of public records to the requester, the OAG reserves the right to seek reimbursement of those actual shipping expenses from the requester. Charges for copies of public records shall be assessed in accordance with the "Fee Schedule for Duplication of Public Records" attached as Appendix B to these rules. However, pursuant to FOIA Section 6(b), "Documentation shall be furnished without charge or at a reduced charge where [OAG] determines that waiver or reduction of the fee is in the public interest because furnishing information can be considered as primarily benefiting the general public."

c) Charges may be waived or reduced in any case in which the FOI(Freedom of Information) Officer determines that the waiver serves the public interest.

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)
Section 601.520  General - Materials Immediately Available From the Freedom of Information Officer

Detailed information about the OAG is publicly and immediately available at the OAG web site: www.auditor.illinois.gov. The OAG web site provides a description of the OAG's mission and responsibilities, organizational structure, categories of public records, and the process for obtaining public records. Public records immediately available on the web site include audit reports issued by the OAG, the OAG’s quarterly and annual reports, audit advisories, and Legislative Travel Control Board meeting minutes and policies. The Freedom of Information Officer shall make available to the public at no charge the following materials:

a)  Bound audit reports, the OAG Annual Report, and other OAG rules and regulations (as long as supplies last).

b)  A list of types and categories of other public records maintained by the Office of the Auditor General.

c)  A brief description of the means for requesting information and public records, listing the title and address of the OAG FOIA Officer to whom requests should be directed and including the Fee Schedule for copying and certifying public records.

d)  A brief description of the Office of the Auditor General, including a short summary of its purpose, organizational chart, amount of its operating budget, number and location of its offices, approximate number of full and part-time employees, and identifying the Commission which advises OAG, exercises some control over its policies, and to which it reports.

(Source: Amended at 34 Ill. Reg. 11459, effective August 13, 2010)
NOTICE OF ADOPTED AMENDMENTS

Section 601. APPENDIX A  Request for Public Records  (Repealed)

<table>
<thead>
<tr>
<th>TO:</th>
<th>FROM:</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOIA Officer</td>
<td>Name</td>
</tr>
<tr>
<td>Auditor General's Office</td>
<td>Address</td>
</tr>
<tr>
<td>Address</td>
<td>Phone-Number</td>
</tr>
</tbody>
</table>

DESCRIPTION OF REQUESTED RECORD(S):

Please indicate if you wish to inspect the above-captioned records or wish to copy them:

☐ Inspection  ☐ Copy  ☐ Both

Do you wish to have copies certified?  ☐

FOR OFFICE USE ONLY:

__________________________  __________________________
Date-Received               Date-Response-Due

Notations re Oral Communications or Other Items:

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)
NOTICE OF ADOPTED AMENDMENTS

Section 601.APPENDIX B  Fee Schedule for Duplication and Certification of Public Records (Repealed)

<table>
<thead>
<tr>
<th>Type of Duplication</th>
<th>Charge Per Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bound Audit Report</td>
<td>FREE*</td>
</tr>
<tr>
<td>Annual Report</td>
<td>FREE*</td>
</tr>
<tr>
<td>FOIA and other OAG Rules and Regulations</td>
<td>FREE*</td>
</tr>
<tr>
<td>Photocopy from paper original</td>
<td>$.10</td>
</tr>
<tr>
<td>(possibly higher charges for sizes different from 8½&quot; x 11&quot; or 8½&quot; x 14&quot;)</td>
<td></td>
</tr>
<tr>
<td>Photocopy from microfilm</td>
<td>.10</td>
</tr>
<tr>
<td>Photocopy from computer original</td>
<td>.35</td>
</tr>
<tr>
<td>Certification of Public Records</td>
<td>.50</td>
</tr>
</tbody>
</table>

* If supplies available for distribution are exhausted, requester will be charged $.10 a page per photocopy.

Some records possessed by OAG are in book or pamphlet form. A charge may be assessed for such materials based upon the cost of such materials incurred by OAG.

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)
NOTICE OF ADOPTED AMENDMENTS

Section 601.APPENDIX C   Approval of Request for Public Records (Repealed)

<table>
<thead>
<tr>
<th>TO:</th>
<th>FROM:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>FOIA Officer</td>
</tr>
<tr>
<td>Address</td>
<td>Auditor General's Office</td>
</tr>
<tr>
<td>Address</td>
<td></td>
</tr>
</tbody>
</table>

**DESCRIPTION OF REQUESTED RECORD(S):**

Your request dated for the above-captioned records has been approved.

- ☐ The documents you requested are enclosed.
- ☐ The documents will be made available upon payment of copying costs in the amount of ____________
- ☐ You may inspect the records at ____________________________ on ________________

Date ____________________________

(FOIA Officer)

Date ____________________________

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)
TO: ________________________ FROM: ________________________
Name: ________________________ FOIA Officer
Address: ________________________ Auditor General’s Office
Address: ________________________

Phone Number: ________________________

DESCRIPTION OF REQUESTED RECORD(S):

Your request dated ____________ for the above-captioned records has been denied.


☐ The request creates an undue burden on the public body in accordance with Section 3(f) of The Freedom of Information Act, and we were unable to negotiate a more reasonable request. Compliance with the request would cause an undue burden on the Office of the Auditor General for the following reason(s):

☐ The materials requested are exempt under Section 7 of The Freedom of Information Act for the following reasons:

The individuals who have reached the determination that the records you have requested are to
NOTICE OF ADOPTED AMENDMENTS

be denied are:

1) 
2) 

You have the right to appeal the denial of the records you have requested to the Auditor General by submitting a written notice of appeal to:

The Auditor General
Iles Park Plaza
740 East Ash
Springfield, Illinois 62703-3154

In submitting your notice of appeal, you should include copies of your original request and this denial, and state any reason(s) why your appeal should be granted.

______________________________    _______________________________
FOLIA Officer                        Date

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)
NOTICE OF ADOPTED AMENDMENTS

Section 601. APPENDIX E  Partial Approval of Request for Public Records (Repealed)

TO: ___________________________________ FROM: ________________________________
    Name
    Address
    Phone Number

    ________________________________  Auditor General's Office
    Address

DESCRIPTION OF REQUESTED RECORD(S):

Your request dated ___________ for the above-captioned records has been partially approved. Those parts of your request which have been approved:

☐ are enclosed.

☐ will be made available upon payment of copying costs in the amount of ____________

☐ may be inspected at ____________________________ on ____________________________ Date

The following portions of your request have been denied for the reasons(s) cited:

The individuals who have reached the determination that the records you have requested are to be partially denied are:

1)
2)
NOTICE OF ADOPTED AMENDMENTS

You have the right to appeal the partial denial of the records you have requested to the Auditor General by submitting a written notice of appeal to:

The Auditor General
Iles Park Plaza
740 East Ash
Springfield, Illinois 62703-3154

In submitting your notice of appeal, you should include copies of your original request and this partial denial, and state any reason(s) why your appeal should be granted.

__________________________________________  ____________________________
FOIA Officer                                      Date

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)
TO: ___________________________ FROM: ___________________________
   Name                          FOIA Officer
   ___________________________  Auditor General's Office
   Address                      ___________________________
   ___________________________  Address
   ___________________________  ___________________________
   Phone Number

DESCRIPTION OF REQUESTED RECORD(S):

Your request dated _____________ for the above-captioned records has been delayed. The delay in responding to your request is for the following reason(s) in accordance with FOIA Section 3(d):

You will be notified by (Date) as to the action taken on your request.

_________________________  ___________________________
FOIA Officer                  Date

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)
TO: ________________________________ FROM: ________________________________

Name ________________________________ FOIA Officer ________________________________

Address __________________________________ Auditor General's Office ________________________________

Address __________________________________

Phone Number ________________________________

DESCRIPTION OF REQUESTED RECORD(S):

Noted below is the action I have taken on your appeal from the total or partial denial of your request for the above-captioned records:

☐ I hereby approve your appeal to the following extent and the following reason(s):

☐ I affirm the denial of your request made by the Freedom of Information Officer.

You are entitled to judicial review of my denial pursuant to Section 11 of the Freedom of Information Act.

_________________________________________  ________________________________
Auditor General  Date

(Source: Repealed at 34 Ill. Reg. 11459, effective August 13, 2010)
# NOTICE OF ADOPTED AMENDMENTS

1) **Heading of the Part:** Inspector General Complaint Policies and Procedures

2) **Code Citation:** 2 Ill. Adm. Code 605

3) **Section Numbers:**
   - 605.10  Amended
   - 605.30  Amended
   - 605.40  Amended
   - 605.50  Amended
   - 605.60  Amended
   - 605.70  Amended

4) **Statutory Authority:** Section 30-5(b) of the State Officials and Employees Ethics Act [5 ILCS 430/30-5(b)]

5) **Effective Date of Rulemaking:** August 13, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) The adopted amendments, including any materials incorporated by reference, is on file at the Auditor General's Springfield office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** March 19, 2010; 34 Ill. Reg. 3392

10) **Has JCAR issued a Statement of Objection to this rulemaking?** No

11) **Differences between proposal and final version:** None

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** No agreements were necessary.

13) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and Purpose of Rulemaking:** The rules are amended to conform to changes made by Public Act 96-555 to the State Officials and Employees Ethics Act. Significant
NOTICE OF ADOPTED AMENDMENTS

changes include the acceptance of anonymous complaints, monthly reporting by the Inspector General, and summary report procedures and disclosure.

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

Becky Patton, Legal Counsel
Office of the Auditor General
740 E. Ash St.
Springfield, IL  62703

217/782-6046
888/261-2887 (TTY)

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

NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENT ORGANIZATION
SUBTITLE C: CONSTITUTIONAL OFFICERS
CHAPTER V: AUDITOR GENERAL

PART 605
INSPECTOR GENERAL COMPLAINT POLICIES AND PROCEDURES

Section:
605.5 Definitions
605.10 Jurisdiction
605.15 Complaint Form
605.20 Referral to the Appropriate Entity
605.25 Referral to Law Enforcement Agencies
605.30 Opening an Investigative File
605.40 Investigations
605.50 Summary Report
605.60 Cooperation in Investigations
605.70 Confidentiality

AUTHORITY: Implementing and authorized by Section 30-5 of the State Officials and Employees Ethics Act [5 ILCS 430/30-5].


Section 605.10 Jurisdiction

a) The jurisdiction of the Inspector General is to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of the Act or violations of other related laws or rules involving employees of the Office of the Auditor General.

b) The Inspector General will decline to investigate the following types of complaints:

1) anonymous complaints;
NOTICE OF ADOPTED AMENDMENTS

1) complaints relating to conduct the most recent act of which occurred more than a year before the complaint is filed, except when there is reasonable cause to believe that fraudulent concealment has occurred. To constitute fraudulent concealment sufficient to toll this limitations period, there must be an affirmative act or representation calculated to prevent discovery of the fact that a violation has occurred;

2) complaints involving vendors of the Office of the Auditor General, unless the complaint also specifically alleges improper conduct by an employee of the Office of the Auditor General relating to that vendor;

3) anything that has been fully adjudicated (administratively or in a court) or is pending before an agency or pending in civil or criminal court; and

4) disagreements of legal interpretations relating to or arising out of the audit and examination process or decisions by the Office of the Auditor General relating to audits or examinations.

c) The Inspector General may also decline to investigate the following types of complaints:

1) complaints in which a person is dissatisfied with the Office of the Auditor General's administrative or personnel policies or procedures, such as the identity of one's supervisor or a work assignment; and

2) complaints that are currently pending before another federal, State or local entity.

(Source: Amended at 34 Ill. Reg. 11477, effective August 13, 2010)

Section 605.30 Opening an Investigative File

a) An investigative file shall be opened upon receipt of a complaint form meeting the requirements of this Part. Multiple complaint forms that relate to the same alleged acts of misconduct may be consolidated for purposes of investigation. In the absence of a completed complaint form, the Inspector General may create an investigation file and assign the file a unique tracking number if, upon information received and not upon his or her own prerogative, the Inspector
NOTICE OF ADOPTED AMENDMENTS

General reasonably believes that misconduct may have occurred within the Inspector General's jurisdiction.

b) The investigation file shall contain the complaint form or, if none, so much of the information that would normally appear on the complaint form as is known to the Inspector General at the inception of the matter.

(Source: Amended at 34 Ill. Reg. 11477, effective August 13, 2010)

Section 605.40 Investigations

a) Investigations shall commence upon the opening of an investigation file.

b) The Inspector General shall have the discretion to determine whether reasonable cause exists to warrant the opening of an investigative file and to determine the appropriate means of investigation as permitted by law. All investigations will be conducted 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.

c) The Inspector General will utilize methods for investigative interviews consistent with current practices and techniques and will observe and comply with all laws and agreements related to the questioning of employees or other individuals.

d) When the Inspector General concludes that there is insufficient evidence that a violation has occurred, the Inspector General shall close the investigation. At the request of the subject of the investigation, the Inspector General shall provide a written statement to the subject of the investigation of the Inspector General's decision to close the investigation. Closure by the Inspector General does not bar the Inspector General from resuming the investigation if circumstances warrant.

e) Monthly Reports

1) The Inspector General shall monthly submit reports to the Auditor General indicating:
NOTICE OF ADOPTED AMENDMENTS

A) the number of allegations received since the date of the last report;

B) the number of investigations initiated since the date of the last report;

C) the number of investigations concluded since the date of the last report;

D) the number of investigations pending as of the reporting date;

E) the number of complaints referred to the Attorney General since the date of the last report; and

F) the number of allegations referred to any law enforcement agency since the date of the last report.

2) The monthly report shall be available on the Auditor General's website at www.auditor.illinois.gov.

(Source: Amended at 34 Ill. Reg. 11477, effective August 13, 2010)

Section 605.50 Summary Report

a) If the Inspector General, upon conclusion of an investigation, determines that reasonable cause exists to believe that a violation has occurred, then the Inspector General shall issue a summary report of the investigation. The report shall be delivered to the Auditor General, as ultimate jurisdictional authority.

b) The summary report of the investigation shall include the following:

1) A description of any allegations or other information received by the Inspector General pertinent to the investigation.

2) A description of any alleged misconduct discovered in the course of the investigation.
3) Recommendations for any corrective or disciplinary action to be taken in response to any alleged misconduct described in the report, including but not limited to discharge.

4) Other information the Inspector General deems relevant to the investigation or resulting recommendations.

c) The Auditor General shall respond to the summary report within 20 days, in writing, to the Inspector General. The response shall include a description of any corrective or disciplinary action to be imposed.

d) If the Inspector General determines that any alleged misconduct resulted in the loss of public funds in an amount of $5,000 or greater, the Inspector General shall refer the allegations regarding that misconduct to the Attorney General and any other appropriate law enforcement authority.

e) Within 60 days after receipt of a summary report and response from the Auditor General that resulted in a suspension of at least 3 days or termination of employment, the Inspector General shall make available to the public the report and response or a redacted version of the report and response. The Auditor General may make available to the public any other summary report and response or a redacted version of the report and response.

f) Before a summary report is made public, information shall be redacted that may reveal the identity of witnesses, complainants or informants, or that the Inspector General or Auditor General determines is appropriate to protect the identity of a person. The Inspector General or Auditor General may also redact any information either believes, after consultation with appropriate parties, should not be made public.

g) Publication of a report or response may be withheld if the Inspector General or Auditor General certifies that releasing the report to the public will interfere with an ongoing investigation.

(Source: Amended at 34 Ill. Reg. 11477, effective August 13, 2010)

Section 605.60 Cooperation in Investigations
AUDITOR GENERAL

NOTICE OF ADOPTED AMENDMENTS

a) It is the duty of every employee under the jurisdiction of the Inspector General to cooperate with the Inspector General in any investigation undertaken pursuant to the Act. Failure to cooperate with an investigation of the Inspector General is grounds for disciplinary action, including dismissal. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements. Nothing in this provision limits or alters a person's existing rights or protections under State or federal law.

b) Any employee who is the subject of an investigation who, according to present evidence or allegations, faces potential discipline shall be notified by the Inspector General of whether the interview is criminal or administrative in nature and of the right to the presence of a representative or co-worker uninvolved in the investigation or the representation of a private attorney during any interview. The interview subject shall sign a written acknowledgement of his or her understanding of these rights on a form prescribed by the Inspector General. If, at any point, an interview subject indicates that he or she wants the presence of a person authorized by this subsection (b), the interview shall be suspended and a new date and time set. Evidence obtained directly or indirectly in violation of this subsection (b) shall not be admissible in any proceeding.

c) Interviews shall not be audiotaped or otherwise recorded without the written consent of the employee. The written consent shall indicate that the interview subject is not required to consent to the audio recording and his or her refusal to consent to the audio recording does not constitute failure to cooperate with the investigation. The written consent and audiotapes shall be preserved, unedited, in the investigation file.

(Source: Amended at 34 Ill. Reg. 11477, effective August 13, 2010)

Section 605.70 Confidentiality

a) The identity of any individual providing information or reporting any possible or alleged misconduct to the Inspector General shall be kept confidential and may be disclosed only on an as-needed basis, including for referrals to other Inspectors General, the Attorney General or appropriate law enforcement agencies, or with the consent of the individual or as otherwise required by law. The confidentiality granted by this subsection (a) does not preclude the disclosure of the identity of a person in any capacity other than as the source of an allegation.
NOTICE OF ADOPTED AMENDMENTS

b) Except as otherwise provided in Section 605.50 for summary reports, any allegations and related documents submitted to the Inspector General and the Inspector General's files and reports are exempt from the provisions of the Freedom of Information Act [5 ILCS 140] and are confidential, except as necessary for referral to and possible action by:

1) law enforcement agencies, prosecutorial authorities, other Inspectors General or other parties as permitted by this Part; and

2) the Auditor General.

c) If an investigation results in a finding that an employee engaged in misconduct, the results of the investigation and the names of the witnesses may become public in any ensuing administrative or judicial proceeding.

d) Requests from the ethics officer for guidance on matters involving the interpretation or application of the Act or rules promulgated under the Act are exempt from the provisions of the Freedom of Information Act. Guidance provided to an ethics officer or State employee at the request of an ethics officer on matters involving the interpretation or application of the Act or rules promulgated under the Act is exempt from the provisions of the Freedom of Information Act.

(Source: Amended at 34 Ill. Reg. 11477, effective August 13, 2010)
POLLUTION CONTROL BOARD

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1) **Heading of the Part**: Proceedings Pursuant to Specific Rules or Statutory Provisions

2) **Code Citation**: 35 Ill. Adm. Code 106

3) **Section Numbers**: Adopted Action:
   - 106.100 Amended
   - 106.800 New
   - 106.802 New
   - 106.804 New
   - 106.806 New
   - 106.808 New
   - 106.810 New
   - 106.812 New

4) **Statutory Authority**: Implementing Section 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28]

5) **Effective Date of Amendments**: July 23, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) The adopted amendments, including any material incorporated by reference, is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500 and are available for public inspection.

9) **Notice of Proposal Published in Illinois Register**: April 16, 2010; 34 Ill. Reg. 5545

10) **Has JCAR issued a Statement of Objection to these amendments?** No

11) **Differences between proposal and final version**: Deleted "and the Agency must be named the respondent" from Section 106.800(b) and inserted the word "101" after "35 Ill. Adm. Code" in Section 106.802.

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR?** Yes

13) **Will this rulemaking replace any emergency rulemaking currently in effect?** No
14) Are there any amendments pending on this Part?

15) Summary and Purpose of Amendments: A more detailed description of this rulemaking is contained in the Board's opinion and order in Procedural Rules for Authorizations under P.A. 95-115 (Regulation of Phosphorus in Detergents Act), 35 Ill. Adm. Code 106.Subpart H, R10-19 (July 15, 2010). This proposed rulemaking implements P.A. 95-115, the Regulation of Phosphorus in Detergents Act, signed and effective August 13, 2007. P.A. 95-115, codified at 415 ILCS 92/1 et seq., prohibits the manufacture, distribution, sale, and use of "any cleaning agent" that contains more than 0.5% phosphorus by weight, expressed as elemental phosphorus, after July 1, 2010. Section 5(d) provides that the Board may authorize use of cleaning agents with excess phosphorus "upon finding that there is no adequate substitute for that cleaning agent or that compliance with this . . . would otherwise be unreasonable or create a significant hardship on the user." The Board is directed to promulgate rules to implement the section. The Board has not received any proposals for rulemaking to implement this Section, and so has itself drafted and now proposes procedural rules for Board cleaning agent determinations.

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

Kathleen Crowley
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL  60601
312-814-6929

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 R10-19 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

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

Section
POLLUTION CONTROL BOARD

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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
106.700 Purpose
POLLUTION CONTROL BOARD

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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

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

AUTHORITY:  Implementing and authorized by Sections 5, 14.2(c), 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), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].
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SUBPART A: GENERAL PROVISIONS

Section 106.100 Applicability

a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, and the involuntary termination of environmental management system agreements, and authorization of use of cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92].

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 34 Ill. Reg. 11486, effective July 23, 2010)

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

Section 106.800 General
POLLUTION CONTROL BOARD

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a) **Description.** This Subpart applies to any person who files a petition for Board authorization to use cleaning agents that contain phosphorus of an amount exceeding 0.5% by weight as provided in Section 5(e) of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5(e)].

b) **Parties.** The person filing the petition for authorization must be named the petitioner.

c) **Filing and Service.** The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

**Section 106.802 Definitions**

The definitions of 35 Ill. Adm. Code 101 Subpart B and Section 5 of the Regulation of Phosphorus in Detergents Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 5 of the Act will apply.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

**Section 106.804 Initiation of Proceeding**

The petitioner must file the petition for authorization with the Clerk of the Board and must serve one copy upon the Agency.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

**Section 106.806 Petition Content Requirements**

The petition must contain the following information:

a) A written statement, signed by the petitioner or an authorized representative, concerning the cleaning agent containing excess phosphorus for which authorization is sought and outlining a description of the cleaning agent and its phosphorus content, the duration of, the reasons for, and the basis of the authorization sought, consistent with the burden of proof stated in Section 106.812 of this Part.
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b) The nature of the petitioner's operations;

c) Any other information that may be required by Section 5 of the Regulation of Phosphorus in Detergents Act.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.808 Response and Reply

a) Within 21 days after the filing of a petition, the Agency may file a response to any petition in which it has not joined as co-petitioner. The response must include the comments concerning potential Board action on the petition.

b) The petitioner may file a reply within 14 days after the service of any Agency response.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.810 Hearing

The Board will hold a public hearing in an authorization proceeding only if a hearing is requested by the petitioner, the Agency, or any other person within 14 days after the filing of any reply under Section 106.808(b). The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.812 Burden of Proof

The burden of proof is on the petitioner. The petitioner must demonstrate that:

a) There is no adequate substitute for that cleaning agent for which authorization is sought; or

b) Compliance with the requirements of Section 5 of the Regulation of Phosphorus in Detergents Act would otherwise be unreasonable or create a significant hardship on the user. [415 ILCS 92/5(e)]
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(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)
ILIINOIS ELECTRONIC RECORDING COMMISSION

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1) Heading of the Part: Illinois Electronic Recording Commission

2) Code Citation: 14 Ill. Adm. Code 1400

3) Section Numbers: Adopted Action:
   1400.10   New Section
   1400.20   New Section
   1400.30   New Section

4) Statutory Authority: 765 ILCS 33/5(h)

5) Effective Date of Rules: July 21, 2010

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

7) Does this rulemaking contain incorporations by reference? Yes

8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Department's Division of Driver's Services, and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: 34 Ill. Reg. 5588; April 16, 2010

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Difference between proposal and final version: Added an effective date of August 1, 2010, to Section 1400.30(n).

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: Pursuant to Public Act 95-472, this rulemaking establishes uniform standards for the electronic recording of property documents with County Recorders within the State of Illinois.

16) Information and questions regarding this rulemaking shall be directed to:
ILLINOIS ELECTRONIC RECORDING COMMISSION

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Jennifer Egizii
Office of the Secretary of State
Driver Services Department
2701 South Dirksen Parkway
Springfield, Illinois 62723

217/557-4462

The full text of the Adopted Rules begins on the next page:
NOTICE OF ADOPTED RULES

TITLE 14: COMMERCE
CHAPTER IV: ILLINOIS ELECTRONIC RECORDING COMMISSION

PART 1400
ILLINOIS ELECTRONIC RECORDING COMMISSION

Section 1400.10  Definitions
Section 1400.20  Incorporated and Referenced Materials
Section 1400.30  Electronic Recording

AUTHORITY: Implementing and authorized by Section 5 of the Uniform Real Property Electronic Recording Act [765 ILCS 33/5].


Section 1400.10  Definitions

For purposes of this Part, the following definitions shall apply:

"County Recorder" or "Recorder" – the county land records official, who is the County Recorder, County Clerk and Recorder or land records official designated by the County Board.

"Data Fields" – the discreet pieces of information contained in a document that are transcribed into the corresponding County Recorder's electronic document index. Examples are document type, consideration, grantee, grantor, legal description, street address, city, state and zip code.

"Document Rejection" – the act of the County Recorder refusing to accept a document for recording, based on the submitter having not met some statutory or county requirement.

"Document Submission" – the act of submitting a document to the County Recorder for recording.

"Document Type Definition" or "DTD" – a document created using the Standard Generalized Markup Language (SGML) that defines a unique markup language
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(such as XML or XHTML). A DTD includes a list of tags, attributes and rules of usage.

"Electronic Acceptance" – the act of the County Recorder accepting a submitted document for recording through electronic means.

"Electronic Delivery Process" – the process that begins with preparing the document for transmission to the Recorder, the transmission and reception at the County Recorder's office.

"Electronic Document" – a document that is received by a County Recorder, in an electronic form, meeting the document standards of this Part and the county.


"Electronic Recording" or "E-recording" – the process of a County Recorder accepting, recording and indexing a document in an electronic form instead of by paper submission.

"Electronic Recording Submission" – the act of submitting a document to the County Recorder via electronic means.

"Electronic Recording System" – the computer program, and the hardware components that host it, that receives electronic documents for recording.

"Electronic Signature" – an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document. Electronic signatures must meet any statutory requirement of the State of Illinois for such signatures.

"E-Recording Submitter" – the party sending a document to the County Recorder using electronic means. The submitter may be the same entity as the E-Recording Submitting Vendor.

"E-Recording Submitting Vendor" – the entity that offers the service to an E-Recording Submitter, providing the software and/or electronic system to transmit a document, via electronic means, to the County Recorder.
"Formatting" – the appearance attributes of the document.

"Index" – the electronic catalog of information about documents in the Recorder's office.

"Land Records System" – the computer software or electronic system used by a Recorder's office to index and store both document images and searchable attributes that identify the document.

"Land Records System Vendor" – an entity outside the Recorder's office that programs or produces the Land Records System for the Recorder. This entity can be a state, county or private enterprise.

"Metadata" – commonly described as "data about data". Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource.

"Open Architecture" – the attributes of the reception software that are public and discernable by the submitting software vendor.

"Paper Submissions" – the documents submitted to the County Recorder printed on paper or other physical media.

"Portable Document Format" or "PDF" – a file format created by Adobe Systems, Inc. that uses the PostScript printer description language to create documents. PDF files capture the appearance of the original document, can store both text and images, are difficult to modify and can be rendered with free, cross-platform viewer software.

"Portal" – a website considered as an entry point to other websites, often by being or providing access to useful content and/or functioning as a gateway to other web locations.

"PRIA" – the Property Records Industry Association.

"Receiving Party" – The County Recorder's office that receives the e-recording document for recording and the entity that receives the electronic document as recorded or rejected from the County Recorder.
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"Reception" – the receiving of the document in the County Recorder's office.

"Recording Fee" – any fee imposed by statute or county ordinance, charged by the County Recorder for recording a document.

"Submitter" or "Submitting Party" – the entity that originates the e-recording document or delivers it to the Transmitting Party for transmission to the County Recorder.

"Tagged Image File Format" or "TIFF" – a non-proprietary, defined format for storing images.

"Transfer Declaration" or "Form PTAX-203" – the sales disclosure document required by Illinois statute to accompany the recording of a deed.

"Transfer Tax" – a tax imposed on the privilege of transferring title to real estate located in Illinois, on the privilege of transferring a beneficial interest in real property located in Illinois, and on the privilege of transferring a controlling interest in a real estate entity owning property in Illinois, pursuant to Section 31-10 of the Real Estate Transfer Tax Law.

"Transmitting Party" – the entity that transmits the document to the County Recorder. This can be the submitter, but is usually a service that specializes in transmitting electronic documents to a County Recorder.

Section 1400.20 Incorporated and Referenced Materials

a) Incorporations by Reference
The following materials are incorporated by reference in this Part:

Property Records Industry Association (PRIA)
2501 Aerial Center Parkway, Ste. 103
Morrisville NC 27560
Telephone: 919.459.2081; FAX: 919.459.2075

eRecording XML Implementation Guide for Version 2.4.1 DTD,
Revision 2 (3/05/07);
b) All incorporations by reference listed in this Section are as of the date specified and include no later amendments or editions.

c) Referenced Statutes

1) Uniform Real Property Electronic Recording Act [765 ILCS 33].

2) Real Estate Transfer Tax Law [35 ILCS 200].

3) Counties Code [55 ILCS 5].

4) Local Records Act [50 ILCS 205].

5) Electronic Commerce Security Act [5 ILCS 175].

6) Illinois Notary Public Act [5 ILCS 312].

7) Electronic Signatures in Global and National Commerce Act (15 USC 96).

Section 1400.30 Electronic Recording

a) Electronic recording is a delivery method for submitting documents to the County Recorder. This Part applies to the handling of the document in that electronic delivery process, its security and storage of the image and indexing information by the Recorder. This Part does not override any Illinois statute.

b) For electronic document submission, reception, formatting and data fields, the State of Illinois adopts PRIA standard 2.4.1, which is comprised of the following: Document Version 2.4.1 DTD, Notary Version 2.4.1, PRIA Request Version 2.4.2, and PRIA Response Version 2.4.2.

c) The County Recorder may determine which of the three types of e-recording the county will accept, model one, two or three, as described in PRIA URPERA Enactment and eRecording Standards Implementation Guide, sections 2.3.1, 2.3.2 and 2.3.3.
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1) If a County Recorder utilizes model three to accept e-recording, the Recorder must also accept documents filed in accordance with models one and two.

2) If a County Recorder utilizes model two to accept e-recording, the Recorder must also accept documents filed in accordance with model one.

d) Each county that accepts e-recording shall provide open architecture for reception of electronic documents and shall issue such technical specifications as are necessary for an e-recording submitter to conform document transmissions to the county land indexing and/or e-recording system software. The technical specifications shall be published on the County Recorder's website or made available on request. If the technical specifications for acceptance of a document have been developed by a land records system vendor, those specifications shall be provided to the County Recorder upon request to meet these provisions. The electronic document submissions of any entity meeting the reception standards of the county shall be accepted for e-recording.

e) Application to become an e-recording submitting vendor, with any county, shall be directed to the County Recorder via an application that is published on the Recorder's website or made available at no charge upon request.

f) Fees for documents e-recorded shall be the same as for paper documents, in conformance with Section 3-5018 of the Counties Code, to the extent applicable to documents submitted electronically. No additional fee for e-recording access to the county, or fee per document, shall be charged by the county or any county land records system vendor, provider, programmer or computer system host. This subsection shall not be interpreted to apply to the services or fees of the e-recording submitting vendor.

g) No county shall be required to enter into any mandatory portal requirement. Individual counties may enter into portal agreements with the provider of their choice and with other counties, at the discretion of the County Recorder. Any web portal used shall meet all the requirements of this Part for each participating individual county.

h) Each County Recorder shall establish and publish on his or her website or by hard copy, available by request, business rules for electronic recording in the county. Business rules shall include, but are not limited to, the following topics:
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1) defined technical specifications, which may be incorporated by reference to sources cited in this Part;

2) document and indexing specifications;

3) hours during which electronic submissions will be accepted and processing schedules that affect order of acceptance;

4) payment options for all recording fees and applicable transfer taxes;

5) terms under which an entity may submit documents for e-recording and specified reasons for which a County Recorder may terminate submissions;

6) document rejection rights and procedure;

7) adequate notice before changes to business or technical rules takes effect; and

8) identification of the venue of any litigation arising between the parties.

i) All electronic documents shall be secured in such a way that both the transmitting and receiving parties are assured of each other's identity and that no unauthorized party can view or alter the electronic document during transmission, processing and delivery. If the electronic document has been subject to those security measures identified in Chapter 6 of the PRIA eRecording XML Implementation Guide For Version 2.4.1, Revision 2 throughout the entire electronic submission, the security obligations under PRIA standards have been satisfied.

j) County Recorders are only required to record documents containing electronic signatures and notary acknowledgements that they have the technology to support. Recorders have no responsibility to authenticate electronic signatures or notary acknowledgement stamps embedded within the body of the document. Any electronic signature or notarization submitted to a County Recorder shall comply with the Electronic Commerce Security Act and the Electronic Signatures in Global and National Commerce Act insofar as the Illinois Uniform Real Property Electronic Recording Act does not supercede those laws, the Illinois Notary
ILLINOIS ELECTRONIC RECORDING COMMISSION

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Public Act and any other laws governing that signature or notarization, as applicable.

k) If necessary, images of e-recordings will be converted to, and preserved under, the electronic file format established by the county. If the county has no previously established file format, images will be stored as either TIFF or PDF files, along with their associated metadata. Any document submitted under model three of PRIA 2.4.1 DTD submissions shall be converted to TIFF or PDF for archiving.

l) The County Recorder shall only accept e-recording submissions during open office hours approved by the County Board in conformance with Section 3-5017 of the Counties Code. The Recorder shall publish criteria on his or her website, or make the criteria available by request, setting forth provisions to preserve the time of recording in the order of reception with paper documents, in conformance with Section 3-5010 of the Counties Code.

m) County Recorders shall retain all records of e-submissions in accordance with the storage of paper submissions described in Section 3-5010 of the Counties Code and Section 1-15 of the Local Records Act.

n) Effective August 1, 2010, contracts entered into between any Illinois county and any software provider hosting or programming a county land records system or any contract and agreement affecting electronic recording of documents in a County Recorder's office shall comply with this Part.
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

1) **Heading of the Part:** Standards for All Illinois Teachers

2) **Code Citation:** 23 Ill. Adm. Code 24

3) **Section Numbers:**

   - 24.10 Amendment
   - 24.100 Amendment
   - 24.110 Amendment
   - 24.120 Amendment
   - 24.130 New Section

4) **Statutory Authority:** 105 ILCS 5/Art. 21 and 2-3.6

5) **Effective Date of Amendments:** July 26, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** April 9, 2010; 34 Ill. Reg. 4970

10) **Has JCAR issued a Statement of Objection to this rulemaking?** No

11) **Differences between proposal and final version:**

   The year in which the new standards and testing take effect has been changed to 2013 (see Table of Contents, section headings and section introductions).

   The introductions to Sections 24.100, 24.110 and 24.110 include the following statement: "Further limitations on institutions submitting applications for approval of new teacher preparation programs or courses of study are delineated in Section 24.130 of this Part".

   The introduction to Section 24.130 includes the following statement: "An application for approval of a new preparation program or course of study submitted on or after November 1, 2010, shall provide evidence of congruence with the standards identified in this Section".
STATE BOARD OF EDUCATION

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In Section 24.130(a)(1)(D), the date of the Federal Register citation was changed to "2006".

Throughout Section 24.130, numerous wording changes have been made to simplify and clarify the standards without making substantive changes. Specific subsections involved include (a)(2)(E) and (F); (d)(2)(E) and (F); (e)(1)(C) and (D); (e)(2)(H); (h)(1)(C) and (H); (h)(2)(A), (F), and (G); and (i)(1)(F), (G) and (H).

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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

14) Are there any other proposed rulemakings pending on this Part? No

15) Summary and Purpose of Amendments: Part 24 was first promulgated in 2002 and is now outdated in several respects. In particular, the amendments better address the specific needs of individualized instruction (special education, English language learners, and gifted) and reflect current research and best practices. The revisions also make the standards more relevant to practicing teachers as well as students currently enrolled in teacher preparation programs.

The amendments further incorporate literacy and technology standards for prekindergarten through grade 12 into the Illinois Professional Teaching Standards by placing the salient standards and indicators of each into one set of standards. Previously, Sections 24.110 and 24.120 addressed those areas, and both sections can be repealed once the new standards take effect on July 1, 2013. The following examples demonstrate the new standards’ incorporation of relevant literacy and technology standards.

- Indicators relating to technology standards can be found in all of the proposed Illinois Professional Teaching Standards, with the exception of "Collaborative Relationships" (Section 24.130(h)). In addition, standards relative to the use of assistive technology are found in all but "Collaborative Relationships" and "Professionalism, Leadership, and Advocacy" (Section 24.130(i)).
- Indicators related to literacy and language arts academic standards have been placed in "Teaching Diverse Learners" (Section 24.130(a)), "Content Area and Pedagogical Knowledge" (Section 24.130(b)), and “Reading, Writing, and Oral Communication” (Section 24.130(f)).
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• Indicators related to children with special needs (e.g., special education, bilingual education) are stressed in all standards and are addressed more specifically in "Teaching Diverse Learners", "Planning for Differentiated Instruction" (Section 24.130(c)), and "Instructional Delivery" (Section 24.130(e)).

As noted above, the new standards will take effect July 1, 2013, giving postsecondary institutions with approved teacher preparation programs time to adjust their curriculum and instruction accordingly. The assessment of professional teaching (APT) based on the new standards will be the only version of that assessment administered starting September 1, 2013 (although candidates completing programs aligned to the previous standards will have through August 31, 2014, to take the APT aligned to those).

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

Patrick Murphy, Division Administrator
Illinois State Board of Education
100 North First Street, E-310
Springfield, Illinois 62777

217/782-2948

The full text of the Adopted Amendments begins on the next page:
## Section 24.10  Purpose

This Part establishes certain standards that shall apply to the issuance of all Illinois initial teaching certificates beginning July 1, 2003. The standards set forth in this Part shall apply both to candidates for certification and to the programs that prepare them. That is:

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<td>a)</td>
<td><strong>beginning July 1, 2003</strong>, approval of any preparation program or course of study in any teaching field pursuant to the State Board's rules for Certification (23 Ill. Adm. Code 25, Subpart C) shall be based on the congruence of that program's or course's content with the applicable standards identified in this Part; and</td>
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<td>b)</td>
<td><strong>beginning on October 1, 2003</strong>, the examination(s) required for issuance of an initial teaching certificate shall be based on the applicable standards set forth in this Part.</td>
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(Source: Amended at 34 Ill. Reg. 11505, effective July 26, 2010)

### Section 24.100  The Illinois Professional Teaching Standards **Through June 30, 2013**

### Section 24.110  Language Arts Standards for All Illinois Teachers **Through June 30, 2013**

### Section 24.120  Technology Standards for All Illinois Teachers **Through June 30, 2013**

### Section 24.130  The Illinois Professional Teaching Standards **Beginning July 1, 2013**

**AUTHORITY:** Implementing Article 21 and authorized by Section 2-3.6 of the School Code [105 ILCS 5/Art. 21 and 2-3.6].

**SOURCE:** Adopted at 26 Ill. Reg. 11847, effective July 18, 2002; amended at 34 Ill. Reg. 11505, effective July 26, 2010.
Beginning July 1, 2013, the provisions of this Section are replaced by Section 24.130 of this Part as the minimum requirements both for the approval of any teacher preparation program or course of study in any teaching field pursuant to the State Board's rules for Certification (23 Ill. Adm. Code 25.Subpart C) and the basis of the examinations required for issuance of an initial teaching certificate. Further limitations on institutions submitting applications for approval of new teacher preparation programs or courses of study are described in Section 24.130 of this Part.

a) Content Knowledge – The competent teacher understands the central concepts, methods of inquiry, and structures of disciplines and creates learning experiences that make the content meaningful to all students.

1) Knowledge Indicators – The competent teacher:

   A) Understands major concepts, assumptions, debates, principles, and theories that are central to the discipline(s) in which certification is sought.

   B) Understands the processes of inquiry central to the discipline.

   C) Understands how students' conceptual frameworks and their misconceptions for an area of knowledge can influence their learning.

   D) Understands the relationship of knowledge within the discipline to other content areas and to life and career applications.

   E) Understands how a student's disability affects processes of inquiry and influences patterns of learning.

2) Performance Indicators – The competent teacher:

   A) Evaluates teaching resources and curriculum materials for their comprehensiveness, accuracy, and usefulness for representing particular ideas and concepts.

   B) Uses differing viewpoints, theories, "ways of knowing" and methods of inquiry in teaching subject matter concepts.
C) Engages students in generating and testing knowledge according to the process of inquiry and standards of evidence of the discipline.

D) Designs learning experiences to promote student skills in the use of technologies appropriate to the discipline.

E) Anticipates and adjusts for common misunderstandings of the disciplines that impede learning.

F) Uses a variety of explanations and multiple representations of concepts that capture key ideas to help students develop conceptual understanding.

G) Facilitates learning experiences that make connections to other content areas and to life and career experiences.

H) Designs learning experiences and utilizes adaptive devices/technology to provide access to general curricular content to individuals with disabilities.

b) Human Development and Learning – The competent teacher understands how individuals grow, develop, and learn and provides learning opportunities that support the intellectual, social, and personal development of all students.

1) Knowledge Indicators – The competent teacher:

A) Understands how students construct knowledge, acquire skills, and develop habits of mind.

B) Understands that students' physical, social, emotional, ethical, and cognitive development influences learning.

C) Understands human development, learning theory, neural science, and the ranges of individual variation within each domain.

D) Understands that differences in approaches to learning and performance interact with development.

E) Understands how to include student development factors when
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making instructional decisions.

F) Knows the impact of cognitive, emotional, physical, and sensory disabilities on learning and communication processes.

2) Performance Indicators – The competent teacher:

A) Analyzes individual and group performance in order to design instruction that meets learners’ current needs in the cognitive, social, emotional, ethical, and physical domains at the appropriate level of development.

B) Stimulates student reflection on prior knowledge and links new ideas to already familiar ideas and experiences.

C) Introduces concepts and principles at different levels of complexity so that they are meaningful to students at varying levels of development and to students with diverse learning needs.

c) Diversity – The competent teacher understands how students differ in their approaches to learning and creates instructional opportunities that are adapted to diverse learners.

1) Knowledge Indicators – The competent teacher:

A) Understands the areas of exceptionality in learning as defined in the Individuals with Disabilities Education Act (IDEA) and the State Board's rules for Special Education (23 Ill. Adm. Code 226).

B) Understands the process of second language acquisition and strategies to support the learning of students whose first language is not English.

C) Understands how students' learning is influenced by individual experiences, talents, and prior learning, as well as language, culture, family, and community values.

D) Understands and identifies differences in approaches to learning and performance, including different learning styles, multiple
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intelligences, and performance modes.

E) Understands cultural and community diversity through a well-grounded framework and understands how to learn about and incorporate students' experiences, cultures, and community resources into instruction.

F) Understands personal cultural perspectives and biases and their effects on one's teaching.

2) Performance Indicators – The competent teacher:

A) Facilitates a learning community in which individual differences are respected.

B) Makes appropriate provisions (in terms of time and circumstances for work, tasks assigned, communication, and response modes) for individual students who have particular learning differences or needs.

C) Uses information about students' families, cultures, and communities as a basis for connecting instruction to students' experiences.

D) Uses cultural diversity and individual student experiences to enrich instruction.

E) Uses a wide range of instructional strategies and technologies to meet and enhance diverse student needs.

F) Identifies and designs instruction appropriate to students' stages of development, learning styles, strengths and needs.

G) Identifies when and how to develop and implement strategies and interventions within the classroom and how to access appropriate services or resources to assist students with exceptional learning needs.

H) Demonstrates positive regard for individual students and their
families regardless of culture, religion, gender, sexual orientation, and varying abilities.

d) Planning for Instruction – The competent teacher understands instructional planning and designs instruction based upon knowledge of the discipline, students, the community, and curriculum goals.

1) Knowledge Indicators – The competent teacher:

   A) Understands the Illinois Learning Standards, curriculum development, content, learning theory, and student development and knows how to incorporate this knowledge in planning instruction.

   B) Understands how to develop short- and long-range plans consistent with curriculum goals, learner diversity, and learning theory.

   C) Understands how to take the contextual considerations of instructional materials, individual students' interests, and career needs into account in planning instruction that creates an effective bridge between students' experiences and career and educational goals.

   D) Understands when and how to adjust plans based on students' responses and other contingencies.

   E) Understands how to integrate technology into classroom instruction.

   F) Understands how to review and evaluate educational technologies to determine instructional value.

   G) Understands how to use various technological tools to access and manage information.

   H) Understands the uses of technology to address students' needs.

2) Performance Indicators – The competent teacher:
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A) Establishes expectations for students' learning.

B) Applies principles of scope and sequence when planning curriculum and instruction.

C) Creates short-range and long-term plans to achieve the expectations for students' learning.

D) Creates and selects learning materials and learning experiences appropriate for the discipline and curriculum goals, relevant to the students, and based on students' prior knowledge and principles of effective instruction.

E) Creates multiple learning activities that allow for variation in students' learning styles and performance modes.

F) Incorporates experiences into instructional practices that relate to the students' current life experiences and to future career and work experiences.

G) Creates approaches to learning that are interdisciplinary and that integrate multiple content areas.

H) Develops plans based on students' responses and provides for different pathways based on students' needs.

I) Uses teaching resources and materials which have been evaluated for accuracy and usefulness.

J) Accesses and uses a wide range of information and instructional technologies to enhance students' learning.

K) Uses individualized education program (IEP) goals and objectives to plan instruction for students with disabilities.

e) Learning Environment – The competent teacher uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.
1) Knowledge Indicators – The competent teacher:

A) Understands principles of and strategies for effective classroom management.

B) Understands how individuals influence groups and how groups function in society.

C) Understands how to help students work cooperatively and productively in groups.

D) Understands factors that influence motivation and engagement and how to help students become self-motivated.

E) Knows procedures for inventoring the instructional environment to determine when and how best to meet a student's individual needs.

F) Knows applicable statutes, rules and regulations, procedural safeguards, and ethical considerations regarding planning and implementing behavioral change programs for individuals with disabilities.

G) Knows strategies for intervening in situations to prevent crises from developing or escalating.

H) Knows environmental arrangements that promote positive behavior and learning for students with diverse learning characteristics.

2) Performance Indicators – The competent teacher:

A) Maintains proper classroom decorum.

B) Maximizes the amount of class time spent in learning by creating expectations and processes for communication and behavior along with a physical setting conducive to achieving classroom goals.

C) Uses strategies to create a smoothly functioning learning
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community in which students assume responsibility for themselves and one another, participate in decision-making, work collaboratively and independently, use appropriate technology, and engage in purposeful learning activities.

D) Analyzes the classroom environment and makes decisions to enhance social relationships, students' motivation and engagement in productive work through mutual respect, cooperation, and support for one another.

E) Organizes, allocates, and manages time, materials, and physical space to provide active and equitable engagement of students in productive tasks.

F) Engages students in and monitors individual and group learning activities that help them develop the motivation to achieve.

G) Demonstrates a variety of effective behavior management techniques appropriate to the needs of all students, including those with disabilities (including implementing the least intrusive intervention consistent with the needs of these students).

H) Modifies the learning environment (including the schedule and physical arrangement) to facilitate appropriate behaviors and learning for students with diverse learning characteristics.

I) Uses a variety of approaches to promote social interaction between students with disabilities and students without disabilities.

J) Uses effective methods for teaching social skill development in all students.

f) Instructional Delivery – The competent teacher understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem-solving, and performance skills.

1) Knowledge Indicators – The competent teacher:

A) Understands the cognitive processes associated with various kinds
of learning and how these processes can be stimulated.

B) Understands principles and techniques, along with advantages and limitations, associated with various instructional strategies.

C) Knows how to enhance learning through the use of a wide variety of materials as well as human and technological resources.

D) Understands the disciplinary and interdisciplinary approaches to learning and how they relate to life and career experiences.

E) Knows techniques for modifying instructional methods, materials, and the environment to facilitate learning for students with disabilities and/or diverse learning characteristics.

2) Performance Indicators – The competent teacher:

A) Evaluates how to achieve learning goals, choosing alternative teaching strategies and materials to achieve different instructional purposes and to meet students' needs.

B) Uses multiple teaching and learning strategies to engage students in active learning opportunities that promote the development of critical thinking, problem-solving, and performance capabilities and that help students assume responsibility for identifying and using learning resources.

C) Monitors and adjusts strategies in response to learners' feedback.

D) Varies his or her role in the instructional process as instructor, facilitator, coach, or audience in relation to the content and purposes of instruction and the needs of students.

E) Develops a variety of clear, accurate presentations and representations of concepts, using alternative explanations to assist students' understanding and presenting diverse perspectives to encourage critical thinking.

F) Uses a wide range of instructional technologies to enhance
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students' learning.

G) Develops curriculum that demonstrates an interconnection between subject areas that will reflect life and career experiences.

H) Uses strategies and techniques for facilitating meaningful inclusion of individuals with disabilities.

I) Uses technology appropriately to accomplish instructional objectives.

J) Adapts the general curriculum and uses instructional strategies and materials according to characteristics of the learner.

K) Implements and evaluates individual learning objectives.

g) Communication – The competent teacher uses knowledge of effective written, verbal, non-verbal, and visual communication techniques to foster active inquiry, collaboration, and supportive interaction in the classroom.

1) Knowledge Indicators – The competent teacher:

   A) Understands communication theory, language development, and the role of language in learning.

   B) Understands how cultural and gender differences can affect communication in the classroom.

   C) Understands the social, intellectual, and political implications of language use and how they influence meaning.

   D) Understands the importance of audience and purpose when selecting ways to communicate ideas.

2) Performance Indicators – The competent teacher:

   A) Models accurate, effective communication when conveying ideas and information and when asking questions and responding to students.
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B) Uses effective questioning techniques and stimulates discussion in different ways for specific instructional purposes.

C) Creates varied opportunities for all students to use effective written, verbal, non-verbal, and visual communication.

D) Communicates with and challenges students in a supportive manner and provides students with constructive feedback.

E) Uses a variety of communication modes to effectively communicate with a diverse student population.

F) Practices effective listening, conflict resolution, and group-facilitation skills as a team member.

G) Communicates using a variety of communication tools to enrich learning opportunities.

h) Assessment – The competent teacher understands various formal and informal assessment strategies and uses them to support the continuous development of all students.

1) Knowledge Indicators – The competent teacher:

A) Understands assessment as a means of evaluating how students learn, what they know and are able to do in meeting the Illinois Learning Standards, and what kinds of experiences will support their further growth and development.

B) Understands the purposes, characteristics, and limitations of different kinds of assessments.

C) Understands measurement theory and assessment-related issues such as validity, reliability, bias, and scoring.

D) Understands how to use the results of assessment to reflect on and modify teaching.
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E) Understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning and instruction.

F) Knows legal provisions, regulations, and guidelines regarding assessment (and inclusion in statewide assessments) of individuals with disabilities.

G) Knows methods for monitoring progress of individuals with disabilities.

H) Knows strategies that consider the influence of diversity and disability on assessment, eligibility, programming, and placement of students with disabilities.

2) Performance Indicators – The competent teacher:

A) Uses assessment results to diagnose students' learning needs, align and modify instruction, and design teaching strategies.

B) Appropriately uses a variety of formal and informal assessments to evaluate the understanding, progress, and performance of the individual student and the class as a whole.

C) Involves students in self-assessment activities to help them become aware of their strengths and needs and encourages them to establish goals for learning.

D) Maintains useful and accurate records of students' work and performance and communicates students' progress knowledgeably and responsibly to students, parents, and colleagues.

E) Uses appropriate technologies to monitor and assess students' progress.

F) Collaborates with families and other professionals involved in the assessment of individuals with disabilities.

G) Uses various types of assessment procedures appropriately,
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including the adaptation of procedures for individual students in specific contexts.

H) Uses technology appropriately in conducting assessments and interpreting results.

I) Uses assessment strategies and devices which are nondiscriminatory and take into consideration the impact of disabilities, methods of communication, cultural background, and primary language on measuring knowledge and performance of students.

i) Collaborative Relationships – The competent teacher understands the role of the community in education and develops and maintains collaborative relationships with colleagues, parents/guardians, and the community to support students' learning and well-being.

1) Knowledge Indicators – The competent teacher:

A) Understands schools as organizations within the larger community context.

B) Understands the benefits, barriers, and techniques involved in parent/family relationships.

C) Understands school- and work-based learning environments and the need for collaboration with business organizations in the community.

D) Understands the collaborative process.

E) Understands collaborative skills which are necessary to carry out the collaborative process.

F) Understands concerns of parents of individuals with disabilities and knows appropriate strategies to collaborate with parents in addressing these concerns.

G) Understands roles of individuals with disabilities, parents, teachers,
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and other school and community personnel in planning individualized education programs for students with disabilities.

2) Performance Indicators – The competent teacher:

   A) Initiates collaboration with others and creates situations where collaboration with others will enhance students' learning.

   B) Works with colleagues to develop an effective learning climate within the school.

   C) Participates in collaborative decision-making and problem-solving with other professionals to achieve success for students.

   D) Develops relationships with parents and guardians to acquire an understanding of the students' lives outside of the school in a professional manner that is fair and equitable.

   E) Works effectively with parents/guardians and other members of the community from diverse home and community situations and seeks to develop cooperative partnerships in order to promote students' learning and well-being.

   F) Identifies and uses community resources to enhance students' learning and to provide opportunities for students to explore career opportunities.

   G) Collaborates in the development of comprehensive individualized education programs for students with disabilities.

   H) Coordinates and/or collaborates in directing the activities of a classroom para-educator, volunteer, or peer tutor.

   I) Collaborates with the student and family in setting instructional goals and charting progress of students with disabilities.

   J) Communicates with team members about characteristics and needs of individuals with specific disabilities.
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K) Implements and monitors individual students' programs, working in collaboration with team members.

L) Demonstrates the ability to co-teach and co-plan.

j) Reflection and Professional Growth – The competent teacher is a reflective practitioner who continually evaluates how choices and actions affect students, parents, and other professionals in the learning community and actively seeks opportunities to grow professionally.

1) Knowledge Indicators – The competent teacher:

A) Understands that reflection is an integral part of professional growth and improvement of instruction.

B) Understands methods of inquiry that provide for a variety of self-assessment and problem-solving strategies for reflecting on practice.

C) Understands major areas of research on the learning process and resources that are available for professional development.

D) Understands teachers' attitudes and behaviors that positively or negatively influence behavior of individuals with disabilities.

2) Performance Indicators – The competent teacher:

A) Uses classroom observation, information about students, pedagogical knowledge, and research as sources for active reflection, evaluation, and revision of practice.

B) Collaborates with other professionals as resources for problem-solving, generating new ideas, sharing experiences, and seeking and giving feedback.

C) Participates in professional dialogue and continuous learning to support his/her own development as a learner and a teacher.

D) Actively seeks and collaboratively shares a variety of instructional
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resources with colleagues.

E) Assesses his or her own needs for knowledge and skills related to teaching students with disabilities and seeks assistance and resources.

k) Professional Conduct and Leadership – The competent teacher understands education as a profession, maintains standards of professional conduct, and provides leadership to improve students' learning and well-being.

1) Knowledge Indicators – The competent teacher:

A) Understands the unique characteristics of education as a profession.

B) Understands how school systems are organized and operate.

C) Understands school policies and procedures.

D) Understands legal issues in education.

E) Understands the importance of active participation and leadership in professional organizations.

F) Is familiar with the rights of students with disabilities.

G) Knows the roles and responsibilities of teachers, parents, students, and other professionals related to special education.

H) Knows identification and referral procedures for students with disabilities.

2) Performance Indicators – The competent teacher:

A) Contributes knowledge and expertise about teaching and learning to the profession.

B) Follows codes of professional conduct and exhibits knowledge and expectations of current legal directives.
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C) Follows school policy and procedures, respecting the boundaries of professional responsibilities, when working with students, colleagues, and families.

D) Initiates and develops educational projects and programs.

E) Actively participates in or leads in such activities as curriculum development, staff development, and student organizations.

F) Participates, as appropriate, in policy design and development at the local level, with professional organizations, and/or with community organizations.

G) Demonstrates commitment to developing the highest educational and quality-of-life potential of individuals with disabilities.

H) Demonstrates positive regard for individual students and their families regardless of culture, religion, gender, and sexual orientation.

I) Promotes and maintains a high level of integrity in the practice of the profession.

J) Complies with local, State, and federal monitoring and evaluation requirements related to students with disabilities.

K) Complies with local, State, and federal regulations and policies related to students with disabilities.

L) Uses a variety of instructional and intervention strategies prior to initiating a referral of a student for special education.

(Source: Amended at 34 Ill. Reg. 11505, effective July 26, 2010)

Section 24.110 Language Arts Standards for All Illinois Teachers Through June 30, 2013

Beginning July 1, 2013, the provisions of this Section are replaced by Section 24.130 of this Part as the minimum requirements both for the approval of any teacher preparation program or course
of study in any teaching field pursuant to the State Board's rules for Certification (23 Ill. Adm. Code 25.Subpart C) and the basis of the examinations required for issuance of an initial teaching certificate. Further limitations on institutions submitting applications for approval of new teacher preparation programs or courses of study are described in Section 24.130 of this Part.

a) All teachers must know a broad range of literacy techniques and strategies for every aspect of communication and must be able to develop each student's ability to read, write, speak, and listen to his or her potential within the demands of the discipline.

1) Knowledge Indicators – The competent teacher:

   A) Understands and can articulate the needs for literacy development in general and in specific disciplines or at specific grade levels.
   
   B) Understands effective literacy techniques to activate prior student knowledge and build schema to enhance comprehension of "text".
   
   C) Knows strategies and techniques for teaching communication skills to those students whose first language is not English.

2) Performance Indicators – The competent teacher:

   A) Practices effectively the language processes of reading, writing, and oral communication in the daily classroom exchange between student and teacher, between student and student, between teacher and "text," and between student and "text".
   
   B) Practices effective literacy techniques to make reading purposeful and meaningful.
   
   C) Practices effective questioning and discussion techniques to extend content knowledge acquired from "text".
   
   D) Uses a variety of "text" and research resources with students in an attempt to enhance students' learning from reading, learning from writing, and learning from oral communication.

b) All teachers should model effective reading, writing, speaking, and listening skills
during their direct and indirect instructional activities. The most important communicator in the classroom is the teacher, who should model English language arts skills.

1) Knowledge Indicators – The competent teacher:
   A) Knows and understands the rules of English grammar, spelling, punctuation, capitalization, and syntax for both written and oral contexts.
   B) Understands how to communicate ideas in writing to accomplish a variety of purposes.

2) Performance Indicators – The competent teacher:
   A) Models the rules of English grammar, spelling, punctuation, capitalization, and syntax in both written and oral contexts.
   B) Reads, understands, and clearly conveys ideas from texts or other supplementary materials.
   C) Writes and speaks in a well-organized and coherent manner that adapts to the individual needs of readers/listeners.
   D) Expresses ideas orally with explanations, examples, and support in a clear, succinct style.
   E) Helps students understand a variety of modes of writing (persuasive, descriptive, informative, and narrative).
   F) Listens well.

c) All teachers should give constructive instruction and feedback to students in both written and oral contexts while being aware of diverse learners' needs. Teachers should effectively provide a variety of instructional strategies, constructive feedback, criticism, and improvement strategies.

1) Knowledge Indicators – The competent teacher:
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A) Understands how to analyze an audience to determine culturally appropriate communication strategies to share ideas effectively in both written and oral formats with students and their families, other faculty and administrators, and the community and business in general.

B) Understands how to use diverse instructional strategies and assessments that include an appropriate balance of lecture, discussion, activity, and written and oral work.

2) Performance Indicators – The competent teacher:

A) Analyzes content materials to determine appropriate strategies and techniques to create successful learning through reading, writing, speaking, and listening.

B) Assists students whose communication skills may be impeded by learning, language, and/or cultural differences, especially those whose first language is not English.

C) Conducts effective classroom discussions by managing groups, asking questions, eliciting and probing responses, and summarizing for comprehension.

D) Uses a variety of media to enhance and supplement instruction.

E) Uses multi-disciplinary instructional approaches.

(Source: Amended at 34 Ill. Reg. 11505, effective July 26, 2010)

Section 24.120 Technology Standards for All Illinois Teachers Through June 30, 2013

Beginning July 1, 2013, the provisions of this Section are replaced by Section 24.130 of this Part as the minimum requirements both for the approval of any teacher preparation program or course of study in any teaching field pursuant to the State Board's rules for Certification (23 Ill. Adm. Code 25.Subpart C) and the basis of the examinations required for issuance of an initial teaching certificate. Further limitations on institutions submitting applications for approval of new teacher preparation programs or courses of study are described in Section 24.130 of this Part.
a) The competent teacher will have, and continually develop, the knowledge and skills in learning technologies to be able to appropriately and responsibly use tools, resources, processes, and systems to retrieve, assess, and evaluate information from various media. The competent teacher will use that knowledge, along with the necessary skills and information, to assist Illinois learners in solving problems, in communicating clearly, in making informed decisions, and in constructing new knowledge, products, or systems in diverse, engaged learning environments.

b) Basic Computer/Technology Operations and Concepts – The competent teacher will use computer systems to run software; to access, generate, and manipulate data; and to publish results. He or she will also evaluate performance of hardware and software components of computer systems and apply basic trouble-shooting strategies as needed.

1) Knowledge Indicator – The competent teacher understands how to run computer software; access, generate, and manipulate data; and publish results.

2) Performance Indicators – The competent teacher:

   A) Operates a multi-media computer system with related peripheral devices to successfully install and use a variety of software packages.

   B) Uses appropriate terminology related to computers and technology in written and oral communications.

   C) Describes and implements basic trouble-shooting techniques for multi-media computer systems with related peripheral devices.

   D) Uses imaging devices such as scanners, digital cameras, and/or video cameras with computer systems and software.

   E) Demonstrates knowledge of uses of computers and technology in education, business and industry, and society.

cb) Personal and Professional Use of Technology – The competent teacher will apply tools for enhancing personal professional growth and productivity; will use
technology in communicating, collaborating, conducting research, and solving problems and will promote equitable, ethical, and legal use of computer/technology resources.

1) Knowledge Indicator – The competent teacher understands how to use technology in communicating, collaborating, conducting research, and solving problems.

2) Performance Indicators – The competent teacher:

   A) Identifies computer and other related technology resources for facilitating life-long learning and emerging roles of the learner and the educator in engaged, collaborative learning environments.

   B) Uses computers and other learning technologies to support problem-solving, data collection, information management, communications, presentations, and decision-making.

   C) Uses productivity tools for word processing, database management, and spreadsheet applications, and basic multi-media presentations.

   D) Uses computer-based technologies including telecommunications to access information and enhance personal and professional productivity.

   E) Demonstrates awareness of resources for adaptive/assistive devices for students with special needs.

   F) Demonstrates knowledge of ethical and legal issues concerning use of computers and technology.

   G) Adheres to copyright laws and guidelines in the access and use of information from various technologies.

   H) Demonstrates knowledge of broadcast instruction, audio/video conferencing, and other distant learning applications.

   I) Ensures policies and practices are in place to provide equal access
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to media and technology resources for students regardless of race, ethnicity, gender, religion, or socio-economic status.

d) Application of Technology in Instruction – The competent teacher will apply learning technologies that support instruction in his or her grade level and subject areas. He or she must plan and deliver instructional units that integrate a variety of software, applications, and learning tools. Lessons developed must reflect effective grouping and assessment strategies for diverse populations.

1) Knowledge Indicator – The competent teacher understands how to apply learning technologies that support instruction in his or her grade level and subject areas.

2) Performance Indicators – The competent teacher:

A) Explores, evaluates, and uses computer/technology resources, including applications, tools, educational software, and associated documentation.

B) Describes current instructional principles, research, and appropriate assessment practices as related to the use of computers and technology resources in the curriculum.

C) Designs, implements, and assesses student learning activities that integrate computers/technology for a variety of student grouping strategies and for diverse student populations.

D) Practices socially responsible, ethical, and legal use of technology, information, and software resources.

E) Designs student learning activities that foster equitable, ethical, and legal use of technology by students.

e) Social, Ethical, and Human Issues – The competent teacher will apply concepts and skills in making decisions concerning the social, ethical, and human issues related to computing and technology. The competent teacher will understand the changes in information technologies, their effects on workplace and society, their potential to address life-long learning and workplace needs, and the consequences of misuse.
1) Knowledge Indicator – The competent teacher understands the social, ethical, and human issues related to computing and technology.

2) Performance Indicators – The competent teacher:

   A) Describes the historical development and important trends affecting the evolution of technology and its probable future roles in society.

   B) Describes strategies for facilitating consideration of ethical, legal, and human issues involving school purchasing and policy decisions.

Productivity Tools – The competent teacher will integrate advanced features of technology-based productivity tools to support instruction, extend communication outside the classroom, enhance classroom management, perform administrative routines more effectively, and become more productive in daily tasks.

1) Knowledge Indicator – The competent teacher knows advanced features of technology-based productivity tools.

2) Performance Indicators – The competent teacher:

   A) Uses advanced features of word processing, desktop publishing, graphics programs, and utilities to develop professional products.

   B) Uses spreadsheets for analyzing, organizing, and displaying numeric data graphically.

   C) Designs and manipulates databases and generates customized reports.

   D) Uses teacher utility and classroom management tools to design solutions for a specific purpose.

   E) Identifies, selects, and integrates video and digital images in varying formats for use in presentations, publications, and/or other products.
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F) Applies specific-purpose electronic devices (such as a graphing calculator, language translator, scientific probeware, or electronic thesaurus) in appropriate content areas.

G) Uses features of applications that integrate word processing, database, spreadsheet, communication, and other tools.

Telecommunications and Information Access – The competent teacher will use telecommunications and information-access resources to support instruction.

1) Knowledge Indicator – The competent teacher knows how to access telecommunications resources to support instruction.

2) Performance Indicators – The competent teacher:

A) Accesses and uses telecommunications tools and resources for information-sharing, remote information access and retrieval, and multi-media/hypermedia publishing.

B) Uses electronic mail and web browser applications for communications and for research to support instruction.

C) uses automated, on-line search tools and intelligent agents to identify and index desired information resources.

Research, Problem Solving, and Product Development – The competent teacher will use computers and other technologies in research, problem solving, and product development. The competent teacher will appropriately use a variety of media, presentation, and authorizing packages; plan and participate in team and collaborative projects that require critical analysis and evaluation; and present products developed.

1) Knowledge Indicator – The competent teacher understands how to use computers and other technologies in research, problem solving, and product development.

2) Performance Indicators – The competent teacher:
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A) Identifies basic principles of instructional design associated with the development of multimedia and hypermedia learning materials.

B) Develops simple hypermedia and multimedia products that apply basic instructional design principles.

C) Selects appropriate tools for communicating concepts, conducting research, and solving problems for an intended audience and purpose.

D) Identifies examples of emerging programming, authoring, or problem solving environments.

E) Collaborates with on-line workgroups to build bodies of knowledge around specific topics.

F) Uses a computer projection device to support and deliver oral presentations.

G) Designs and publishes simple on-line documents that present information and include links to critical resources.

H) Develops instructional units that involve compiling, organizing, analyzing, and synthesizing of information, and uses technology to support these processes.

I) Conducts research and evaluates on-line sources of information that support and enhance the curriculum.

J) Makes use of development readings and other resource materials from professional and trade organizations to improve teaching learning.

K) Participates in courses and other professional development activities to enhance teaching and learning.

Information Literacy Skills – The competent teacher will develop information literacy skills to be able to access, evaluate, and use information to improve teaching and learning.
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1) Knowledge Indicator – The competent teacher understands how to access, evaluate, and use information to improve teaching and learning.

2) Performance Indicators – The competent teacher:
   A) Models evaluation and use of information to solve problems and make decisions.
   B) Expects students to intellectually access, evaluate, and use information to solve problems and make decisions in all subject areas.
   C) Structures instruction and designs learning tasks and assignments to reflect higher-level thinking skills.
   D) Structures and/or facilitates cooperative learning groups as part of students' tasks and assignments.

(Source: Amended at 34 Ill. Reg. 11505, effective July 26, 2010)

Section 24.130 The Illinois Professional Teaching Standards Beginning July 1, 2013

No later than July 1, 2013, all approved teacher preparation programs shall submit the course of study for that program with evidence that the program's or course's content is congruent with the standards identified in this Section. An application for approval of a new preparation program or course of study submitted on or after November 1, 2010, shall provide evidence of congruence with the standards identified in this Section. No later than September 1, 2013, the assessment of professional teaching (APT) required for the issuance of an initial teaching certificate under 23 Ill. Adm. Code 25.720 (Certification) shall be based on the standards set forth in this Section.

a) Teaching Diverse Students – The competent teacher understands the diverse characteristics and abilities of each student and how individuals develop and learn within the context of their social, economic, cultural, linguistic, and academic experiences. The teacher uses these experiences to create instructional opportunities that maximize student learning.

1) Knowledge Indicators – The competent teacher:
A) understands the spectrum of student diversity (e.g., race and ethnicity, socioeconomic status, special education, gifted, English language learners (ELL), sexual orientation, gender, gender identity) and the assets that each student brings to learning across the curriculum;

B) understands how each student constructs knowledge, acquires skills, and develops effective and efficient critical thinking and problem-solving capabilities;

C) understands how teaching and student learning are influenced by development (physical, social and emotional, cognitive, linguistic), past experiences, talents, prior knowledge, economic circumstances and diversity within the community;

D) understands the impact of cognitive, emotional, physical, and sensory disabilities on learning and communication pursuant to the Individuals with Disabilities Education Improvement Act (also referred to as IDEA) (20 USC 1400 et seq.), its implementing regulations (34 CFR 300; 2006), Article 14 of the School Code [105 ILCS 5/Art.14] and 23 Ill. Adm. Code 226 (Special Education);

E) understands the impact of linguistic and cultural diversity on learning and communication;

F) understands his or her personal perspectives and biases and their effects on one's teaching; and

G) understands how to identify individual needs and how to locate and access technology, services, and resources to address those needs.

2) Performance Indicators – The competent teacher:

A) analyzes and uses student information to design instruction that meets the diverse needs of students and leads to ongoing growth and achievement;
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B) stimulates prior knowledge and links new ideas to already familiar ideas and experiences;

C) differentiates strategies, materials, pace, levels of complexity, and language to introduce concepts and principles so that they are meaningful to students at varying levels of development and to students with diverse learning needs;

D) facilitates a learning community in which individual differences are respected; and

E) uses information about students' individual experiences, families, cultures, and communities to create meaningful learning opportunities and enrich instruction for all students.

b) Content Area and Pedagogical Knowledge – The competent teacher has in-depth understanding of content area knowledge that includes central concepts, methods of inquiry, structures of the disciplines, and content area literacy. The teacher creates meaningful learning experiences for each student based upon interactions among content area and pedagogical knowledge, and evidence-based practice.

1) Knowledge Indicators – The competent teacher:

A) understands theories and philosophies of learning and human development as they relate to the range of students in the classroom;

B) understands major concepts, assumptions, debates, and principles; processes of inquiry; and theories that are central to the disciplines;

C) understands the cognitive processes associated with various kinds of learning (e.g., critical and creative thinking, problem-structuring and problem-solving, invention, memorization, and recall) and ensures attention to these learning processes so that students can master content standards;

D) understands the relationship of knowledge within the disciplines to other content areas and to life applications;
E) understands how diverse student characteristics and abilities affect processes of inquiry and influence patterns of learning;

F) knows how to access the tools and knowledge related to latest findings (e.g., research, practice, methodologies) and technologies in the disciplines;

G) understands the theory behind and the process for providing support to promote learning when concepts and skills are first being introduced; and

H) understands the relationship among language acquisition (first and second), literacy development, and acquisition of academic content and skills.

2) Performance Indicators – The competent teacher:

A) evaluates teaching resources and materials for appropriateness as related to curricular content and each student's needs;

B) uses differing viewpoints, theories, and methods of inquiry in teaching subject matter concepts;

C) engages students in the processes of critical thinking and inquiry and addresses standards of evidence of the disciplines;

D) demonstrates fluency in technology systems, uses technology to support instruction and enhance student learning, and designs learning experiences to develop student skills in the application of technology appropriate to the disciplines;

E) uses a variety of explanations and multiple representations of concepts that capture key ideas to help each student develop conceptual understanding and address common misunderstandings;

F) facilitates learning experiences that make connections to other content areas and to life experiences;
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g) designs learning experiences and utilizes assistive technology and
digital tools to provide access to general curricular content to
individuals with disabilities;

h) adjusts practice to meet the needs of each student in the content
areas; and

i) applies and adapts an array of content area literacy strategies to
make all subject matter accessible to each student.

c) Planning for Differentiated Instruction – The competent teacher plans and designs
instruction based on content area knowledge, diverse student characteristics,
student performance data, curriculum goals, and the community context. The
teacher plans for ongoing student growth and achievement.

1) Knowledge Indicators – The competent teacher:

a) understands the Illinois Learning Standards (23 Ill. Adm. Code
1.Appendix D), curriculum development process, content, learning
theory, assessment, and student development and knows how to
incorporate this knowledge in planning differentiated instruction;

b) understands how to develop short- and long-range plans, including
transition plans, consistent with curriculum goals, student
diversity, and learning theory;

c) understands cultural, linguistic, cognitive, physical, and social and
emotional differences, and considers the needs of each student
when planning instruction;

d) understands when and how to adjust plans based on outcome data,
as well as student needs, goals, and responses;

e) understands the appropriate role of technology, including assistive
technology, to address student needs, as well as how to incorporate
contemporary tools and resources to maximize student learning;
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F) understands how to co-plan with other classroom teachers, parents or guardians, paraprofessionals, school specialists, and community representatives to design learning experiences; and

G) understands how research and data guide instructional planning, delivery, and adaptation.

2) Performance Indicators – The competent teacher:

A) establishes high expectations for each student's learning and behavior;

B) creates short-term and long-term plans to achieve the expectations for student learning;

C) uses data to plan for differentiated instruction to allow for variations in individual learning needs;

D) incorporates experiences into instructional practices that relate to a student's current life experiences and to future life experiences;

E) creates approaches to learning that are interdisciplinary and that integrate multiple content areas;

F) develops plans based on student responses and provides for different pathways based on student needs;

G) accesses and uses a wide range of information and instructional technologies to enhance a student's ongoing growth and achievement;

H) when planning instruction, addresses goals and objectives contained in plans developed under Section 504 of the Rehabilitation Act of 1973 (29 USC 794), individualized education programs (IEP) (see 23 Ill. Adm. Code 226 (Special Education)) or individual family service plans (IFSP) (see 23 Ill. Adm. Code 226 and 34 CFR 300.24; 2006);
works with others to adapt and modify instruction to meet individual student needs; and

develops or selects relevant instructional content, materials, resources, and strategies (e.g., project-based learning) for differentiating instruction.

d) Learning Environment – The competent teacher structures a safe and healthy learning environment that facilitates cultural and linguistic responsiveness, emotional well-being, self-efficacy, positive social interaction, mutual respect, active engagement, academic risk-taking, self-motivation, and personal goal-setting.

1) Knowledge Indicators – The competent teacher:

A) understands principles of and strategies for effective classroom and behavior management;

B) understands how individuals influence groups and how groups function in society;

C) understands how to help students work cooperatively and productively in groups;

D) understands factors (e.g., self-efficacy, positive social interaction) that influence motivation and engagement;

E) knows how to assess the instructional environment to determine how best to meet a student's individual needs;

F) understands laws, rules, and ethical considerations regarding behavior intervention planning and behavior management (e.g., bullying, crisis intervention, physical restraint);

G) knows strategies to implement behavior management and behavior intervention planning to ensure a safe and productive learning environment; and
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H) understands the use of student data (formative and summative) to design and implement behavior management strategies.

2) Performance Indicators – The competent teacher:

A) creates a safe and healthy environment that maximizes student learning;

B) creates clear expectations and procedures for communication and behavior and a physical setting conducive to achieving classroom goals;

C) uses strategies to create a smoothly functioning learning community in which students assume responsibility for themselves and one another, participate in decision-making, work collaboratively and independently, use appropriate technology, and engage in purposeful learning activities;

D) analyzes the classroom environment and makes decisions to enhance cultural and linguistic responsiveness, mutual respect, positive social relationships, student motivation, and classroom engagement;

E) organizes, allocates, and manages time, materials, technology, and physical space to provide active and equitable engagement of students in productive learning activities;

F) engages students in and monitors individual and group-learning activities that help them develop the motivation to learn;

G) uses a variety of effective behavioral management techniques appropriate to the needs of all students that include positive behavior interventions and supports;

H) modifies the learning environment (including the schedule and physical arrangement) to facilitate appropriate behaviors and learning for students with diverse learning characteristics; and
I) analyzes student behavior data to develop and support positive behavior.

e) Instructional Delivery – The competent teacher differentiates instruction by using a variety of strategies that support critical and creative thinking, problem-solving, and continuous growth and learning. This teacher understands that the classroom is a dynamic environment requiring ongoing modification of instruction to enhance learning for each student.

1) Knowledge Indicators – The competent teacher:

A) understands the cognitive processes associated with various kinds of learning;

B) understands principles and techniques, along with advantages and limitations, associated with a wide range of evidence-based instructional practices;

C) knows how to implement effective differentiated instruction through the use of a wide variety of materials, technologies, and resources;

D) understands disciplinary and interdisciplinary instructional approaches and how they relate to life and career experiences;

E) knows techniques for modifying instructional methods, materials, and the environment to facilitate learning for students with diverse learning characteristics;

F) knows strategies to maximize student attentiveness and engagement;

G) knows how to evaluate and use student performance data to adjust instruction while teaching; and

H) understands when and how to adapt or modify instruction based on outcome data, as well as student needs, goals, and responses.

2) Performance Indicators – The competent teacher:
A) uses multiple teaching strategies, including adjusted pacing and flexible grouping, to engage students in active learning opportunities that promote the development of critical and creative thinking, problem-solving, and performance capabilities;

B) monitors and adjusts strategies in response to feedback from the student;

C) varies his or her role in the instructional process as instructor, facilitator, coach, or audience in relation to the content and purposes of instruction and the needs of students;

D) develops a variety of clear, accurate presentations and representations of concepts, using alternative explanations to assist students' understanding and presenting diverse perspectives to encourage critical and creative thinking;

E) uses strategies and techniques for facilitating meaningful inclusion of individuals with a range of abilities and experiences;

F) uses technology to accomplish differentiated instructional objectives that enhance learning for each student;

G) models and facilitates effective use of current and emerging digital tools to locate, analyze, evaluate, and use information resources to support research and learning;

H) uses student data to adapt the curriculum and implement instructional strategies and materials according to the characteristics of each student;

I) uses effective co-planning and co-teaching techniques to deliver instruction to all students;

J) maximizes instructional time (e.g., minimizes transitional time); and

K) implements appropriate evidence-based instructional strategies.
f) Reading, Writing, and Oral Communication – The competent teacher has foundational knowledge of reading, writing, and oral communication within the content area and recognizes and addresses student reading, writing, and oral communication needs to facilitate the acquisition of content knowledge.

1) Knowledge Indicators – The competent teacher:

A) understands appropriate and varied instructional approaches used before, during, and after reading, including those that develop word knowledge, vocabulary, comprehension, fluency, and strategy use in the content areas;

B) understands that the reading process involves the construction of meaning through the interactions of the reader's background knowledge and experiences, the information in the text, and the purpose of the reading situation;

C) understands communication theory, language development, and the role of language in learning;

D) understands writing processes and their importance to content learning;

E) knows and models standard conventions of written and oral communications;

F) recognizes the relationships among reading, writing, and oral communication and understands how to integrate these components to increase content learning;

G) understands how to design, select, modify, and evaluate a wide range of materials for the content areas and the reading needs of the student;

H) understands how to use a variety of formal and informal assessments to recognize and address the reading, writing, and oral communication needs of each student; and
I) knows appropriate and varied instructional approaches, including those that develop word knowledge, vocabulary, comprehension, fluency, and strategy use in the content areas.

2) Performance Indicators – The competent teacher:

A) selects, modifies, and uses a wide range of printed, visual, or auditory materials, and online resources appropriate to the content areas and the reading needs and levels of each student (including ELLs, and struggling and advanced readers);

B) uses assessment data, student work samples, and observations from continuous monitoring of student progress to plan and evaluate effective content area reading, writing, and oral communication instruction;

C) facilitates the use of appropriate word identification and vocabulary strategies to develop each student's understanding of content;

D) teaches fluency strategies to facilitate comprehension of content;

E) uses modeling, explanation, practice, and feedback to teach students to monitor and apply comprehension strategies independently, appropriate to the content learning;

F) teaches students to analyze, evaluate, synthesize, and summarize information in single texts and across multiple texts, including electronic resources;

G) teaches students to develop written text appropriate to the content areas that utilizes organization (e.g., compare/contrast, problem/solution), focus, elaboration, word choice, and standard conventions (e.g., punctuation, grammar);

H) integrates reading, writing, and oral communication to engage students in content learning;
works with other teachers and support personnel to design, adjust, and modify instruction to meet students' reading, writing, and oral communication needs; and

stimulates discussion in the content areas for varied instructional and conversational purposes.

g) Assessment – The competent teacher understands and uses appropriate formative and summative assessments for determining student needs, monitoring student progress, measuring student growth, and evaluating student outcomes. The teacher makes decisions driven by data about curricular and instructional effectiveness and adjusts practices to meet the needs of each student.

Knowledge Indicators – The competent teacher:

A) understands the purposes, characteristics, and limitations of different types of assessments, including standardized assessments, universal screening, curriculum-based assessment, and progress monitoring tools;

B) understands that assessment is a means of evaluating how students learn and what they know and are able to do in order to meet the Illinois Learning Standards;

C) understands measurement theory and assessment-related issues, such as validity, reliability, bias, and appropriate and accurate scoring;

D) understands current terminology and procedures necessary for the appropriate analysis and interpretation of assessment data;

E) understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning and instruction;

F) knows research-based assessment strategies appropriate for each student;
G) understands how to make data-driven decisions using assessment results to adjust practices to meet the needs of each student;

H) knows legal provisions, rules, and guidelines regarding assessment and assessment accommodations for all student populations; and

I) knows assessment and progress monitoring techniques to assess the effectiveness of instruction for each student.

2) Performance Indicators – The competent teacher:

A) uses assessment results to determine student performance levels, identify learning targets, select appropriate research-based instructional strategies, and implement instruction to enhance learning outcomes;

B) appropriately uses a variety of formal and informal assessments to evaluate the understanding, progress, and performance of an individual student and the class as a whole;

C) involves students in self-assessment activities to help them become aware of their strengths and needs and encourages them to establish goals for learning;

D) maintains useful and accurate records of student work and performance;

E) accurately interprets and clearly communicates aggregate student performance data to students, parents or guardians, colleagues, and the community in a manner that complies with the requirements of the Illinois School Student Records Act [105 ILCS 10], 23 Ill. Adm. Code 375 (Student Records), the Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g) and its implementing regulations (34 CFR 99; (December 9, 2008); 

F) effectively uses appropriate technologies to conduct assessments, monitor performance, and assess student progress;
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G) collaborates with families and other professionals involved in the assessment of each student;

H) uses various types of assessment procedures appropriately, including making accommodations for individual students in specific contexts; and

I) uses assessment strategies and devices that are nondiscriminatory, and take into consideration the impact of disabilities, methods of communication, cultural background, and primary language on measuring knowledge and performance of students.

h) Collaborative Relationships – The competent teacher builds and maintains collaborative relationships to foster cognitive, linguistic, physical, and social and emotional development. This teacher works as a team member with professional colleagues, students, parents or guardians, and community members.

1) Knowledge Indicators – The competent teacher:

A) understands schools as organizations within the larger community context;

B) understands the collaborative process and the skills necessary to initiate and carry out that process;

C) collaborates with others in the use of data to design and implement effective school interventions that benefit all students;

D) understands the benefits, barriers, and techniques involved in parent and family collaborations;

E) understands school- and work-based learning environments and the need for collaboration with all organizations (e.g., businesses, community agencies, nonprofit organizations) to enhance student learning;

F) understands the importance of participating on collaborative and problem-solving teams to create effective academic and behavioral interventions for all students;
G) understands the various models of co-teaching and the procedures for implementing them across the curriculum;

H) understands concerns of families of students with disabilities and knows appropriate strategies to collaborate with students and their families in addressing these concerns; and

I) understands the roles and the importance of including students with disabilities, as appropriate, and all team members in planning individualized education programs (i.e, IEP, IFSP, Section 504 plan) for students with disabilities.

2) Performance Indicators – The competent teacher:

A) works with all school personnel (e.g., support staff, teachers, paraprofessionals) to develop learning climates for the school that encourage unity, support a sense of shared purpose, show trust in one another, and value individuals;

B) participates in collaborative decision-making and problem-solving with colleagues and other professionals to achieve success for all students;

C) initiates collaboration with others to create opportunities that enhance student learning;

D) uses digital tools and resources to promote collaborative interactions;

E) uses effective co-planning and co-teaching techniques to deliver instruction to each student;

F) collaborates with school personnel in the implementation of appropriate assessment and instruction for designated students;

G) develops professional relationships with parents and guardians that result in fair and equitable treatment of each student to support growth and learning;
H) establishes respectful and productive relationships with parents or guardians and seeks to develop cooperative partnerships to promote student learning and well-being;

I) uses conflict resolution skills to enhance the effectiveness of collaboration and teamwork;

J) participates in the design and implementation of individualized instruction for students with special needs (i.e., IEPs, IFSP, transition plans, Section 504 plans), ELLs, and students who are gifted; and

K) identifies and utilizes community resources to enhance student learning and to provide opportunities for students to explore career opportunities.

i) Professionalism, Leadership, and Advocacy – The competent teacher is an ethical and reflective practitioner who exhibits professionalism; provides leadership in the learning community; and advocates for students, parents or guardians, and the profession.

1) Knowledge Indicators – The competent teacher:

A) evaluates best practices and research-based materials against benchmarks within the disciplines;

B) knows laws and rules (e.g., mandatory reporting, sexual misconduct, corporal punishment) as a foundation for the fair and just treatment of all students and their families in the classroom and school;

C) understands emergency response procedures as required under the School Safety Drill Act [105 ILCS 128], including school safety and crisis intervention protocol, initial response actions (e.g., whether to stay in or evacuate a building), and first response to medical emergencies (e.g., first aid and life-saving techniques);
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D) identifies paths for continuous professional growth and improvement, including the design of a professional growth plan;

E) is cognizant of his or her emerging and developed leadership skills and the applicability of those skills within a variety of learning communities;

F) understands the roles of an advocate, the process of advocacy, and its place in combating or promoting certain school district practices affecting students;

G) understands local and global societal issues and responsibilities in an evolving digital culture; and

H) understands the importance of modeling appropriate dispositions in the classroom.

2) Performance Indicators – The competent teacher:

A) models professional behavior that reflects honesty, integrity, personal responsibility, confidentiality, altruism and respect;

B) maintains accurate records, manages data effectively, and protects the confidentiality of information pertaining to each student and family;

C) reflects on professional practice and resulting outcomes; engages in self-assessment; and adjusts practices to improve student performance, school goals, and professional growth;

D) communicates with families, responds to concerns, and contributes to enhanced family participation in student education;

E) communicates relevant information and ideas effectively to students, parents or guardians, and peers, using a variety of technology and digital-age media and formats;
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F) collaborates with other teachers, students, parents or guardians, specialists, administrators, and community partners to enhance students' learning and school improvement;

G) participates in professional development, professional organizations, and learning communities, and engages in peer coaching and mentoring activities to enhance personal growth and development;

H) uses leadership skills that contribute to individual and collegial growth and development, school improvement, and the advancement of knowledge in the teaching profession;

I) proactively serves all students and their families with equity and honor and advocates on their behalf, ensuring the learning and well-being of each child in the classroom;

J) is aware of and complies with the mandatory reporter provisions of Section 4 of the Abused and Neglected Child Reporting Act [325 ILCS 5/4];

K) models digital etiquette and responsible social actions in the use of digital technology; and

L) models and teaches safe, legal, and ethical use of digital information and technology, including respect for copyright, intellectual property, and the appropriate documentation of sources.

(Source: Added at 34 Ill. Reg. 11505, effective July 26, 2010)
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NOTICE OF ADOPTED RULES

1) **Heading of the Part**: Illinois Hope and Opportunity Pathways through Education Program

2) **Code Citation**: 23 Ill. Adm. Code 210

3) **Section Numbers**:  
   - 210.10 New Section  
   - 210.20 New Section  
   - 210.30 New Section  
   - 210.35 New Section  
   - 210.40 New Section  
   - 210.50 New Section  
   - 210.60 New Section  
   - 210.70 New Section  
   - 210.75 New Section  
   - 210.80 New Section  
   - 210.90 New Section  
   - 210.100 New Section  
   - 210.110 New Section  
   - 210.200 New Section  
   - 210.210 New Section  
   - 210.220 New Section  
   - 210.230 New Section

4) **Statutory Authority**: 105 ILCS 5/2-3.66b

5) **Effective Date of Rules**: July 26, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register**: April 9, 2010; 34 Ill. Reg. 5019

10) **Has JCAR issued a Statement of Objection to these rules?** No
11) **Differences between proposal and final version:** In Sections 210.30(g), 210.30(a)(3), 210.40(a), and 210.220, the specific titles used with the rules' citations were modified.

In Section 210.60(a)(3), "service learning" was defined as "activities that combine academics and community service".

In Section 210.80(a)(4), "State Board" was changed to "State Superintendent".

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** Yes

13) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

14) **Are there any other proposed rulemakings pending on this Part?** No

15) **Summary and Purpose of Rules:** Public Act 96-106, effective July 30, 2009, establishes the Illinois Hope and Opportunity Pathways through Education (IHOPE) program with the goal of re-enrolling high school dropouts into programs that will enable these individuals to earn their high school diplomas by successfully meeting both State- and locally-imposed graduation requirements.

Under the law, regional offices of education (or City of Chicago School District 299) may establish IHOPE programs in coordination with school districts, community colleges and other community programs that work with dropouts. The programs may offer an array of programming to meet the needs of the individuals enrolled, and each program must contain certain components specified in the law.

New Part 210, Subpart A, sets forth the requirements for an IHOPE program, whose plan for the program must be approved by the State Board of Education in order for it to be eligible to receive general State aid or an incentive grant. The requirements for that plan are contained in Section 210.70 and criteria for review and approval of the plan are in Section 210.75.

The requirements protect the rights of students who choose to enroll in IHOPE programs by ensuring that:

- before individuals can be enrolled in an IHOPE program, they, along with their parents or guardians if they are less than 18 years old, receive information about the program;
each student has a learning plan that addresses his or her individual needs and goals;

• the IHOPE program and school district awarding the high school diploma work in cooperation to provide services to students who had an Individualized Education Program in the last high school they attended; and

• school records are retained by the district of residence awarding the diploma in accordance with the Illinois School Student Records Act [105 ILCS 10] and the State Board of Education's rules governing Student Records (23 Ill. Adm. Code 375).

The rules also require that individuals providing instruction be certified in Illinois and that personnel providing support services be properly qualified. While IHOPE programs must be offered for a full school year in order to claim general State aid (i.e., 176 days of actual pupil attendance), they may offer less than five clock-hours of instruction under conditions specified in Section 210.60 and still receive full reimbursement. Other provisions address continuation of programs beyond the initial approval year and suspension and revocation of program approval in certain circumstances.

Subpart B of the rules establishes the process for applying for an incentive grant. The law requires that grant funds be allocated based on the proportion of dropouts in the geographic area served by the regional office of education or Chicago school district in comparison to the total number of dropouts statewide. A consistent count for dropouts will be used to calculate the amount each regional office or Chicago school district will receive by using the dropout totals reported by school districts to the Student Information System by July 31 of each year. There is no appropriation in Fiscal Year 2011 for incentive grants; however, promulgating rules now for the application process will ensure that the grant process can begin immediately when funding is approved.

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

Monique Chism, Division Administrator
Illinois State Board of Education
100 North First Street, N-242 217/524-4832
Springfield, Illinois  62777

The full text of the Adopted Rules begins on the next page:
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NOTICE OF ADOPTED RULES

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER e: INSTRUCTION

PART 210
ILLINOIS HOPE AND OPPORTUNITY PATHWAYS
THROUGH EDUCATION PROGRAM

SUBPART A: PROGRAM APPROVAL

Section
210.10 Purpose
210.20 Program Components
210.30 Requirements for Student Participation
210.35 Enrollment of Students with Individualized Education Programs
210.40 Program Requirements
210.50 Individual Instructional Plan
210.60 Supplemental Services and Instructional Time
210.70 Content of IHOPE Plan
210.75 Program Approval Criteria
210.80 Application for Program Continuation
210.90 Program Funding
210.100 Suspension and Revocation of Program Approval
210.110 Terms and Conditions of Approval

SUBPART B: INCENTIVE GRANTS

210.200 Purpose
210.210 Eligible Applicants
210.220 Funding Formula
210.230 Application Procedures

AUTHORITY: Implementing and authorized by Section 2-3.66b of the School Code [105 ILCS 5/2-3.66b].

Section 210.10 Purpose

This Subpart A establishes the requirements for approval of Illinois Hope and Opportunity Pathways through Education (IHOPE) programs established pursuant to Section 2-3.66b of the School Code [105 ILCS 5/2-3.66b] by regional offices of education or the City of Chicago School District 299 (CPS).

a) IHOPE programs shall re-enroll high school dropouts in their respective regions of the State and provide instructional and other services to enable dropouts to meet the prerequisites to receiving a high school diploma specified in Section 27-22 of the School Code and any other graduation requirements of the student's district of residence. [105 ILCS 5/2-3.66b(b)] For the purposes of this Part, "any other graduation requirements" means those that the district of residence has established for all students enrolled in the district's general program of instruction.

b) A regional office of education or CPS may establish an IHOPE program or may contract with one or more entities specified in Section 2-3.66b(d) of the School Code to operate those programs.

c) A regional office or CPS may provide instructional services through a subcontractor only if the entity providing those instructional services is recognized by the State Board of Education. (See Section 210.40(a)(2) of this Part.)

Section 210.20 Program Components

An IHOPE program approved under this Part shall contain each of the components enumerated under Section 2-3.66b(g) of the School Code. As set forth in Section 2-3.66b(b) of the School Code, instructional and other services may be offered in one or more of the following ways:

a) comprehensive year-round programming;

b) summer or evening school programs;

c) community college coursework offered through dual enrollment programs (i.e., a student attends both high school and college classes), or dual credit courses, as defined in Section 5 of the Dual Credit Quality Act [110 ILCS 27/5];

d) adult education programs;
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e) vocational training and work experience;

f) programs to enhance self-concept; and/or

g) parenting classes.

Section 210.30 Requirements for Student Participation

Any individual subject to compulsory attendance requirements set forth in Article 26 of the School Code [105 ILCS 5/Art. 26] may be considered for enrollment in an IHOPE program, provided that he or she is considered to be a "dropout" for reporting purposes under Section 2-3.13a of the School Code [105 ILCS 5/2-3.13a].

a) Each regional office of education or CPS, as applicable, that establishes an IHOPE program shall provide information about the program to the parents or guardians of all dropouts who are less than 18 years old who are being considered for enrollment and shall identify a staff member who may be contacted for information or assistance.

1) Before a dropout as defined in subsection (a) of this Section is enrolled in an IHOPE program, the program shall send a written notification to the student and the student's parent or guardian to attend a conference about the program. This notification also shall contain a statement of the rights of the parent or guardian (e.g., requirement for written parental permission to enroll in the program, ability to withdraw consent for enrollment, participation in development of an individual instructional plan).

2) The conference shall be designed to help the parent or guardian determine whether the student's participation in an IHOPE program would be beneficial.

3) A dropout as defined in subsection (a) of this Section shall not be enrolled in an IHOPE program without the written consent of his or her parent or guardian. This provision does not apply to youth who are considered to be an "unaccompanied youth" under Section 725 of federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 (42 USC 11431 et seq.).
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b) Before enrolling a dropout who is 18 years or older or an unaccompanied youth, the IHOPE program shall conduct the conference described in subsection (a) of this Section with the dropout.

c) An approved IHOPE program shall enroll only dropouts who reside in their region or district (see Section 2-3.66b(b) of the School Code), and no tuition may be charged of students who choose to participate.

d) Enrollment, in an IHOPE program of a dropout who, when enrolled in his or her previous school had an Individualized Education Program, shall be subject to the additional requirements set forth in Section 210.35 of this Part.

e) Receipt of a high school diploma under the IHOPE program is not subject to the state assessment requirements contained in Section 2-3.64 of the School Code [105 ILCS 5/2-3.64].

f) All rights granted under this Part to the student's parent or guardian shall become those of the student once the student reaches 18 years of age, subject to the provisions of the Emancipation of Minors Act [750 ILCS 30].

g) For each dropout enrolled, an IHOPE program shall request from the school that the student last attended a certified copy of the student's records, in accordance with 23 Ill. Adm. Code 375.75 (Public and Nonpublic Schools: Transmission of Records for Transfer Students).

Section 210.35 Enrollment of Students with Individualized Education Programs

a) A dropout who, in his or her previous school, had an Individualized Education Program (IEP) is eligible to enroll in an IHOPE program if he or she meets the eligibility requirements for the program, subject to the requirements of this Section.

1) The IHOPE program shall work in cooperation with the school district at which the student was last enrolled to ensure that the student receives the special education and related services necessary for the student to achieve academically and meet the requirements for receipt of a high school diploma.
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2) All services identified as necessary pursuant to subsection (a)(1) of this Section shall be delivered by properly qualified personnel.

3) If a student enrolled in an IHOPE program is referred for an evaluation to determine whether he or she is eligible for special education, then the evaluation and eligibility determination shall be conducted in accordance with the State Board's rules for Special Education (see 23 Ill. Adm. Code 226.Subpart B (Identification of Eligible Children)).

b) In cooperation with the school district from which the student will earn a high school diploma, the regional office of education establishing the IHOPE program, or CPS, as applicable, shall develop an up-to-date IEP for each student who previously had an IEP and continues to qualify for services in accordance with 23 Ill. Adm. Code 226. The responsibilities of the regional office of education and the school district shall be specified in the cooperative agreement executed pursuant to Section 210.70(c)(8) of this Part.

Section 210.40 Program Requirements

Each IHOPE program approved by the State Board of Education shall conform to the following program requirements.

a) The program of instruction of an IHOPE program shall be consistent with State standards set forth in 23 Ill. Adm. Code 1.Appendix D (State Goals for Learning) and provide innovative and varied instructional strategies designed to facilitate the student's receipt of a high school diploma.

1) In consultation with the student's school district of residence, the IHOPE program must award academic credit in accordance with that district's policy developed pursuant to 23 Ill. Adm. Code 1.420(b).

2) If the instructional program is provided by a non-profit entity, then that entity shall be recognized by the State Board of Education. A recognized entity is one that:

   A) is established by the State to provide education-related services or instruction (e.g., regional offices of education, intermediate service centers, public community colleges or universities); or
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B) is a nonpublic elementary or secondary school recognized by the State Board of Education under 23 Ill. Adm. Code 425 (Voluntary Registration and Recognition of Nonpublic Schools); or

C) is designated for operation through a standardized approval process administered by the State Board of Education (i.e., public university laboratory schools, alternative schools, charter schools, area vocational centers, Alternative Learning Opportunities Programs); or

D) meets the requirements of a national or regional accrediting body (e.g., private colleges and universities, other nonpublic elementary or secondary schools).

b) Support services shall be provided for each student enrolled in the IHOPE program. The particular services provided shall be those that are determined to be necessary for the student's academic success.

c) An individual instructional plan shall be developed for each student enrolled in the IHOPE program in accordance with Section 210.50 of this Part.

d) Progress reports for students enrolled in the IHOPE program shall be provided at least in the same manner and with the same frequency as progress reports are sent to parents and guardians of students enrolled in the school district from which the student will receive his or her diploma. A student's parent or guardian may request a meeting anytime during the school year to review the student's progress, in accordance with procedures developed by the IHOPE program.

e) The IHOPE program shall employ staff who are appropriately qualified.

1) Teachers shall hold a valid and active elementary, secondary, special K-12 or special preschool-age 21 Illinois teaching certificate required for the grade levels to which they will be assigned, except that staff employed in dual credit programs must meet the requirements set forth in 110 ILCS 27/20.

2) Professional personnel who provide other services for students enrolled in the program shall hold the certificates appropriate to their roles pursuant to
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State Board of Education rules for Certification (23 Ill. Adm. Code 25), except that:

A) personnel providing professional nursing services shall meet the requirements of Section 10-22.23 of the School Code [105 ILCS 5/10-22.23];

B) personnel providing school counseling services shall meet the requirements of Section 10-22.24b of the School Code [105 ILCS 5/10-22.24b];

C) personnel providing noninstructional services shall meet the requirements of Section 10-22.34 of the School Code [105 ILCS 5/10-22.34];

D) personnel providing school psychological services shall meet the requirements of Section 14-1.09.1 of the School Code [105 ILCS 5/14-1.09.1]; and

E) personnel providing school social work services shall meet the requirements of Section 14-1.09.2 of the School Code [105 ILCS 5/14-1.09.2].

Section 210.50 Individual Instructional Plan

a) The individual instructional plan (IIP) developed for each student in the IHOPE program shall be based on an assessment of a student's educational skills and prior academic success. Each plan shall contain the following elements:

1) goals and objectives for satisfactory performance that will lead to the awarding of a high school diploma. When appropriate, the goals and objectives specified in the IIP shall take into account the social norms and behaviors specific to the student's cultural and linguistic background;

2) the specific curriculum and instructional methods;

3) the support services needed to remove barriers to learning;
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4) when appropriate, the career development experiences the student will receive to enhance his or her career awareness;

5) the expected academic, social and behavioral outcomes to be achieved as a result of the student's participation in the IHOPE program and the student's responsibilities for achieving those outcomes;

6) an estimate of the length of time the student will need to complete State and local requirements for receipt of a high school diploma;

7) a description of the commitments that the student's parent or guardian, as applicable, will make to ensure that the student successfully completes the IHOPE program; and

8) the assessment procedures to be used to determine the degree to which the student has achieved his or her learning objectives and other specified outcomes.

b) Each IIP shall be reviewed at least twice during the school year and more often, if necessary. The review shall consider any changes in the elements of the IIP, as specified under subsection (a) of this Section, that are necessary based on the student's academic progress since the previous review period or in the previous school year. If any changes are proposed for the IIP of a student who meets the criteria under Section 210.30(a) of this Part, then the IHOPE program shall notify the student's parent or guardian of the proposed changes in accordance with the procedures outlined in subsection (a) of this Section.

c) The IHOPE program shall send a written notification 10 school days in advance to the student, and his or her parent or guardian for a student meeting the criteria under Section 210.30(a) of this Part, of the opportunity to participate in the development of the IIP. The notice must include the time, date and place of the meeting to consider the plan. If the student or parent or guardian, as applicable, is unable to participate in the meeting, then the regional office of education or CPS, as applicable, shall:

1) take other steps, including individual or conference telephone calls, to ensure that the student and his or her parent or guardian, as applicable, have an opportunity to comment on the proposed plan; and
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2) provide to the student and his or her parent or guardian, as applicable, a copy of the final IIP after it is completed.

d) The IIP and any subsequent revisions to the IIP shall become part of the individual's Student Temporary Record, as defined in 23 Ill. Adm. Code 375.10, and shall be made available to the State Superintendent of Education upon request in instances in which there is a demonstrable educational interest (see 105 ILCS 10/6(a)(2)) and/or when necessary for State or federal program purposes (see 105 ILCS 10/6(a)(12)).

Section 210.60 Supplemental Services and Instructional Time

In order to receive general State aid, an IHOPE program shall develop a plan in accordance with Section 2-3.66b(c) of the School Code and Section 210.70 of this Part that proposes a calendar for the program that is in conformance with the requirements of Section 2-3.66b(e) of the School Code. A calendar that varies in the length of the instructional day (i.e., 5 clock-hours of school work) from those requirements shall be approved under the following conditions.

a) The calendar meets all of the following exceptions:

1) The IHOPE plan submitted under Section 210.70 of this Part establishes that a program providing the required minimum daily hours of school work would not serve the needs of the program's students.

2) Each day of attendance shall provide no fewer than 3 clock-hours of school work, as defined under Section 18-8.05(F)(1) of the School Code [105 ILCS 5/18-8.05(F)(1)].

3) Each day of attendance that provides fewer than 5 clock-hours of school work also shall provide supplementary services, including, without limitation, work-based learning, student assistance programs, counseling, case management, life-skills or conflict resolution training, career counseling, or service learning (e.g., activities that combine academics and community service), in order to provide a total daily program to the student of 5 clock-hours. A program may claim general State aid for up to 2 clock-hours of the time each day that a student is receiving supplementary services.
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4) Each program shall provide no fewer than 176 days of actual pupil attendance during the school term.

b) The supplemental services provided pursuant to subsection (a) of this Section that are noninstructional in nature (e.g., student assistance programs, counseling services, case management, life skills or conflict resolution training, career counseling) shall be:

1) directly linked to a need identified in the student's individual instructional plan developed pursuant to Section 210.50 of this Part and necessary for the student to successfully advance in the instructional program and meet the requirements for receipt of a high school diploma set forth in Section 2-3.66b(b) of the School Code;

2) provided by qualified personnel with the experience and skills appropriate to the service being provided; and

3) monitored by IHOPE program staff to ensure that the services provided are effective in improving the student's academic achievement, as specified in his or her individual instructional plan.

c) Activities that are instructional in nature (e.g., work-based learning activities, service learning) shall not be considered supplemental services for the purposes of this Section. These shall be considered to be part of the 5 clock-hours of school work required under Section 18-8.05 of the School Code, provided that:

1) the activity is an integral and regular part of the academic instruction that the student is receiving and is tied to one or more of the State Goals for Learning (23 Ill. Adm. Code 1.Appendix D);

2) the student receives academic credit upon successful completion of the activity, in accordance with the policies of the student's district of residence that will be issuing the high school diploma; and

3) the activity is provided under the direction of a certified teacher (see Section 210.40(e) of this Part).

Section 210.70 Contents of IHOPE Plan
The plan for each IHOPE program shall be approved by the State Superintendent of Education in accordance with criteria set forth under Section 2-3.66b(c) of the School Code and Section 210.75 of this Part.

a) The State Superintendent of Education shall annually notify regional offices of education and CPS of the opportunity to submit an IHOPE plan for approval, specifying the information that shall be included in the plan and requiring that the plan be submitted no later than the date specified in the notification.

b) Each application shall be reviewed for completeness and conformance to the requirements of Section 2-3.66b of the School Code and this Part.

1) Incomplete plans shall be returned to the regional office of education or CPS, as applicable, specifying the additional information that is needed, which shall be submitted within 15 calendar days after receiving the request.

2) Based on the criteria contained in Section 210.75 of this Part, plans that do not meet the requirements of Section 2-3.66b of the School Code and this Part shall be returned to the regional office of education or CPS, as applicable, specifying the reasons why the plan was not acceptable.

c) Each plan for an IHOPE program shall be submitted in a format specified by the State Superintendent of Education and shall contain the following elements:

1) A description of the planning process conducted to determine the type of IHOPE program to be established and a list of the participants in that process to at least include those entities specified in Section 2-3.66b(c) of the School Code.

2) An organizational chart that reflects the governance, administrative, educational and support structures of the proposed IHOPE program and describes the responsibilities of each entity involved in the program.

3) Evidence that the plan for the IHOPE program includes each of the components enumerated in Section 2-3.66b(g) of the School Code.

A) Programs that exceed the enrollment limits set forth under Section 2-3.66b(g)(1) of the School Code shall provide a justification for a
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A larger program and a description of the steps to be taken to ensure that the program will meet the needs of each student to be enrolled in an effective manner.

B) In order to demonstrate compliance with Section 2-3.66b(g)(3) of the School Code, the plan shall include a description of the experiences, competency, and qualifications of certified and non-certificated staff that emphasizes their individual and collective abilities to work successfully with students who have dropped out of school. (Also see Section 210.40(e) of this Part.)

C) In order to demonstrate compliance with Section 2-3.66b(g)(6) of the School Code, the plan shall include a schedule of support services that will be available to students as part of their instructional program, including the procedures for accessing a student's need for services on an as-needed basis.

D) In order to demonstrate compliance with Section 2-3.66b(g)(9), the plan shall address how instruction will incorporate "action into study" to include but not be limited to the following elements: observation and interaction, laboratory and field experiences, applying what is learned in the classroom to real-life situations or problems, or students being active participants in their learning.

4) The specific curriculum to be used (see Section 210.40(a) of this Part), to at least include a description of how work experience and the instructional program will be integrated. If a non-profit entity will be providing instructional services, then the regional office of education or CPS, as applicable, shall identify the entity and provide evidence that it meets the requirements of Section 210.40(a)(2) of this Part.

5) The process for admitting dropouts to the program, which shall address factors to be considered to enroll students. These factors shall be nondiscriminatory and shall not take into consideration the needs of individual students for specific services, such as special education or bilingual services. If there are more eligible applicants for enrollment in an IHOPE program than there are spaces available, students shall be selected either on a first come, first served basis or by lottery.
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6) A list of any cooperative and intergovernmental agreements and subcontracts that identifies the entity with which the agreement or subcontract is entered and includes a description of the need and purpose of the agreement or subcontract; measurable and time-specific services to be provided, as applicable; associated costs, i.e., the amounts to be paid, as applicable; and the projected number of participants to be served.

7) An agreement with each school district from which an IHOPE student will graduate and receive a diploma in accordance with Section 2-3.66b(b) of the School Code.

8) If any of the students enrolled require special education services, then the cooperative agreement with the school district of residence of each student that addresses responsibility for at least, but not limited to, the evaluation process, provision of services, dispute resolution, child count, and receipt of State special education funds.

9) The procedures to be used to review student progress on a regular basis, which shall at least conform with the requirements of Section 210.40(d) of this Part.

10) A summary of the program's student discipline policy, to address the procedures to be used for a student's suspension or expulsion from the program due to gross disobedience or misconduct.

11) The proposed calendar for the program, providing evidence that it is in conformance with the requirements of Section 2-3.66b(e) of the School Code and Section 210.60 of this Part.

12) A description of how the IHOPE program's professional development plan will address instruction of students who have dropped out of school.

13) A detailed program budget that includes the sources of funding to be used in conjunction with general State aid and/or any incentive grant received pursuant to Subpart B of this Part and a plan for allocating costs to those funds.
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A) The budget plan shall outline how any local, State or federal funds will be coordinated to ensure the efficient and effective delivery of the program.

B) The budget shall describe sources of revenue other than general State aid or an incentive grant that the regional office of education or CPS, as applicable, will allocate to the program.

C) The budget shall include an estimate of the total cost per student for the program and an estimate of any gap between existing revenue available for the program and the total cost of the program.

14) A plan for evaluating the effectiveness of the program in improving academic performance of the students working towards meeting State and local requirements for receipt of a high school diploma. The plan shall include:

A) the methods to be used to conduct the evaluation;

B) the data to be collected, which shall include at least the indicators outlined in Section 2-3.66b(h) of the School Code, as applicable to the program;

C) the specific procedures for how achievement levels of individual students enrolled in the program will be assessed to ensure that each student is making anticipated progress, as stipulated in his or her individual instructional program;

D) the specific procedures for how achievement levels of students with IEPs will be assessed, if these students are enrolled in the program;

E) how the evaluation will measure the extent to which the program overall is an effective strategy for assisting dropouts in completing their high school education and receiving a diploma; and

F) how the evaluation results will be used to improve the program.

Section 210.75 Program Approval Criteria
All complete applications to establish an IHOPE program shall be reviewed in accordance with the following criteria and approved based upon the extent to which:

a) the proposed program is structured to meet the individual needs of the students anticipated to be served, includes approaches shown to be successful in serving dropouts, and will be located at a site that will be educationally beneficial for the students to be served;

b) the curriculum is tied to State and district standards, its pace and sequence will likely lead to academic progress in a timely way, and the specific educational goals and accompanying procedures for assessing student progress are clearly defined and measurable;

c) support services are appropriate and necessary for students to improve their academic achievement and will not unduly interrupt the ability of the students to progress academically;

d) evidence is presented that the staff to be employed meet the requirements of Section 210.40(e) of this Part and that any not-for-profit entity proposed to provide instructional services is recognized by the State Board of Education (see Section 210.40(a)(2) of this Part); and

e) the financial plan to support the program is cost-effective, as evidenced by the numbers to be served and services to be provided, and includes evidence that local, State or federal funds and other sources of revenue will be coordinated to ensure the efficient and effective delivery of program services and activities.

Section 210.80 Application for Program Continuation

a) In order to continue to operate an IHOPE program approved pursuant to Section 2-3.66b of the School Code and this Part, the IHOPE program shall annually submit an application for continuation, in a format specified by the State Superintendent of Education, that shall include the following:

1) a description of proposed changes in any of the elements of the plan for the IHOPE program (see Section 210.70(c) of this Part);
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2) the results of the evaluation of the previous year's program conducted pursuant to Section 210.70(c)(14) of this Part, including the educational outcomes achieved by the students enrolled in the program;

3) the activities proposed for the continuation period in light of the evaluation of the preceding year's project, including the identification of each unmet objective and the rationale for its continued inclusion or its deletion from the program;

4) an expenditure report, in a format specified by the State Superintendent of Education, for the previous school year; and

5) updated information regarding any subcontracts, contracts, or cooperative or intergovernmental agreements into which the IHOPE program has entered to operate the program or provide services, including any changes to the entities involved or in their roles and responsibilities.

b) An IHOPE program shall be approved for continuation provided that it:

1) submits evidence that it is meeting the educational outcomes specified in the IHOPE plan, including the educational outcomes identified for the individual students served;

2) continues to comply with all applicable State and federal laws;

3) in the year previous to the continuation application, complied with:
   A) the terms and conditions of any incentive grant it received pursuant to Subpart B of this Part;
   B) the plan submitted for program approval pursuant to Section 210.70 of this Part; and
   C) any updates to that plan subsequently submitted to the State Superintendent of Education pursuant to subsection (a) of this Section; and

4) maintains financial records in accordance with Generally Accepted Governmental Auditing Standards or, in the case of CPS, 23 Ill. Adm.
c) An IHOPE program that is not approved for continuation shall be subject to the requirements of Section 210.100 of this Part.

Section 210.90 Program Funding

An IHOPE program approved by the State Board of Education shall be eligible to receive general State aid for those students who are participating in a high school completion program that is meeting the requirements of Section 27-22 of the School Code for receipt of a high school diploma [105 ILCS 5/2-3.66b(b)] from their respective school districts and meets the requirements for claiming State aid specified in Section 18-8.05 of the School Code and criteria specified in Section 210.60 of this Part.

a) A regional office of education that operates an eligible IHOPE program is entitled to submit a claim directly to the State Board of Education for general State aid at the foundation level of support. The regional office shall maintain a record-keeping system that tracks the attendance of IHOPE students and the provision of supplemental services, as applicable, and make such records available to the State Superintendent or designee upon request.

1) The regional office of education's claim shall include only the time period during which students in the high school completion program are enrolled in the IHOPE program.

2) The school district or districts subject to the provisions of the cooperative agreements specific to the issuance of a diploma for students in the high school completion program shall not claim State aid for these students.

3) The school district or districts operating the program on behalf of the regional office of education shall not claim State aid for the students served in the IHOPE program.

b) CPS shall account for the students enrolled in an IHOPE program separately from other students enrolled in the district. Attendance by these students shall be claimed as part of the district's regular claim for State aid. The district shall maintain a record-keeping system that tracks the attendance of IHOPE students.
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and the provision of supplemental services, as applicable, and make those records available to the State Superintendent or designee upon request.

Section 210.100 Suspension and Revocation of Program Approval

a) The State Superintendent of Education shall investigate an IHOPE program when any of the following occurs:

1) the program fails to receive approval to continue operating, in accordance with the requirements of Section 210.80 of this Part;

2) a parent or guardian files a written complaint with the regional superintendent of education or CPS, as applicable, or the State Superintendent of Education alleging that the program meets one or more of the following conditions:

   A) A failure to meet educational outcomes as enumerated in the approved IHOPE plan for a period of two or more consecutive years;

   B) A failure to comply with all applicable laws as specified in Section 2-3.66b of the School Code and this Part;

   C) A failure to comply with the terms and conditions of an IHOPE incentive grant received pursuant to Subpart B of this Part; or

   D) A failure to maintain financial records according to Generally Accepted Accounting Procedures or, in the case of CPS, 23 Ill. Adm. Code 100;

3) the State Superintendent otherwise receives information or becomes aware of allegations that the program meets one or more of the conditions set forth in subsection (a)(2) of this Section.

b) If the State Superintendent of Education, at the conclusion of the investigation, identifies deficiencies in the program that meet any of the conditions specified in subsection (a) of this Section, then he or she shall provide to the regional office of education that established the program, or to CPS, as applicable, written notification of the specific deficiencies found.
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1) The regional office of education or CPS, as applicable, shall submit to the State Superintendent of Education, within 30 calendar days after receiving the notification, a time-specific plan that addresses the specific steps to be taken and staff responsible to remedy each of the deficiencies cited. In no case shall the time needed to correct deficiencies exceed 120 days.

2) The State Superintendent shall approve the plan no later than 15 days after receiving the plan if it meets all of the following requirements.

   A) The timeframe is reasonable to correct the cited deficiencies.

   B) The proposed steps to be taken to remedy the problems have a high likelihood of correcting the cited deficiencies.

   C) A sufficient number of staff are proposed to implement the plan, and their expertise relates to the areas in which the deficiencies were found.

3) The regional office of education or CPS, as applicable, shall provide a copy of the deficiencies and of the approved plan to any entity with which it has entered into a cooperative agreement, intergovernmental agreement, contract or subcontract in order to operate the program or to provide services for students enrolled, as well as to any school district with which it has agreements to issue high school diplomas.

4) If the regional office of education or CPS, as applicable, provides evidence that it has corrected the deficiencies within the timeframe specified in the plan approved pursuant to subsection (b)(2) of this Section, then no change in the program's approved status shall be made.

c) If the regional office of education or CPS, as applicable, is unable to correct all of the deficiencies within the timeframe specified in its plan, even after the provision of technical assistance by State Board of Education staff, then it may submit to the State Superintendent an amended plan.

1) The amended plan shall be submitted no later than 30 calendar days prior to the time the affected deficiencies were to be corrected.
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2) The amended plan shall identify the deficiencies that are still unresolved, specifying the reasons for the delay and describing the steps to be taken to remedy the problems and the timeline for completing each. In no case shall the time needed to correct the remaining deficiencies exceed 30 additional calendar days.

3) The State Superintendent of Education will accept the amended plan, provided the remaining deficiencies can be corrected within 30 calendar days and that none of the deficiencies:

   A) presents an immediate health hazard or danger to students and staff;

   B) severely affects the program's ability to provide a program appropriate to the needs of the students enrolled (i.e., addresses the State Goals for Learning, employs certified staff, provides the services identified as necessary to assist students to earn a high school diploma); and

   C) represents prolonged or repeated problems to a degree that indicates the program's intention not to correct the deficiencies.

d) If the regional office of education or CPS, as applicable, fails to demonstrate that all of the deficiencies have been corrected within the timeframe specified in the amended plan, or fails to submit an amended plan that meets the requirements of subsection (c) of this Section, then approval to operate the program shall be suspended upon written notification from the State Superintendent of Education.

1) The program may serve the students enrolled in the program during the time of its suspension, provided it continues to make progress as specified in its plan and no additional students are enrolled in the program.

2) The regional office of education or CPS, as applicable, shall provide a copy of the notice of suspension to any entity with which it has entered into a cooperative agreement, intergovernmental agreement, contract or subcontract in order to operate the program or to provide services for students enrolled, as well as to any school district with which it has agreements to issue high school diplomas.
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3) If the regional office of education or CPS, as applicable, fails to correct all remaining deficiencies within 30 calendar days after receiving the notice of suspension, then approval to operate the program shall be revoked.

e) Notification to revoke program approval shall be sent by certified mail, return receipt requested to the regional office of education that established the program or to CPS, as applicable. A regional office of education or CPS, as applicable, shall have 10 calendar days after receipt of the notice of revocation to submit a written request for a hearing pursuant to the Illinois Administrative Procedure Act [5 ILCS 100] and the State Board of Education's rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475). The receipt of notification shall be determined by the date of receipt shown on the return receipt form.

f) Once approval for a program has been revoked:

1) a regional office of education or CPS, as applicable, shall be ineligible to file any claim upon the Common School Fund with regard to the program;

2) the State Superintendent of Education shall recover grant funds from a regional office of education or CPS, as applicable, in accordance with the provisions of the Illinois Grant Funds Recovery Act [30 ILCS 705]; and

3) all students (and their parents or guardians, as applicable) enrolled in the program shall be informed in writing of the revocation no later than 10 school days following receipt of the notification that approval has been revoked.

Section 210.110 Terms and Conditions of Approval

a) All contracts, subcontracts, and cooperative or intergovernmental agreements necessary for the operation of the program shall be approved by the regional superintendent of schools or, in the case of CPS, the board of education, and shall specify the roles of, and amount to be paid to, each entity subject to the contract or agreement.

b) Student records for each student enrolled in the IHOPE program shall be maintained by the student's resident district in accordance with the requirements of the Illinois School Student Records Act [105 ILCS 10], the State Board of
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Education rules governing Student Records (23 Ill. Adm. Code 375), and the Family Educational Rights and Privacy Act (FERPA) (20 USC 1232g).

c) Programs established and operated in accordance with Section 2-3.66b of the School Code and this Part must comply with all State and federal laws applicable to education providers, including, but not limited to, those prohibiting discrimination on the basis of race, color, national origin, sex, age or handicap, such as Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), the Illinois Human Rights Act [775 ILCS 5], the Individuals with Disabilities Education Improvement Act (20 USC 1400 et seq.), the Age Discrimination in Employment Act of 1967 (29 USC 621 et seq.), Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000d et seq., 2000e et seq.), the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.), the Illinois School Code [105 ILCS 5], and relevant case law, including Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382 (1982).

d) Each IHOPE program not subject to Section 34-18.5 of the School Code [105 ILCS 5/34-18.5] must certify that a fingerprint-based criminal history records check through the Illinois State Police and a check of the Statewide Sex Offender Database will be performed for all of its employees, volunteers, and all employees of persons or firms holding contracts with the program who have direct contact with students enrolled. Further, an IHOPE program shall not employ individuals, allow individuals to volunteer, or enter into a contract with a person or firm who employs individuals, who will have direct contact with students enrolled in the IHOPE program who have been convicted of any offense identified in Section 10-21.9(c) of the School Code [105 ILCS 5/10-21.9(c)] or have been found to be the perpetrator of sexual or physical abuse of any minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987 [705 ILCS 405/Art. II].

e) It will be the responsibility of the IHOPE program to maintain records of attendance for the students enrolled in the program and to make those records available to the State Superintendent of Education upon request.

SUBPART B: INCENTIVE GRANTS

Section 210.200 Purpose
This Subpart B establishes the procedures for approval of applications submitted to the State Board of Education for incentive grant funding to develop partnerships with school districts, public community colleges and community groups to build comprehensive plans to re-enroll school dropouts in their regions or districts. [105 ILCS 5/2-3.66b(b)]

Section 210.210 Eligible Applicants

Regional offices of education and City of Chicago School District 299 (CPS) may apply for incentive grant funding if they meet each of the following conditions.

a) The State Board of Education has approved the plan submitted under Section 210.70 of this Part by the regional office of education or CPS, as applicable, to establish an Illinois Hope and Opportunity Pathways through Education (IHOPE) program.

b) The regional office of education or CPS, as applicable, has established a partnership with at least one community college and one community group to participate in the IHOPE project. In addition, the partnership of each regional office of education also shall include one or more school districts from which the resident students of those districts enrolled in the IHOPE program will receive high school diplomas upon completion of all State and local graduation requirements.

c) An administrative agent shall be designated from among the members of the partnership, and the official from each of the partnership entities who is legally authorized to submit the application and bind the partner to its provisions shall sign the application.

Section 210.220 Funding Formula

In years in which an appropriation is received for the incentive grant, the funds shall be distributed in accordance with the formula set forth in Section 2-3.66b(e) of the School Code [105 ILCS 5/2-3.66b(e)] to IHOPE programs that meet the criteria set forth in Section 210.210 of this Part. Dropout figures to be used in the calculation shall be those reported by school districts in the Student Information System (SIS) authorized under 23 Ill. Adm. Code 1.75 no later than July 31 of each year.

Section 210.230 Application Procedures
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a) When an appropriation is made for the IHOPE incentive grant, the State Superintendent of Education shall release a request for applications (RFA) specifying the information that applicants shall include and requiring that proposals be submitted no later than the date specified in the RFA. The RFA shall provide at least 30 calendar days in which to submit applications.

b) It is the intention of the State Superintendent of Education to approve IHOPE incentive grants for a three-year period. Funding in each subsequent year is subject to a sufficient appropriation for the program and satisfactory progress of the grantee in the previous grant period. (See Section 210.80 of this Part.)

c) Each application shall include evidence that the plan, and any continuation plans, for the IHOPE program have received approval from the State Superintendent of Education. An applicant whose plan has been submitted to the State Superintendent of Education, but who has not yet received approval, shall submit a copy of the plan with its application for funding.

d) The application shall require the completion of a budget summary and payment schedule as well as a budget breakdown, i.e., a detailed explanation of each line item of expenditure.

e) Each application shall include such certifications, assurances and program-specific terms of the grant as the State Superintendent of Education may require, to be signed by each applicant that is a party to the application and submitted with the proposal.

f) Applicants may be requested to clarify various aspects of their applications. The contents of the approved application shall be incorporated into a grant agreement to be signed by the State Superintendent of Education or designee and the regional superintendent of education or, in the case of CPS, by the chief executive officer of the district.
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1) Heading of the Part: Transitional Bilingual Education

2) Code Citation: 23 Ill. Adm. Code 228

3) Section Numbers: Adopted Action:
   228.5    New Section
   228.10   Amendment
   228.15   Amendment
   228.20   Amendment
   228.25   Amendment
   228.27   New Section
   228.30   Amendment
   228.35   New Section
   228.40   Amendment
   228.50   Amendment
   228.60   Amendment

4) Statutory Authority: 105 ILCS 5/2-3.39(1) and Art. 14C

5) Effective Date of Amendments: July 26, 2010

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

7) Does this rulemaking contain incorporations by reference? Yes; see Sections
   228.25(b)(1), and 228.30(b)(4), (c)(1)(C) and (d)(2)(A).

8) A copy of the adopted amendments, including any material incorporated by reference, is
   on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: November 13, 2009; 33 Ill. Reg. 15405

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version: Consideration of "anyone who resides in
    the student's household" was removed from the definition of "home language" in Section
    228.10. "Home language" replaced the use of "native language" in Sections 228.10, 228.25, 228.27, 228.30 and 228.35.
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Also in Section 228.10, a particular prescribed screening instrument for preschool students was removed and a definition for prescribed screening procedures was added. Further changes were made throughout the rulemaking to align to the use of screening procedures rather than a prescribed screening instrument.

In Section 228.15(e), the closing phrase, “for purposes of placement and eligibility”, was moved to the beginning of the sentence.

A provision was added to Section 228.15(e)(1)(C)(iv) to allow for the consideration of nationally normed standardized tests in lieu of screening for transfer students who had been enrolled in any grade in which the Illinois State assessments are administered.

Sections 228.25(a)(1) and (2) were modified to move the reference of applicability of these provisions to students in kindergarten and any of grades 1 through 12 to the end of each subsection and to add a cross-reference after the statutory citation to Sections 228.30(c) and (d), respectively.

In Sections 228.30(b)(4), 228.35(d)(3), 228.35(e)(5), and 228.50(b)(4)(D), implementation was delayed until the 2012-2013 school year for Spanish Language Arts Standards and certain professional development, and until the 2011-12 school year for a submission of a plan to align programs to Spanish Language Arts Standards.

Section 228.30(a)(6) was made more explicit by replacing "bilingual education services" with "transitional bilingual education programs or transitional programs of instruction".

A specific exception to the requirements of Section 228.30(b) for preschool programs was added in this subsection.

Sections 228.25(b)(2) and 228.30(c)(3) were clarified regarding the scores to be used for determining English language proficiency and part-time placement, and language was added to require the State Superintendent of Education to inform districts of the minimum scores to be used by a date certain, as well as to post the scores and any modifications on the agency’s website by July 1 of the year in which the modifications take effect.

Other minor clarifications and nonsubstantive technical changes also were made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
13) Will this rulemaking replace any emergency rulemaking currently in effect? No

14) Are there any other proposed rulemakings pending on this Part? No

15) Summary and Purpose of Amendments: The majority of the changes in Part 228 flow from Public Act 95-793, effective January 1, 2009, which clarifies the law to explicitly direct school districts to provide bilingual education services required under Article 14C of the School Code to students enrolled in preschool programs established by the districts.

Also included in the rulemaking is new Section 228.27, which addresses districts’ plans for continuing services for students who leave a transitional bilingual education (TBE) program or a transitional program of instruction (TPI) without having achieved English proficiency. These new provisions help to more clearly identify school district requirements under both state law and the federal mandate in the Equal Educational Opportunities Act (EEOA). That is, Section 14C-3 of the School Code requires districts to serve students either until the student achieves English proficiency or for three years, whichever comes first, while Section 1703(f) of the EEOA requires school districts to provide services that will enable limited English proficient (LEP) students to “overcome barriers” to educational achievement. The addition of these new requirements will address an inquiry from the U.S. Department of Justice, Civil Rights Division, which questioned whether the agency, by not specifically referencing the EEOA in its rules, was violating Section 1703(f). Legal staff do not believe the agency has violated the law. The addition of Section 228.27 to the rules, however, demonstrates that, despite a state law explicitly permitting school districts to exit non-proficient students from TBE/TPI after three years, the agency expects school districts that do in fact exit non-proficient students to provide these students services in accordance with federal law.

Section 228.25 also is being amended to require statewide exit criteria. This change is the result of federal Title I monitoring conducted in 2008, in which the agency received a finding for lacking consistent, statewide criteria to exit students from the LEP subgroup for Annual Yearly Progress (AYP) purposes. The current rule allows districts to require a higher cut-score than the minimum set by the agency and/or to set additional exit criteria indicators to determine when students are no longer LEP. As a result, the parameters of the LEP subgroup varied from district to district, preventing a valid comparison of the LEP subgroup across the State. The amendment to 228.25 addresses the problem by establishing an exit standard for LEP students with statewide uniformity. Under the rules, districts now must use only the State-established cut-score.
Other proposed amendments address the Spanish Language Arts Standards and certificate requirements for directors of bilingual programs. The Spanish Language Arts Standards (2005 version) are being incorporated by reference. Districts will be expected to include in their bilingual education plans for the 2011-12 school year a discussion of how they plan to align instruction to the standards, which must occur in the 2012-13 school year. Beginning in 2012-13, plans also must discuss how student performance will be measured and curriculum modified, as needed.

New Section 228.35 addresses requirements for bilingual staff and administrators, as well as for ongoing professional development. This section contains requirements that were previously found in Sections 228.10 and 228.30(c). In addition to moving existing requirements under a single section, several modifications also were made: a cross-reference is made to the requirements for preschool teachers and noncertificated personnel found in Part 235 (Early Childhood Block Grant) and an allowance is made for preschool teachers to meet bilingual certification requirements by July 1, 2014.

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

Robin Lisboa, Division Administrator
Illinois State Board of Education
100 West Randolph, Suite 14-300
Chicago, Illinois 60602

312/814-3850

The full text of the Adopted Amendments begins on the next page:
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NOTICE OF ADOPTED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 228
TRANSITIONAL BILINGUAL EDUCATION

Section 228.5  Purpose and Applicability

a) This Part establishes requirements for school districts' provision of services to students in preschool through grade 12 who have been identified as limited English proficient in accordance with Article 14C of the School Code [105 ILCS 5/14C] and this Part.
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b) The requirements of Article 14C of the School Code and this Part shall apply to every school district in Illinois, regardless of whether the district chooses to seek funding pursuant to Section 228.50 of this Part.

(Source: Added at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.10 Definitions

"Bilingual Education Teacher" means a teacher who:

holds a valid Illinois certificate with an endorsement or approval in bilingual education or an endorsement in ENL with a language-specific designation for bilingual education (see 23 Ill. Adm. Code 25.Appendix E and 23 Ill. Adm. Code 1.780 and 1.781); or

holds a Transitional Bilingual Certificate endorsed for teaching in a language other than English and issued by the State Board of Education in accordance with 23 Ill. Adm. Code 25.90; or

holds a Visiting International Teacher Certificate and meets the requirements of 23 Ill. Adm. Code 25.92(i).

"English as a Second Language" or "ESL" or "English as a New Language" or "ENL" means specialized instruction designed to assist students whose home language is other than English in attaining English language proficiency. ESL or ENL instruction includes skills development in listening, speaking, reading, and writing. (ESL and ENL are not to be confused with English language arts as taught to students whose home language is English.)

"English Language Proficiency Assessment" means the ACCESS for ELLs® (World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706 (2006)).

"Home Language" means that language normally used in the home by the student and/or by the student's parents or legal guardians.

"Language Background other than English" means that the home language of a student in preschool, kindergarten or any of grades 1 through 12, whether born in
the United States or born elsewhere, is other than English or that the student comes from a home where a language other than English is spoken, by the student, or by his or her parents or legal guardians, or by anyone who resides in the student's household.

"Preschool Program" means instruction provided to children who are ages 3 up to but not including those of kindergarten enrollment age as defined in Section 10-20.12 of the School Code [105 ILCS 5/10-20.12] in any program administered by a school district, regardless of whether the program is provided in an attendance center or a non-school-based facility.

"Prescribed Screening Instrument" means the:

- WIDA ACCESS Placement Test (W-APT™) (2006 or 2007) for students entering or in the second semester of grade 1 or in grades 2 through 12 (W-APT™) (World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706 (2006));
- Measure of Developing English Language (MODEL™) (2008) for students entering kindergarten or the first semester of grade 1 (World-class Instructional Design and Assessment Consortium, Wisconsin Center for Education Research (WCER), University of Wisconsin-Madison, 1025 West Johnson Street, MD#23, Madison WI 53706).

"Prescribed Screening Procedures" means the procedures that a school district determines to be appropriate to assess a preschool student's level of English language proficiency (minimally in the domains of speaking and listening), in order to determine whether the student is eligible to receive bilingual education services. The procedures may include, without limitation, established screening instruments or other procedures, provided that they are research-based. Further, screening procedures shall at least:

- Be age and developmentally appropriate;
- Be culturally and linguistically appropriate for the children being screened;
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Include one or more observations using culturally and linguistically appropriate tools;

Use multiple measures and methods (e.g., home language assessments; verbal and nonverbal procedures; various activities, settings, and personal interactions);

Involves family by seeking information and insight to help guide the screening process without involving them in the formal assessment or interpretation of results; and

Involve staff who are knowledgeable about preschool education, child development, and first and second language acquisition.

"Standard School Program" means the educational program offered by the local school district to the majority of its students ("general education").

"Students of Limited English Proficiency" means students in preschool, kindergarten or any of grades 1 through 12, whether born in the United States or born elsewhere, whose homenative language background is a language other than English and whose difficulties in speaking, reading, writing, or understanding English may be sufficient to deny them:

the ability to meet the State's proficient level of achievement on State assessments;

the ability to successfully achieve in classrooms where the language of instruction is English; or

the opportunity to participate fully in the school setting.

"Students of Non-English Background" means students, whether born in the United States or born elsewhere, whose native language is other than English or students who come from homes where a language other than English is spoken, either by the students themselves or by their parents or legal guardians.

"Teacher of English as a Second Language" or "Teacher of English as a New Language" means a teacher who:
holds a special certificate endorsed for teaching ESL or ENL, issued by the State Board of Education in accordance with 23 Ill. Adm. Code 25; or

holds a valid Illinois certificate and an endorsement or approval for ESL, issued by the State Board of Education pursuant to 23 Ill. Adm. Code 1.780, 1.781, and 1.782; or

meets the requirements set forth in 23 Ill. Adm. Code 1.782.

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.15 Identification of Eligible Students

a) Each school district shall administer a home language survey with respect to each student in preschool, kindergarten or any of grades 1 through 12 who is entering the district's schools or any of the district's preschool programs for the first time, for the purpose of identifying students who have a language background other than English. The survey should be administered as part of the enrollment process or for preschool programs, by the first day the student commences participation in the program. The survey shall include at least the following questions, and the student shall be identified as having a language background other than English if the answer to either question is yes:

1) Whether a language other than English is spoken in the student's home and, if so, which language; and

2) Whether the student speaks a language other than English and, if so, which language.

b) The home language survey shall be administered in English and, if feasible, in the student's home language.

c) The home language survey form shall provide spaces for the date and the signature of the student's parent or legal guardian.

d) The completed home language survey form shall be placed into the student's temporary record as defined in 23 Ill. Adm. Code 375 (Student Records).

e) The district shall, using the prescribed screening instrument, screen the English
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language proficiency of each student identified through the home language survey as having a language non-English background other than English by using the prescribed screening instrument applicable to the student's grade level (i.e., kindergarten or any of grades 1 through 12) or the prescribed screening procedures identified by the preschool program. This screening assessment shall take place within 30 days either after the student's enrollment in the district or, for preschool programs, after the student commences participation in the program, for the purpose of determining the student's eligibility for bilingual education services and, if eligible, the appropriate placement for the student. For kindergarten, all students identified through the home language survey, including students previously screened when enrolled in preschool, must be screened using the prescribed screening instrument for kindergarten.

1) The prescribed screening instrument does not need to be administered to a student who, in his or her previous school district:

   A) has been screened and identified as English language proficient as required in this subsection (e); or

   B) has met the State exit requirements as described in Section 228.25(b)(2) of this Part; or

   C) has met all of the following criteria:

      i) resides in a home where a language other than English is spoken, and

      ii) has not been screened or identified as a student with limited English proficiency, and

      iii) has been enrolled in the general program of instruction in the school he or she has previously attended, and

      iv) has been performing at or above grade level as evidenced by having met or exceeded the Illinois Learning Standards in reading and math on the student's most recent State assessment administered pursuant to Section 2-3.64 of the School Code [105 ILCS 5/2-3.64] or, for students for whom State assessment scores are not available, a
nationally normed standardized test, provided that either assessment was not administered with accommodations for students of limited English proficiency. This provision applies only to a student who had been enrolled in any of the grades in which the State assessment is required to be administered in accordance with Section 2-3.64 of the School Code.

2) For purposes of eligibility and placement, a district must rely upon a student's score attained on the prescribed screening instrument or on the English language proficiency assessment instrument prescribed under Section 228.25 (be) of this Part, if either is available from another school district or another state, provided that the score was achieved no more than 12 months prior to the district's need to assess the student's proficiency in English for purposes of eligibility and placement.

3) If results are not available pursuant to subsection (e)(2) of this Section, then a district must rely upon a student's score on the prescribed screening instrument if available from another school district or another state for the purposes of eligibility and placement for students entering any of grades 1 through 12, if the student's score on the prescribed screening instrument was achieved no more than 12 months prior to the district's need to assess the student's proficiency in English.

4) Each student whose score on the prescribed screening instrument or procedures, as applicable, is identified as not "proficient" as defined by the State Superintendent of Education shall be considered to have limited English proficiency and therefore to be eligible for, and shall be placed into a program of, bilingual education services.

A) For preschool programs using a screening procedure other than an established assessment tool where "proficiency" is defined as part of the instrument, "proficiency" is the point at which performance identifies a child as proficient in English, as set forth in the program's proposed screening process.

B) For any preschool however, even if the student who scores at the "proficient" level, the school district may consider additional indicators such as the results of criterion referenced or locally
developed tests, teachers' evaluations of performance, samples of a student's work, or information received from family members and school personnel in order to determine whether the student's proficiency in English is limited and the student is eligible for services.

3) Students who, based on review of assessment scores and other evidence such as that outlined in subsection (e)(2) of this Section, are judged to be of limited English proficiency shall be eligible for, and shall be placed into a program of, bilingual education services.

f) Each district shall ensure that any accommodations called for in the Individualized Education Programs of students with disabilities are afforded to those students in the administration of the screening instrument or procedures, as applicable, discussed in this Section and the English language proficiency assessment prescribed under Section 228.25(b) of this Part.

g) The parent or guardian of any child resident in a school district who has not been identified as having limited English proficiency may request the district to determine whether the child should be considered for placement in a bilingual education program, and the school district shall make that determination upon request, using the process described in this Section. A determination contested by a parent or legal guardian may be appealed to the regional superintendent of schools for the region in which the district is located, pursuant to the provisions of Section 3-10 of the School Code [105 ILCS 5/3-10].

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.20 Student Language Classification Data Public School Bilingual Census

a) In order to meet the requirements of Section 14C-3 of the School Code, every school district shall update its individual student records in the Student Information System (SIS) authorized under 23 Ill. Adm. Code 1.75 (Public Schools Evaluation, Recognition and Supervision) no later than the first day in March of each year to reflect the following information:

No later than the first day of March of each year, every school district shall submit a bilingual census report for that school year to the State Superintendent of Education (Section 14C-3 of the School Code [105 ILCS 5/14C-3]). The bilingual census report shall be submitted on forms provided by the Superintendent and shall include:
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a) Whether the student has a language number of students of non-English background other than English in each attendance center, as identified via the home language survey;

b) Whether the student has a number of those students who have been identified as having limited English proficiency based on the results of the prescribed screening instrument or procedures, as applicable, or the English language proficiency assessment and other factors discussed in Section 228.15(e) or Section 228.25(b)(c) of this Part; and

c) The home language, birth date, languages, ages, and grade or achievement levels of the student identified as having limited English proficiency.

b) A district may use the number of students who have been identified in its census report as having limited English proficiency and who are thus eligible for bilingual education services as a preliminary count for the purpose of submitting a program application pursuant to Section 228.50 of this Part.

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.25 Program Options, Placement, and Assessment

a) Program Options and Placement

1) When an attendance center has an enrollment of 20 or more limited English proficient students of the same language classification the school district must establish a transitional bilingual education (TBE) program for each language classification represented by those students. (Section 14C-3 of the School Code; also see Section 228.30(c) of this Part). A further assessment of those students to determine their specific programmatic needs or for placement in either a full-time or a part-time program may be conducted. This subsection (a)(1) applies only to students enrolled in kindergarten or any of grades 1 through 12 in an attendance center.

2) When an attendance center has an enrollment of 19 or fewer students of limited English proficiency from any single non-English-language classification other than English, the school district shall conduct an individual student language assessment to determine each student's need
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for \textit{homogeneous} language instruction and may provide a transitional bilingual program in the \textit{non-English} languages \textit{other than English} common to \textit{these} students. If the district elects not to provide a transitional bilingual program, the district shall provide a locally determined transitional program of instruction (TPI) for those students. (Section 14C-3 of the School Code; also see Section 228.30(d) of this Part) This subsection (a)(2) applies only to students enrolled in kindergarten or any of grades 1 through 12 in an attendance center.

3) When a preschool program of the school district has an enrollment of 20 or more students of limited English proficiency of any single language classification other than English in an attendance center or a non-school-based facility, the school district shall establish a TBE program for each language classification represented by the students. If the preschool program of an attendance center or non-school-based facility has 19 or fewer students of limited English proficiency of any single language classification other than English, then the school district shall meet the requirements of subsection (a)(2) of this Section when determining placement and the program to be provided.

\textbf{b) \textit{English Language Proficiency Assessment Annual Examination}}

1) \textit{School districts must annually assess the English language proficiency, including aural comprehension (listening), speaking, reading, and writing skills, of all \textit{children of limited English-speaking ability in kindergarten and any of grades 1 through 12} students enrolled in programs.} (Section 14C-3 of the School Code) using the English language proficiency assessment prescribed by the State Superintendent of Education. This assessment shall be administered during a testing window designated by the State Superintendent, for the purpose of determining individual students' continuing need and eligibility for bilingual education services. The annual assessment shall be based on the "\textit{English Language Proficiency Standards for English Language Learners in PreKindergarten through Grade 12}" "\textit{Framework for Large-Scale Assessment of the English Language Proficiency Standards for English Language Learners K–12}" (2007-2004), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium State of Wisconsin and posted at \url{http://www.wida.us/standards/elp.aspx} \url{www.isbe.net/bilingual/pdfs/elps_framework.pdf}. No later amendments
2) The State Superintendent shall determine and post on the State Board's website no later than September 1, 2010 the composite score and the literacy score that will be used to determine whether a student is identified as "proficient". Should the minimum scores be modified, the State Superintendent shall inform school districts no later than July 1 of the scores to be used and modify the State Board's website accordingly.

A) Each student whose score on the English language proficiency assessment is identified as "proficient" may be considered eligible to exit the program of bilingual education services, subject to the provisions of Section 14C-3 of the School Code [105 ILCS 5/14C-3]. However, the school district may also consider other indicators such as those listed in Section 228.15(e)(2) of this Part to determine whether individual students continue to exhibit limited English proficiency and remain eligible for bilingual education services, subject also to the provisions of Section 14C-3 of the School Code [105 ILCS 5/14C-3].

B) Each student whose score is identified as "proficient" in accordance with subsection (b)(2)(A) of this Section shall no longer be identified as limited English proficient.

3) Beginning with the 2007 administration of the annual English language proficiency examination, each student who is not enrolled in a program under this Part but who has been identified as having limited English proficiency at any time since 2006 shall be required to participate in the annual examination each year until he or she achieves a "proficient" score.

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.27 Language Acquisition Services for Certain Students Exiting the Program

In accordance with Section 1703(f) of the Equal Educational Opportunities Act (EEOA), a school district must provide services that will enable limited English proficient students to "overcome barriers that impede equal participation by these students in the district's instructional programs" (see 20 USC 1703). Section 14C-3 of the School Code, however, authorizes school
districts to discontinue services to students who have been enrolled and participated in the TBE or TPI program for three consecutive years. In instances where a school district chooses to discontinue TBE or TPI program services as permitted under Section 14C-3 of the School Code for those students who have not achieved English proficiency as determined by the process set forth in Section 228.25(b) of this Part, the district shall submit a plan to the State Superintendent that describes the actions it will take to meet its obligations under Section 1703(f) of the EEOA. Any amendments to the plan shall be submitted to the State Superintendent no later than 30 days following adoption of the changes. The plan shall at least include:

- a) the process and criteria the district will use to make a determination of when to exit eligible students from the TBE or TPI program (e.g., after a certain amount of time in the program, once a prescribed academic or proficiency level is achieved);
- b) The language acquisition services and methods to be provided, including how the services and methods differ from the general program of instruction in content, instructional goals, and the use of English and home language instruction;
- c) How the program will meet the educational needs of the students and build on their academic strengths;
- d) How the program will specifically help the students learn English and meet academic achievement standards for grade promotion and graduation;
- e) The names and qualifications of the staff who will implement the program; and
- f) How sufficient resources, including equipment and instructional materials, shall be made available to support the program.

(Source: Added at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.30 Establishment of Programs

- a) Administrative Provisions
  1) Program Facilities – Other than for preschool education programs, TBE and TPI programs shall be located in regular public school facilities rather than in separate facilities. (Section 14C-6 of the School Code [105 ILCS 5/14C-6]) If such a location is not feasible, the substitute location shall be comparable to those made available to a majority of the
district's students with respect to space and equipment. If housed in a facility other than a public school (including a charter school), the school district shall provide a written explanation in its annual application to the State Superintendent of Education as to why the use of a public school building is not feasible.

2) Course Credit – Students enrolled in approved programs shall receive full credit for courses taken in these programs, which shall count toward promotion and fulfillment of district graduation requirements. Courses in ESL shall count toward English requirements for graduation. Students who change attendance centers or school districts shall do so without loss of credit for coursework completed in the program.

3) Extracurricular Activities – Each district shall ensure that students enrolled in programs shall have the opportunity to participate fully in the extracurricular activities of the public schools in the district. (Section 14C-7 of the School Code [105 ILCS 5/14C-7])

4) Inclusion of Students Whose First or Home Language is English – Students whose first or home language is English may be included in a program under this Part provided that all students of limited English proficiency are served.

5) Joint Programs – A school district may join with one or more other school districts to provide joint programs or services in accordance with the provisions of Section 10-22.31a of the School Code [105 ILCS 5/10-22.31a]. The designated administrative agent shall adhere to the procedures contained in 23 Ill. Adm. Code 110 (Program Accounting Manual) as they pertain to cooperative agreements.

6) Preschool and Summer School – A school district may establish preschool and summer school programs for students of limited English proficiency, or join with other school districts in establishing such programs. Summer school programs shall not replace programs required during the regular school year. (Section 14C-11 of the School Code [105 ILCS 5/14C-11])

A school district that offers a summer school program or preschool program shall provide transitional bilingual education programs or
transitional programs of instruction for students having limited English proficiency in accordance with Article 14C and this Part.

b) Instructional Specifications

1) Student-Teacher Ratio – The student-teacher ratio in the ESL and home native-language components of programs serving students in kindergarten or any of grades 1 through 12 as of September 30 of each school year shall not exceed 90% of the average student-teacher ratio in general education classes for the same grades in that attendance center. Decreases in the ratio for general education during the course of a school year due to students’ mobility shall not require corresponding adjustments within the bilingual program. Further, additional students may be placed into bilingual classes during the course of a school year, provided that no bilingual classroom may exhibit a student-teacher ratio that is greater than the average for general education classes in that grade and attendance center as a result of such placements. Preschool programs established pursuant to Section 2-3.71 of the School Code [105 ILCS 5/2-3.71] that provide bilingual education services shall meet the requirements of 23 Ill. Adm. Code 235.30(d) (Early Childhood Block Grant) rather than the requirements of this subsection (b)(1).

2) Grade-Level Placement – Students enrolled in a program of transitional bilingual education shall be placed in classes with students of approximately the same age or grade level, except as provided in subsection (b)(3) of this Section. (Section 14C-6 of the School Code)

3) Multilevel Grouping – If students of different age groups or educational levels are combined in the same class, the school district shall ensure that the instruction given each student is appropriate to his/her age or grade level. (Section 14C-6 of the School Code) Evidence of compliance with this requirement shall be:

A) individualized instructional programs; or

B) grouping of students for instruction according to grade level.

4) Beginning with the 2012-13 school year, instruction in Spanish language arts, where provided under subsection (c) or (d) of this Section, shall be
aligned to the standards that are appropriate to the ages or grade levels of the students served, which are set forth in the document titled "World-Class Instructional Design and Assessment: Spanish Language Arts Standards" (2005), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium and posted at http://www.wida.us/standards/sla.aspx. No later amendments to or editions of these standards are incorporated by this Section.

5) Language Grouping – School districts may place students of limited English proficiency who have different home languages in the same class, provided that, in classes taught in the home native language:

A) instructional personnel or assistants representing each of the languages in the class are used; and

B) the instructional materials are appropriate for the languages of instruction.

6) Program Integration – In courses of subjects in which language is not essential to an understanding of the subject matter, including, but not necessarily limited to, art, music, and physical education, students of limited English proficiency shall participate fully with their English-speaking classmates. (Section 14C-7 of the School Code)

e) Administrators

Beginning July 1, 2008, each individual newly assigned to administer a program under this Part shall meet the applicable requirements of this subsection (e). Administrators first assigned on or before June 30, 2008, shall be subject to the applicable requirements of this subsection (e) as of July 1, 2010.

1) Except as provided in subsections (c)(3) and (4) of this Section, any person designated to administer a TBE program must hold a valid administrative certificate or supervisory endorsement issued by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 (Certification) and 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision) and must hold the bilingual approval or endorsement.
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2) Except as provided in subsections (c)(3) and (4) of this Section, any person designated to administer a TPI program must hold a valid administrative certificate or supervisory endorsement issued by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 and 1 and must hold the bilingual or ESL approval or endorsement.

3) A person designated to administer a TBE or TPI program in a district with fewer than 200 TBE/TPI students shall be exempt from the requirement for bilingual or ESL approval or endorsement, provided that he or she annually completes two hours of professional development specifically designed to address the needs of students with limited English proficiency. Documentation for this professional development activity shall be made available to a representative of the State Board of Education upon request.

4) A person who has been assigned to administer a TPI program in a district that experiences such growth in the number of students eligible for bilingual education that a TBE program is required shall become subject to the requirements of subsection (c)(1) of this Section at the beginning of the fourth school year of the TBE program's operation. A person who has been assigned to administer a program under subsection (c)(3) of this Section in a district where the number of students eligible for bilingual education grows beyond 200 shall become subject to the requirements of subsection (c)(2) of this Section at the beginning of the fourth school year in which the eligible population exceeds 200 students. That is, each individual may continue to serve for the first three school years on the credentials that qualified him or her to administer the program previously operated.

d) In-Service Training for Staff

1) Each school district having a program shall annually plan in-service training activities for the certificated and noncertificated personnel involved in the education of students of limited English proficiency. This plan shall be included in the district's annual application and shall be approved by the State Superintendent of Education if it meets the standards set forth in subsections (d)(2) and (d)(3) of this Section.
2) Program staff beginning their initial year of service shall be involved in training activities that will develop their knowledge of the requirements for the program established under this Part and the employing district's relevant policies and procedures.

3) Training activities shall be provided to all bilingual program staff at least twice yearly and shall address at least one of the following areas:

   A) current research in bilingual education;

   B) content area and language proficiency assessment of students with limited English proficiency;

   C) research-based methods and techniques for teaching students with limited English proficiency;

   D) research-based methods and techniques for teaching students with limited English proficiency who also have disabilities; and

   E) the culture and history of the United States and of the country, territory or geographic area that is the native land of the students or of their parents.

4) In addition to any other training required under this subsection (d), each individual who is responsible for administering the screening instrument referred to in Section 228.15(e) of this Part or the annual English language proficiency examination discussed in Section 228.25(c) of this Part shall be required to complete an on-line training sequence furnished by the State Board of Education and to pass the test embedded in that material.

c) Specific Requirements for Transitional Bilingual Education (TBE) Programs

1) Each full-time TBE program shall consist of at least the following components (Section 14C-2 of the School Code):

   A) Instruction in subjects which are either required by law (see 23 Ill. Adm. Code 1) or by the student's school district, to be given in the student's home language and in English; core subjects such as math, science and social studies must be offered in the student's
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home language;

B) Instruction in the language arts in the student's home language;

and

C) Instruction in English as a second language, which must align to the "English Language Proficiency Standards for English Language Learners in PreKindergarten through Grade 12" (2007), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium and posted at http://www.wida.us/standards/elp.aspx. No later amendments to or editions of these standards are incorporated by this Section; and

D) Instruction in the history and culture of the country, territory, or geographic area which is the native land of the students or of their parents and in the history and culture of the United States.

2) Programs may also include other services, modifications, or activities such as counseling, tutorial assistance, learning settings, or special instructional resources that will assist students of limited English proficiency in meeting the Illinois Learning Standards (see 23 Ill. Adm. Code 1, Appendix D) and for preschool programs established pursuant to Section 2-3.71 of the School Code and for kindergarten levels, the Illinois Early Learning Standards (see 23 Ill. Adm. Code 235, Appendix A).

3) Students may be placed into a part-time program, or students previously placed in a full-time program may be placed in a part-time program, if an assessment of the student's English language skills has been performed in accordance with the provisions of either Section 228.15(e) or Section 228.25(b) of this Part and the assessment results indicate that the student has sufficient proficiency in English to benefit from a part-time program.

A) Beginning July 1, 2011, evidence of sufficient proficiency shall be achievement of the minimum score to be used for this purpose set by the State Superintendent either on the prescribed screening instrument required in Section 228.15(e) of this Part or the English language proficiency assessment required in Section 228.25(b). The State Superintendent shall inform districts of the minimum score to be used for the prescribed screening instrument or the
English language proficiency assessment, and post the minimum score on the State Board's website. Should the minimum score be modified, the State Superintendent shall inform school districts no later than July 1 of the scores to be used and modify the State Board's website accordingly.

B) Preschool programs shall use as evidence of sufficient proficiency either a minimum score for an established screening instrument or a minimum level of performance documented through established screening procedures.

C) District staff also shall consider the student's score and his or her proficiency in the home language, prior performance, if any, in coursework taught exclusively in English, current academic performance, and other relevant factors such as age, disability, and cultural background in order to determine whether a full-time or a part-time program is appropriate.

4) A part-time program shall consist of components of a full-time program that are selected for a particular student based upon an assessment of the student's educational needs. Each student's part-time program shall provide daily instruction in English and in the student's home language as determined by the student's needs.

5) Parent and Community Participation – Each district or cooperative shall establish a parent advisory committee consisting of parents, legal guardians, transitional bilingual education teachers, counselors, and community leaders. This committee shall participate in the planning, operation, and evaluation of programs. The majority of committee members shall be parents or legal guardians of students enrolled in these programs. Membership on this committee shall be representative of the languages served in programs to the extent possible. (Section 14C-10 of the School Code [105 ILCS 5/14C-10])

A) The committee shall:

i) meet at least four times per year;

ii) maintain on file with the school district minutes of these
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meetings; and

iii) review the district's annual program application to the State Superintendent of Education.

B) Each district or cooperative shall ensure that training is provided annually to the members of its parent advisory committee. This training shall be conducted in language that the parent members can understand and shall encompass, but need not be limited to, information related to instructional approaches and methods in bilingual education; the provisions of State and federal law related to students' participation and parents' rights; and accountability measures relevant to students in bilingual programs.

Specific Requirements for Transitional Program of Instruction (TPI)

1) Program Structure – The level of a student's proficiency in English, as determined by an individual student language assessment of the student's language skills on the basis of either the prescribed screening instrument or procedures, as applicable, required in Section 228.15(e) of this Part or the English language proficiency assessment required in Section 228.25(b) of this Part in conjunction with other information available to the district regarding the student's level of literacy in his or her home language, will determine the structure of the student's instructional program.

2) Program Components – A transitional program of instruction must include instruction or other assistance in the student's home language to the extent necessary, as determined by the district on the basis of the prescribed screening instrument or procedures, as applicable, student assessment required in Section 228.15(e) of this Part or the English language proficiency assessment required in Section 228.25(b) of this Part, to enable the student to keep pace with his/her age or grade peers in achievement in the core academic content areas. A transitional program of instruction may include, but is not limited to, the following components:

A) instruction in ESL, which must align to the "English Language Proficiency Standards for English Language Learners in PreKindergarten through Grade 12" (2007), published by the Board of Regents of the University of Wisconsin System on behalf
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of the WIDA Consortium and posted at http://www.wida.us/standards/elp.aspx. No later amendments to or editions of these standards are incorporated by this Section;

B) language arts in the students' home language;

C) instruction in the history and culture of the country, territory, or geographic area that is the native land of the students or of their parents and in the history and culture of the United States.

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.35 Personnel Qualifications; Professional Development

a) Each individual assigned to provide instruction in a student's home language shall meet the requirements for bilingual education teachers set forth in 23 Ill. Adm. Code 25 (Certification) and 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision), as applicable.

b) Each individual assigned to provide instruction in ESL shall meet the requirements for ESL or English as a New Language teachers set forth in 23 Ill. Adm. Code 25 and 23 Ill. Adm. Code 1, as applicable.

c) Preschool Programs

1) Each individual assigned to provide instruction to students in a preschool program shall meet the requirements of 23 Ill. Adm. 235.20(c)(8)(A) (Early Childhood Block Grant).

2) By July 1, 2014, each individual assigned to provide instruction to students in a preschool program also shall meet the applicable requirements of subsection (a) or (b) of this Section, depending on the assignment.

3) Noncertificated staff employed to assist in instruction in a preschool program shall meet the requirements of 23 Ill. Adm. 235.20(c)(8)(B).

d) Administrators
Beginning July 1, 2008, each individual newly assigned to administer a program under this Part shall meet the applicable requirements of this subsection (d). Administrators first assigned on or before June 30, 2008 shall be subject to the applicable requirements of this subsection (d) as of July 1, 2010.

1) Except as provided in subsections (d)(3) and (4) of this Section, any person designated to administer a TBE program must hold a valid administrative certificate or a supervisory endorsement issued on an initial or standard teaching certificate by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 (Certification) and 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision) and must hold the bilingual approval or endorsement or the ENL endorsement with a language designation.

2) Except as provided in subsections (d)(3) and (4) of this Section, any person designated to administer a TPI program must hold a valid administrative certificate or a supervisory endorsement issued on an initial or standard teaching certificate by the State Board of Education in accordance with applicable provisions of 23 Ill. Adm. Code 25 and 1 and must hold the bilingual or ESL approval or endorsement or the ENL endorsement.

3) A person designated to administer a TBE or TPI program in a district with fewer than 200 TBE/TPI students shall be exempt from all but the requirement for an administrative certificate or a supervisory endorsement issued on an initial or standard teaching certificate, provided that he or she annually completes a minimum of two hours of professional development specifically designed to address the needs of students with limited English proficiency. Beginning in the 2012-13 school year, a minimum of eight hours of professional development shall be required. An assurance that this requirement has been met shall be provided annually in a school district's application submitted pursuant to Section 228.50 of this Part. Documentation for this professional development activity shall be made available to a representative of the State Board of Education upon request.

4) A person who has been assigned to administer a TPI program in a district that experiences such growth in the number of students eligible for bilingual education that a TBE program is required shall become subject to the requirements of subsection (d)(1) of this Section at the beginning of
the fourth school year of the TBE program's operation. A person who has been assigned to administer a program under subsection (d)(3) of this Section in a district where the number of students eligible for bilingual education reaches 200 shall become subject to the requirements of subsection (d)(2) of this Section at the beginning of the fourth school year in which the eligible population equals or exceeds 200 or more students. That is, each individual may continue to serve for the first three school years on the credentials that qualified him or her to administer the program previously operated.

e) Professional Development for Staff

1) Each school district having a program shall annually plan professional development activities for the certificated and noncertificated personnel involved in the education of students of limited English proficiency. This plan shall be included in the district's annual application and shall be approved by the State Superintendent of Education if it meets the standards set forth in subsections (e)(2) and (e)(3) of this Section.

2) Program staff beginning their initial year of service shall be involved in training activities that will develop their knowledge of the requirements for the program established under this Part and the employing district's relevant policies and procedures.

3) Training activities shall be provided to all bilingual program staff at least twice yearly and shall address at least one of the following areas:

A) current research in bilingual education;

B) content-area and language proficiency assessment of students with limited English proficiency;

C) research-based methods and techniques for teaching students with limited English proficiency;

D) research-based methods and techniques for teaching students with limited English proficiency who also have disabilities; and
the culture and history of the United States and of the country, territory or geographic area that is the native land of the students or of their parents.

4) In addition to any other training required under this subsection (e), each individual who is responsible for administering the prescribed screening instrument referred to in Section 228.15(e) of this Part or the annual English language proficiency assessment discussed in Section 228.25(b) of this Part shall be required to complete on-line training designated by the State Superintendent of Education and to pass the test embedded in that material.

5) Beginning in the 2012-13 school year, each district that operates either a TBE or a TPI program for students of Spanish language background in kindergarten and any of grades 1 through 12 shall provide annually at least one training session related to the implementation of the Spanish language arts standards required under Section 228.30(b)(4) of this Part for staff members of that program who are providing instruction in the Spanish language arts.

(Source: Added at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.40 Students' Participation; Records

a) Notice of Enrollment and Withdrawal

1) Notice of Enrollment — No later than 30 days after the beginning of the school year or 14 days after the enrollment of any student in a transitional bilingual education program in the middle of a school year, the school district shall notify by mail the parents or legal guardians of the student that their child has been enrolled in a transitional bilingual education program or a transitional program of instruction. The notice shall be in English and in the home language of the student and shall convey, in simple, nontechnical language, all of the information called for in Section 14C-4 of the School Code [105 ILCS 5/14C-4].

2) Withdrawal by Parents — Any parent or legal guardian whose child has been enrolled in a program shall have the absolute right to withdraw the child from the program immediately by submitting a written notice of his
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or her desire to withdraw the child to the school authorities of the school in which the child is enrolled or to the school district in which the child resides. (Section 14C-4 of the School Code)

b) Unless terminated as set forth in subsection (a)(2) of this Section, the duration of a student's participation in a program under this Part shall be as set forth in Section 14C-3 of the School Code.

1) If a student participates in a TBE or TPI in preschool or kindergarten, then that participation does not count towards the three-year total specified in Section 14C-3 of the School Code.

2) If a student exits a program after three years and is not proficient in English, then the school district shall meet the requirements of Section 228.27 of this Part.

c) Maintenance of Records and Reporting Procedures

1) Report Cards – The school shall send progress reports to parents or legal guardians of students enrolled in programs in the same manner and with the same frequency as progress reports are sent to parents or legal guardians of other students enrolled in the school district. These

A) Progress reports shall indicate the student's progress in the program and in the general program of instruction, and

B) Progress reports shall indicate when the student has successfully completed requirements for transition from the program into the general program of instruction if that information has not been reported separately in writing to the parents or legal guardian.

C) Progress reports for all students enrolled in a program under this Part shall be written in English and in the student's home language unless a student's parents or legal guardian agree in writing to waive this requirement. The parents' waiver shall be kept on file in accordance with subsection (c)(3) of this Section.

2) Annual Student Reports – Each district must submit electronically the information requested by the State Superintendent using the Student
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Information System (see 23 Ill. Adm. Code 1.75) no later than June 30 of each year. Each district also must complete the Transitional Bilingual Education Annual Student Report and the Program Delivery Report, provided by the State Superintendent of Education, in which information on each program and each student participating in the program is compiled.

3) Records – School districts shall maintain records of each student enrolled in programs in the manner prescribed in 23 Ill. Adm. Code 375 (Student Records). These records shall include program entry/exit information, annual English language proficiency assessment test scores and results from the prescribed screening instrument for students in kindergarten and any of grades 1 through 12 or the results from the prescribed screening procedures for students in preschool programs; and other student information (e.g., language, grade level, and attendance); the rationale for a student's placement into a part-time program, where applicable, including documentation of the factors indicating that a part-time program would be appropriate; and documentation of conferences and written communication with parents or legal guardians. Parents and legal guardians of students enrolled in programs shall have access to their students' such records, as specified in 23 Ill. Adm. Code 375.

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)

Section 228.50 Program Plan Approval and Reimbursement Procedures

a) Reimbursement for programs provided by school districts pursuant to the provisions of Article 14C of the School Code and this Part is contingent upon the submission and approval of a program plan and request for reimbursement in accordance with the requirements of Section 14C-12 of the School Code and this Section.

b) Program Plan Submission and Approval

1) Applications for program approval shall be submitted, on forms provided by the State Superintendent of Education, at least 60 calendar days prior to the start of the proposed initial or continuing program.

2) The State Superintendent of Education will waive the requirement in
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subsection (b)(1) of this Section only when an application is accompanied by a statement of facts showing that the waiver will enable the district to begin serving a student or students sooner than would otherwise be the case.

3) School districts shall be granted at least 45 calendar days to complete and submit applications to the State Superintendent of Education. A district's failure to submit a completed application by the date specified on the form will delay its receipt of reimbursement pursuant to subsection (c) of this Section.

4) Applications for a Transitional Bilingual Education Program and/or a Transitional Program of Instruction must contain at least the following information:

A) The number of students to be served by grade or grade equivalent and language group in a full-time or part-time program.

B) A summary description of the number and types of personnel who will provide services in the program.

C) A description of the full-time and/or part-time program to be provided to the students identified pursuant to subsection (b)(4)(A) of this Section in relation to the applicable program standards set forth in Section 228.30 of this Part.

D) Additional requirements for programs offering instruction in Spanish language arts in kindergarten and any of grades 1 through 12:

i) For the 2011-12 school year only, a description of the steps the district will take to align its curriculum in the Spanish language arts with the standards required under Section 228.30(b)(4) this Part; and

ii) For 2012-13 and each subsequent school year, a description of the methods by which the district will measure and monitor its students' progress with respect to the standards required under Section 228.30(b)(4) of this Part.
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E) A budget summary containing a projection of the program expenditures (e.g., instruction, support services, administration and transportation) and offsetting revenues for the upcoming fiscal year, and a detailed budget breakdown, including allowable program expenditures for which reimbursement is sought, other program expenditures, and total program costs.

F) In the case of a TBE program, an assurance that the signature of the chairperson of the district's Bilingual Parent Advisory Committee established pursuant to Section 14C-10 of the School Code and Section 228.30(ce)(5) of this Part, which shall be evidence that the Committee has had an opportunity to review the application.

G) Inclusion of certifications, assurances and program-specific terms of the grant, as the State Board of Education may require, to be signed by the applicant that is a party to the application and submitted with the application.

5) Applications that, upon review by the State Superintendent of Education staff, are found to contain the information required pursuant to this Section shall be recommended for approval by the State Superintendent of Education. If the application is found to be incomplete, State Board staff will send a written notice to applicants requesting that they supply the needed information. In order to permit accurate allocation of funds for the program among eligible recipients, the State Superintendent may establish a deadline by which applicants must supply the requested information.

6) The State Superintendent of Education will approve applications that demonstrate compliance with Article 14C of the School Code and this Part, except that the State Superintendent shall invoke subsection (b)(5) of this Section with respect to any requested information that is missing from any application submitted for approval.

c) Account of Expenditures and Reimbursement Procedures

1) An account of each district's expenditures pursuant to Article 14C of the School Code and this Part shall be maintained as required in Section 14C-12 of the School Code. Accounting procedures shall be in accordance
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with applicable requirements of 23 Ill. Adm. Code 100 (Requirements for Accounting, Budgeting, Financial Reporting, and Auditing) and 110 (Program Accounting Manual).

2) The final annual report of district expenditures, which shall include the information specified in Section 14C-12 of the School Code, shall be submitted on forms provided by the State Superintendent of Education no later than July 31 of each year.

3) School districts shall submit claims for reimbursement of programs approved in accordance with this Part on forms provided by the State Superintendent of Education and in accordance with Section 14C-12 of the School Code. No State reimbursement shall be available with respect to any student served for fewer than five class periods per week.

4) In the event that funds appropriated by the General Assembly are insufficient to cover the districts' excess costs, the funds will be distributed on a pro rata basis and in accordance with the timelines specified in Section 14C-12 of the School Code.

5) A request to amend a district's approved budget shall be submitted on forms provided by the State Superintendent of Education whenever a district determines that there is a need to increase or decrease an approved line item expenditure by more than $1,000 or 20 percent, whichever is larger. A budget amendment must also be submitted for approval when a grantee proposes to use funds for allowable expenditures not identified in the approved budget.

6) Budget amendment requests will be approved if the rationale provided for each amendment includes facts demonstrating that:

   A) there is a need (e.g., a change in the number of students served or personnel needed); and

   B) the altered expenditures and their related program services will be in compliance with the requirements of Article 14C of the School Code and this Part.

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)
Section 228.60  Evaluation

a) Each school district's compliance with the requirements of Article 14C of the School Code and this Part shall be evaluated at least every three years by State Board of Education staff, who shall use the criteria set forth in Article 14C of the School Code and this Part to determine compliance.

b) Each school district's progress with regard to the academic achievement of students having limited English proficiency shall be evaluated annually in accordance with the provisions of 23 Ill. Adm. Code 1.40 (Adequate Yearly Progress). The recognition status of districts found to be in noncompliance with the requirements of Article 14C of the School Code and this Part will be evaluated in accordance with the provisions of Subpart A of 23 Ill. Adm. Code 1.

(Source: Amended at 34 Ill. Reg. 11581, effective July 26, 2010)
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1) **Heading of the Part:** Early Childhood Block Grant

2) **Code Citation:** 23 Ill. Adm. Code 235

3) **Section Numbers:**
   - 235.20 Amendment
   - 235.30 Amendment
   - 235.120 Amendment

4) **Statutory Authority:** 105 ILCS 5/1C-2

5) **Effective Date of Amendments:** July 26, 2010

6) **Does this rulemaking contain an automatic repeal date?** No

7) **Does this rulemaking contain incorporations by reference?** No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** November 13, 2009; 33 Ill. Reg. 15438

10) **Has JCAR issued a Statement of Objection to these amendments?** No

11) **Differences between proposal and final version:** Subsections 235.30(f)(1) and (2), which address specific elements in to be included in a description of compliance with Article 14C of the School Code (105 ILCS 5/Art. 14C), have been deleted, as has the introductory clause that precedes those subsections.

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** No changes were requested by JCAR, and no agreement letter was issued.

13) **Will this rulemaking replace any emergency rulemaking currently in effect?** No

14) **Are there any other proposed rulemakings pending on this Part?** No

15) **Summary and Purpose of Amendments:** The amendments flow from two Public Acts, each of which is summarized below.
P.A. 95-793, effective January 1, 2009, requires school districts to provide bilingual education services required under Article 14C of the School Code to students enrolled in preschool programs established by the districts. The law makes explicit the expectation of agency staff that school districts offering preschool programs provide to any limited English proficient student appropriate services that will enable him or her to succeed in the preschool program. While programs for 3- to 5-year-olds funded under the Early Childhood Block Grant have always been required to assess a student's English proficiency and provide an individualized language program based on the results of that assessment, they have not been made to follow the more prescriptive provisions of Article 14C and administrative rules governing Transitional Bilingual Education (Part 228).

Confusion about staff's expectation that preschool programs meet the requirements of Article 14C has existed in the field, partly because preschool education programs are not a regular component of every school district’s program. Rather districts have the option of whether to seek preschool funding under a competitive grant program. Additionally, even if a grant is awarded, the resulting program is designed to serve the neediest students of the district first, particularly those determined to be at risk of academic failure, rather than all students who wish to enroll.

The amendments require that information about bilingual education services be included in preschool grant applications submitted by school districts to ensure that appropriate services will be provided for any student who may be identified as having limited English proficiency.

P.A. 96-119, effective August 4, 2009, requires that Preschool for All Children programs enter into agreements with their local, federally funded Head Start programs. These agreements must address collaboration between the preschool program and Head Start about the services and programs that will be offered by each. Since the law is detailed regarding the content of the agreement and deadline for its submission to the State Board of Education, no changes to Part 235 are needed to implement its provisions. However, Section 235.120(b)(3)(B) is no longer needed since it establishes a funding priority for those applicants who choose to enter into partnership agreements with their Head Start programs.

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

Kay Henderson, Division Administrator
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

Illinois State Board of Education
100 North First Street, E-225
Springfield, Illinois 62777

217/524-4835

The full text of the Adopted Amendments begins on the next page:
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 235
EARLY CHILDHOOD BLOCK GRANT

SUBPART A: PRESCHOOL EDUCATION AND PREVENTION INITIATIVE PROGRAMS

Section
235.10 Purpose; Eligible Applicants
235.20 Application Procedure and Content for New or Expanding Programs
235.30 Additional Program Components for Preschool Education Proposals
235.40 Additional Program Components for Prevention Initiative Proposals
235.50 Proposal Review and Approval for New or Expanding Programs
235.60 Application Content and Approval for Continuation Programs
235.70 Terms of the Grant

SUBPART B: PRESCHOOL FOR ALL CHILDREN PROGRAM

Section
235.100 Purpose; Eligible Applicants
235.110 Application Procedure and Content for New or Expanding Programs
235.120 Proposal Review and Approval for New or Expanding Programs
235.130 Application Content and Approval for Continuation Programs
235.140 Terms of the Grant

SUBPART C: SOCIAL AND EMOTIONAL CONSULTATION SERVICES

Section
235.200 Implementation and Purpose; Eligible Applicants
235.210 Application Procedure and Content
235.220 Proposal Review and Approval of Proposals

235.APPENDIX A Illinois Early Learning Standards
235.APPENDIX B Illinois Birth to Three Program Standards
SUBPART A: PRESCHOOL EDUCATION AND PREVENTION INITIATIVE PROGRAMS

Section 235.20 Application Procedure and Content for New or Expanding Programs

Each applicant that is proposing a program that has not received funding in the year previous to the current application or is seeking additional funds to expand its currently funded program shall submit to the State Board of Education a proposal that includes the components specified in this Section. For purposes of this Section, an "expanded" program includes one in which the applicant is proposing to serve additional children and their families or to offer initiatives not provided under its currently funded program.

a) Grants for new or expanded programs shall be offered in years in which the level of available funding is such that one or more new or expanded programs can be supported, along with those currently funded programs that seek continuation funding in accordance to Section 235.60 of this Part.

b) When sufficient funding is available, the State Superintendent of Education shall issue one or more Requests for Proposals (RFP) specifying the information that applicants shall include in their proposals, informing applicants of any bidders' conferences, and requiring that proposals be submitted no later than the date specified in the RFP. The RFP shall provide at least 45 calendar days in which to submit proposals.

c) All proposals submitted in response to an RFP shall include the following components:
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1) A cover page completed on a form supplied by the State Board of Education and signed by the school district superintendent or official authorized to submit the proposal or, in the case of a joint application, by the superintendent from each of the school districts and each authorized official of other eligible entities participating in the joint proposal.

2) For applicants other than public school districts, a description that includes the following:
   A) the applicant's mission statement, organizational structure, and goals or policies regarding early childhood programs;
   B) the applicant's existing competencies to provide early childhood education programs, to include a list of any early childhood accreditations that have been achieved; and
   C) in the case of a joint application, the goals and objectives of the collaboration and a brief description of each partner's experience in providing services similar to those to be provided under the Early Childhood Block Grant program.

3) A description of the need for the program, which shall include:
   A) current demographic or descriptive information regarding the community in which the families and children reside (including information on the prevalence of homelessness); and
   B) the process that was used to determine the need for the program in the community in relation to other similar services that may be operating in the same geographic area.

4) A description of the population to be served, as defined in Section 235.10(a) of this Part, for each program to be funded under the Early Childhood Block Grant. This description shall include:
   A) how the eligible population will be recruited;
   B) the geographic area to be served; and
C) the estimated number of children and/or families to be enrolled.

5) A description of the procedures to be used to screen children and their families to determine their need for services. Results of the screening shall be made available to the program staff and parents of the children screened. All screening procedures shall include:

A) criteria to determine at what point performance on the screening instrument indicates that children are at risk of academic failure as well as to assess other environmental, economic and demographic information that indicates a likelihood that the children would be at risk;

B) screening instruments/activities related to and able to measure the child's development in at least the following areas (as appropriate for the age of the child): vocabulary, visual-motor integration, language and speech development, English proficiency, fine and gross motor skills, social skills and cognitive development;

C) written parental permission for the screening;

D) parent interview (to be conducted in the parents' home language, if necessary), including at least the following:

i) for preschool education programs, a summary of the child's health history and social development; or

ii) for prevention initiative programs, information about the parents, such as age, educational achievement and employment history;

E) vision and hearing screening, in accordance with 77 Ill. Adm. Code 685 (Vision Screening) and 675 (Hearing Screening); and

F) where practicable, provision for the inclusion of program teaching staff in the screening process.
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6) A description of the parent education and training component that will be provided, to meet at least all of the requirements of Section 2-3.71a of the School Code.

7) A description of how the program will coordinate with other programs, as specified in the RFP, that are in operation in the same area and that are concerned with the education, welfare, health and safety needs of young children.

8) A description of the full-time and part-time professional and nonprofessional staff to be paid by the program, indicating that program administrators, early childhood teachers, counselors, psychologists, psychiatrists and social workers are appropriately qualified.

A) Teachers of children ages 3 to 5 years must hold an initial, initial alternative, standard, master, provisional, provisional alternative, resident teacher, or visiting international teacher early childhood certificate. (See Section 2-3.71(a)(3) of the School Code and 23 Ill. Adm. Code 1.Appendix A.)

B) By July 1, 2014, noncertificated staff employed to assist in instruction provided to children ages 3 to 5 years shall meet the requirements set forth in 23 Ill. Adm. Code 25.510(c).

C) Teachers of children ages 3 to 5 years who are assigned to a transitional bilingual program or a transitional program of instruction that is administered by a school district, either in an attendance center or a non-school-based facility, shall meet the requirements set forth in 23 Ill. Adm. Code 228.35 (Transitional Bilingual Education), as applicable.

9) A description of staff development assessment procedures and ongoing professional development activities to be conducted.

10) A description of the required program components, as set forth in either Section 235.30 or 235.40 of this Part.

11) Other information, as specified in the RFP, such as daily schedules (including the number of hours per day and days per week the program
STATE BOARD OF EDUCATION

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will operate), classroom locations, facility information (e.g., owner's name, terms of lease arrangement, size of classrooms and other areas to be used by the program), if applicable.

12) The plan for ensuring that the program provides either a snack, in the case of a half-day program, or a meal, in the case of a full-day program, for participating children.

13) Budget information, provided on forms supplied by the State Board of Education. The budget shall specify that no more than 5 percent of the total grant award shall be used for administrative and general expenses not directly attributed to program activities, except that a higher limit not to exceed 10 percent may be negotiated with an applicant that has provided evidence that the excess administrative expenses are beyond its control and that it has exhausted all available and reasonable remedies to comply with the limitation.

14) A description of how the applicant will ensure that no fees will be charged of parents or guardians and their children who are enrolled and participate in Early Childhood Block Grant programs.

15) A plan for evaluating the proposed programs and activities to be included in the Early Childhood Block Grant, which shall correspond to the applicable specifications set forth in the RFP.

16) Such certifications and assurances as the State Board of Education may require.

(Source: Amended at 34 Ill. Reg. 11615, effective July 26, 2010)

Section 235.30 Additional Program Components for Preschool Education Proposals

In addition to the requirements set forth in Section 235.20, applications for funding for preschool education programs and activities, as defined in Section 235.10(a)(1) of this Part, must provide:

a) a description of how the comprehensive services to be provided are aligned with the Illinois Early Learning Standards as set forth in Appendix A of this Part;

b) a description of how the proposed educational program is developmentally appropriate for each child, which shall:
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1) be accepted based upon evidence in the proposal that the results of the individualized assessment profile for each child will be the basis for determining that child's educational program;

2) address the domains of development specified in Section 235.20(c)(5)(B) and how a language and literacy development program shall be implemented for each child based on that child's individual assessment; and

3) address how student progress will be assessed and documented to ensure that the educational program meets the needs of the student and provides a system whereby that student's parents are routinely advised of their child's progress;

c) the maximum number of children to be screened for program eligibility and, for those children that are screened, the maximum to be served by the educational program. The maximum number must be served in each classroom if, following completion of screening, the program has a waiting list of eligible children;

d) the child/staff ratio for each classroom, which shall not exceed a ratio of 10 children to one adult, with no more than 20 children being served in each classroom; and

e) a description of how the program will ensure that those children who are age-eligible for kindergarten are enrolled in school upon leaving the preschool education program; and

f) for school district applicants, a description of the steps to be taken to ensure that the provisions of Article 14C of the School Code [105 ILCS 5(Art. 14C) and 23 Ill. Adm. Code 228 (Transitional Bilingual Education) are met.

(Source: Amended at 34 Ill. Reg. 11615, effective July 26, 2010)

SUBPART B: PRESCHOOL FOR ALL CHILDREN PROGRAM

Section 235.120 Proposal Review and Approval for New or Expanding Programs
STATE BOARD OF EDUCATION

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In order to meet the funding priorities set forth in Section 2-3.71(a)(4.5) of the School Code, each proposal shall be reviewed using both quantitative and qualitative criteria.

a) Proposals shall first be screened to identify those proposals that meet the criteria for each funding priority (see Section 235.110(a) of this Part). Proposals shall be separated into the following three categories:

1) proposals serving primarily at-risk children,

2) proposals serving primarily children whose families meet income guidelines, and

3) all other proposals.

b) Within each of the three categories set forth in subsection (a) of this Section, the proposals shall be reviewed and scored using the qualitative criteria set forth in Section 235.50(a) of this Part to determine which proposals provide evidence of a "qualified program". "Qualified programs" shall be those scoring at least 60 out of 100 total points.

1) All qualified programs within the category set forth in subsection (a)(1) of this Section shall be funded before funding any qualified programs in the categories set forth in subsection (a)(2) or (a)(3) of this Section.

2) All qualified programs within the category set forth in subsection (a)(2) of this Section shall be funded before funding any qualified programs in the category set forth in subsection (a)(3) of this Section.

3) Within each category, priority for funding will be given to substantially similar proposals that:
   a) serve children from a community with limited preschool programs or few resources promoting preschool education, or
   b) include a signed partnership agreement with the local Head Start program.

c) The selection of proposals for funding may be based in part on the need to make programs available on a statewide basis and/or provide resources to school districts and communities with varying demographic characteristics.
STATE BOARD OF EDUCATION

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d) The State Superintendent of Education shall determine the amount of individual grant awards. The final award amounts shall be based upon:

1) the total amount of funds available for the Preschool for All Children program; and

2) the resources requested in the top-ranked proposals, as identified pursuant to subsections (b) and (c) of this Section.

(Source: Amended at 34 Ill. Reg. 11615, effective July 26, 2010)
ILLINOIS VIOLENCE PREVENTION AUTHORITY

NOTICE OF ADOPTED RULES

1) **Heading of the Part:** Violence Prevention Grants
2) **Code Citation:** 89 Ill. Adm. Code 1400
3) **Section Number:** Adopted Action:
   - 1400.100 New
   - 1400.110 New
   - 1400.120 New
   - 1400.130 New
   - 1400.140 New
   - 1400.200 New
   - 1400.210 New
   - 1400.220 New
   - 1400.230 New
   - 1400.240 New
   - 1400.250 New
   - 1400.260 New
4) **Statutory Authority:** Implementing and authorized by Section 15 of the Illinois Violence Prevention Act [20 ILCS 4027/15]
5) **Effective Date of Rules:** July 22, 2010
6) **Does this rulemaking contain an automatic repeal date?** No
7) **Does this rulemaking contain incorporations by reference?** No
8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
9) **Date Notice of Proposal Published in Illinois Register:** 34 Ill. Reg.5813; April 23, 2010
10) **Has JCAR issued a Statement of Objection to this rulemaking?** No
11) **Differences between proposal and final version:** Added an effective date of August 1, 2010, to Section 1400.30(n).
12) **Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR?** No agreements were needed.
13) Will this rulemaking replace any emergency rulemaking currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: These rules address policies and procedures utilized by the Illinois Violence Prevention Authority in awarding grants. The rules include general policies and procedures and fiscal and monitoring procedures.

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

Barbara Shaw, Executive Director
Illinois Violence Prevention Authority
100 W. Randolph, Room 4-750
Chicago, Illinois 60601

Phone 312/814-1514
Fax 312/814-8259
barbara.shaw@illinois.gov

The full text of the Adopted Rules begins on the next page:
ILLINOIS VIOLENCE PREVENTION AUTHORITY

NOTICE OF ADOPTED RULES

TITLE 89: SOCIAL SERVICES
CHAPTER XII: ILLINOIS VIOLENCE PREVENTION AUTHORITY
PART 1400
VIOLENCE PREVENTION GRANTS

SUBPART A: GENERAL ADMINISTRATIVE PROVISIONS

Section
1400.100 Administration of Violence Prevention Grants
1400.110 Conflict of Interest
1400.120 Grant Application Process
1400.130 Grant Application Requirements
1400.140 Funding Criteria

SUBPART B: FISCAL AND MONITORING PROVISIONS

Section
1400.200 Accounting Requirements
1400.210 Allowable Expenditures
1400.220 Non-Allowable Expenditures
1400.230 Grant Agreements
1400.240 Modification of Program and Budget
1400.250 Program and Fiscal Reporting
1400.260 Inspection of Records and On-Site Visits

AUTHORITY: Implementing and authorized by Section 15 of the Illinois Violence Prevention Act [20 ILCS 4027/15].


SUBPART A: GENERAL ADMINISTRATIVE PROVISIONS

Section 1400.100 Administration of Violence Prevention Grants

a) The Illinois Violence Prevention Authority (Authority) is authorized to award grants to agencies to conduct violence prevention activities as outlined in Section 15 of the Illinois Violence Prevention Act [20 ILCS 4027/15].

b) Grants are subject to the Illinois Grant Funds Recovery Act [30 ILCS 705].
Section 1400.110 Conflict of Interest

No private organization or agency shall be eligible to receive grants from the Authority if a staff member or contractual employee of that organization or agency is a member of the Authority.

Section 1400.120 Grant Application Process

a) In order to receive a grant from the Authority, agencies must submit an application in response to a Request for Proposals (RFP) issued by the Authority.

b) The Authority shall issue an RFP for each grant program administered by the Authority. The RFP shall specify the deadline for the submission of applications, which shall provide applicants with 30 days to respond, and shall specify the purpose of the grant program, eligible applicants, the maximum amount for which an applicant may apply, and program requirements particular to the grant program for which the applicant is requesting funds. All RFPs for general distribution, other than RFPs issued to renewal applicants, will be posted on the Authority’s website.

c) All applications submitted by eligible applicants will be reviewed by a review committee for completeness and accuracy. Applications recommended for funding will be presented by staff for Authority approval based on the criteria specified in Section 1400.140.

d) Applicants to be awarded grants will be notified within 7 days after the date of approval by the Authority. Applicants who are not awarded funds will be notified within 30 days after the date of Authority determination. A list of all grant awards will be posted on the Authority’s website.

e) Initial grant awards are for a 12 month period. Renewal grants for certain grant programs are available as specified in the RFP for the particular grant program, based on availability of funds. In order to receive renewal grants from the Authority, funding must be available and applicants must have submitted a complete and accurate renewal application and must have complied with previous grant agreements.

Section 1400.130 Grant Application Requirements
A grant application must be submitted in a format prescribed by the Authority and must include the following information:

a) Identifying information, including:

1) Organization name and type, Federal Employer Identification Number, complete address, telephone number, and e-mail address;

2) The name and telephone number of the organization's chief executive officer or executive director;

3) The name, telephone number and e-mail address of the organization's contact person for purposes of the grant;

4) A current certificate of good standing with the Secretary of State;

5) For non-governmental entities, the applicant's Illinois Charitable Trust registration number or a statement that the agency is exempt.

b) A Proposal Narrative that includes:

1) A description of the applicant's capacity to perform the proposed activities and, when applicable, a history of past performance of the proposed activities or similar activities;

2) A description of the community area and the population to be served or reached by the proposed activities;

3) A description of how the applicant will meet grant program requirements as specified in the RFP for the specific grant program for which the applicant is requesting funds;

4) A description of the staffing and management plan associated with conducting the proposed activities/services, when applicable; and

5) Resumes of staff to be funded with grant funds or, if the position has not been filled, a job description.

c) A Proposed Budget that includes:
ILLINOIS VIOLENCE PREVENTION AUTHORITY

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1) Line item costs for personnel services, including a breakdown of fringe benefit costs, contractual services, supplies, travel and equipment costs for the proposed activities;

2) The total cost of the proposed activities and amount requested from the Authority, including, when applicable, specific costs associated with meeting program requirements specified in the RFP for the specific grant program for which the applicant is applying for funds;

3) Sources and amount of applicant and other funds to be utilized for the proposed activities;

4) Three vendor quotations for equipment costs in excess of $1,000; and

5) Budget justification that details the line item costs and specifies how the costs were calculated.

d) A Signed General Assurances Form that certifies and assures compliance with applicable federal and State laws and general grant requirements.

Section 1400.140 Funding Criteria

The Authority shall consider the following criteria in determining which applications to fund and the amount to be awarded to funded applicants:

a) The amount of funds allocated by the Authority for the specific grant program for which the applicant has submitted an application;

b) The degree to which the applicant submitted a complete and accurate application;

c) The extent to which the proposed activities/services meet the specific grant program requirements for which the applicant has submitted an application, as specified in the RFP for the specific grant program for which the applicant is requesting funds;

d) The extent to which different areas of the State are served or reached; and
ILLINOIS VIOLENCE PREVENTION AUTHORITY

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e) The applicant's history of compliance with programming, reporting and accounting requirements pertaining to grants awarded under this Part or under any other government program.

SUBPART B: FISCAL AND MONITORING PROVISIONS

Section 1400.200 Accounting Requirements

The following requirements pertain to all grantees receiving Authority grant awards:

a) All grantee accounting entries must be supported by appropriate source documents, recorded in books of original entry, and posted to a general ledger on a monthly basis.

b) Each grantee shall maintain all fiscal records related to the grant for 3 years after the end of each budget period. In instances involving unresolved issues arising from an audit, pending litigation or unresolved fiscal reporting issues, records relating to the unresolved issues must be retained until the issues are resolved if beyond the 3 year requirement.

c) Grantees shall expend funds in accordance with the contracted budget or in accordance with Authority re-allocation procedures pursuant to Section 1400.240.

Section 1400.210 Allowable Expenditures

Expenditures of Authority grant funds are allowable if they meet the following criteria and are not specified in Section 1400.220 as a non-allowable expenditure:

a) Are necessary and reasonable for proper and efficient administration of the program and are not a general expense required to carry out the overall responsibilities of the agency;

b) Are not allocable to or included as a cost of any other State or federally financed program in either the current or a prior period;

c) Are net of all applicable credits;

d) Are specifically identified with the provisions of a direct service or program activity;
e) Are actual expenditures of funds in support of program activities, documented by check number and/or internal ledger transfer of funds.

Section 1400.220 Non-Allowable Expenditures

Non-allowable costs include, but are not limited to:

a) Alcoholic beverages;
b) Bad debts or debt retirement;
c) Contingencies or provision for unforeseen events;
d) Contributions or donations;
e) Entertainment, exclusive of incentives to encourage target group participation;
f) Fines and penalties;
g) Gratuities;
h) Indirect cost plan allocations when the fiscal agent is also the applicant;
i) Interest and financial costs;
j) Legislative and lobbying expenses; and
k) Real property payments or purchases.

Section 1400.230 Grant Agreements

a) The Grant Agreement serves as the formal statement of mutual expectations between the Authority and the grantee. The Grant Agreement includes an attached budget and specifies the term of the agreement, the grant award amount and payment schedule, and the program and fiscal reporting schedule.
b) The portion of the grantee's application that describes the services to be provided is incorporated in the Grant Agreement by reference.
Section 1400.240  Modification of Program and Budget

a) The grantee shall not change, modify, revise, alter, amend or delete any part of the services or activities it has agreed to provide in the Grant Agreement without written approval of the Authority.

b) The grantee has the responsibility to identify instances in which funds cannot be used in accordance with the Grant Agreement budget and must seek reallocation of these funds utilizing Authority forms and the following procedures:

1) The grantee may reallocate up to $1,000 of grant funds or up to 2% of the total annual budget, whichever is greater, to existing line items in the approved Grant Agreement budget. The grantee must note the reallocation in the fiscal reporting forms.

2) If the grantee wishes to reallocate amounts less than $1,000 of the grant funds or up to 2% of the total annual budget, whichever is greater, to an expense that creates a new line item in the approved budget, the grantee must submit to the Authority a written request and explanation for reallocation.

3) If the grantee wishes to reallocate amounts of $1,000 or more of grant funds or up to 2% of the total annual budget, whichever is greater, the grantee must submit to the Authority a written request and explanation for the reallocation.

4) The Authority shall grant a reallocation of funds when it determines that funds will be used for allowable expenses consistent with the funded services.

5) The Authority shall inform the grantee within 30 days after receipt of a request, if the request is not approved.

Section 1400.250  Program and Fiscal Reporting

a) The grantee shall submit to the Authority financial and activity reports on a timetable specified in the RFP and the Grant Agreement. The reports shall be on forms specified by the Authority. All report forms must be received by the
NOTICE OF ADOPTED RULES

Authority no later than 15 days following the end of the report period and 30 days following the end of the grant. The reports shall detail activities conducted, participants involved, expenditures and revisions, if any, of timetables and activities to reflect the current program status and future activity. Failure to comply within the 15-day period may result in the delay of subsequent award installments or termination of the Grant Agreement.

b) In addition to the reports required by subsection (a), grantee agrees to render to the Authority, upon the demand of the Authority, a complete and satisfactory accounting of any and all monies granted to grantee pursuant to the Grant Agreement.

Section 1400.260 Inspection of Records and On-Site Visits

a) The grantee shall permit agents of the Authority to inspect the financial records of the grantee as they relate to the Grant Agreement.

b) The grantee shall permit agents of the Authority to enter the premises of the grantee to observe the operation of the grantee's program and to conduct a site visit for general monitoring purposes. The Authority shall give the grantee reasonable notice of intent to enter the premises for purposes of observing and/or conducting a site visit.
1. **Statute requiring agency to publish information concerning Private Letter Rulings and General Information Letters in the Illinois Register:**

   **Name of Act:** Illinois Department of Revenue Sunshine Act  
   **Citation:** 20 ILCS 2515/1 et seq.

2. **Summary of information:**

   Index of Department of Revenue income tax Private Letter Rulings and General Information Letters issued for the Second Quarter of 2010. Private letter rulings are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. Private letter rulings are binding on the Department only as to the taxpayer who is the subject of the request for ruling. (See 2 Ill. Adm. Code 1200.110) General information letters are issued by the Department in response to written inquiries from taxpayers, taxpayer representatives, business, trade, industrial associations or similar groups. General information letters contain general discussions of tax principles or applications. General information letters are designed to provide general background information on topics of interest to taxpayers. General information letters do not constitute statements of agency policy that apply, interpret, or prescribe tax laws administered by the Department. *General information letters may not be relied upon by taxpayers in taking positions with reference to tax issues and create no rights for taxpayers under the Taxpayers' Bill of Rights Act.* (See 2 Ill. Adm. Code 1200.120)

   The letters are listed numerically, are identified as either a General Information Letter or a Private Letter Ruling and are summarized with a brief synopsis under the following subjects:

   - Addition Modifications – Other Rulings
   - Apportionment – Financial Organizations
   - Credits – Other Rulings
   - Net Income (Loss) and Net Loss Deduction (IITA §207)
   - Public Law 86-272/Nexus
   - Subtraction Modifications – Interest on U.S. Government Obligations
   - Withholding – Personal Service Contracts
   - Withholding – Other Rulings
DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

2010 SECOND QUARTER INCOME TAX SUNSHINE INDEX

Copies of the ruling letters themselves are available for inspection and may be purchased for a minimum of $1.00 per opinion plus 50 cents per page for each page over one. Copies of the ruling letters may be downloaded free of charge from the Department's World Wide Web site at www.tax.illinois.gov.


3. Name and address of person to contact concerning this information:

   Linda Settle
   Illinois Department of Revenue
   Legal Services Office
   101 West Jefferson Street
   Springfield, Illinois  62794

   217/782-7055
DEPARTMENT OF REVENUE
NOTICE OF PUBLIC INFORMATION

2010 SECOND QUARTER INCOME TAX SUNSHINE INDEX

ADDITION MODIFICATIONS – OTHER RULINGS

IT 10-0009-GIL 04/08/2010 The attribution rules in IRC Section 318 are used to determine ownership for purposes of determining whether a REIT is a captive REIT required to add back its dividends-paid deduction, not for determining control.

APPORTIONMENT – FINANCIAL ORGANIZATIONS

IT 10-0002-PLR 04/22/2010 A corporation that elects to be a bank holding company during a taxable year is a financial organization for the entire taxable year.

CREDITS – OTHER RULINGS

IT 10-0010-GIL 04/19/2010 Tuition paid to a California school for home-based internet schooling does not qualify for the education expense credit.

NET INCOME (LOSS) AND NET LOSS DEDUCTION (IITA §207)

IT 10-0013-GIL 06/22/2010 Illinois has no equivalent of IRC Section 642(h) that would allow a beneficiary of a terminated estate to claim a carryforward deduction of an Illinois net loss incurred by the estate.

PUBLIC LAW 86-272/NEXUS

IT 10-0014-GIL 06/25/2010 Nexus issues are generally not appropriate for general information letters.

IT 10-0016-GIL 06/30/2010 Nexus issues are generally not appropriate for general information letters.

SUBTRACTION MODIFICATIONS – INTEREST ON U.S. GOVERNMENT OBLIGATIONS
DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

2010 SECOND QUARTER INCOME TAX SUNSHINE INDEX

IT 10-0008-GIL  04/02/2010   No federal statute prohibits state taxation of interest paid on Small Business Administration Participation Business Pass-Through Certificates or loans guaranteed by the Small Business Administration.

WITHHOLDING – PERSONAL SERVICE CONTRACTS

IT 10-0012-GIL  5/28/2010   Withholding requirement for personal service contracts involving nonresident individuals under IITA Section 708 was repealed in 1989.

WITHHOLDING – OTHER RULINGS

IT 10-0011-GIL  5/03/2010   Employees using false names or identification numbers are entitled to a credit for taxes they can prove were withheld from their wages.

IT 10-0015-GIL  06/28/2010   A general explanation is provided of the principles for determining when compensation paid to an employee providing services within and without Illinois is subject to withholding.
NOTICES: The scheduled date and time for the JCAR meeting are subject to change. Due to Register submittal deadlines, the Agenda below may be incomplete. Other items not contained in this published Agenda are likely to be considered by the Committee at the meeting and items from the list can be postponed to future meetings.

If members of the public wish to express their views with respect to a rulemaking, they should submit written comments to the Office of the Joint Committee on Administrative Rules at the following address:

Joint Committee on Administrative Rules  
700 Stratton Office Building  
Springfield, Illinois 62706  
Email: jcar@ilga.gov  
Phone: 217/785-2254

RULEMAKINGS CURRENTLY BEFORE JCAR

PROPOSED RULEMAKINGS

Commerce Commission

   - First Notice Published: 34 Ill. Reg. 2871 – 3/5/10  
   - Expiration of Second Notice: 8/13/10

Emergency Management Agency

   - First Notice Published: 33 Ill. Reg. 12061 – 8/28/09  
   - Expiration of Second Notice: 8/12/10
Financial and Professional Regulation

   - First Notice Published: 33 Ill. Reg. 13581 – 10/2/09
   - Expiration of Second Notice: 8/11/10

   - First Notice Published: 33 Ill. Reg. 13642 – 10/2/09
   - Expiration of Second Notice: 8/11/10

5. Nursing and Advanced Practice Nursing Act – Advanced Practice Nurse (Repealer) (68 Ill. Adm. Code 1305)
   - First Notice Published: 34 Ill. Reg. 13746 – 10/2/09
   - Expiration of Second Notice: 8/11/10

Insurance

   - First Notice Published: 34 Ill. Reg. 479 – 1/8/10
   - Expiration of Second Notice: 9/1/10

Natural Resources

7. Raccoon, Opossum, Striped Skunk, Red Fox, Gray Fox, Coyote and Woodchuck (Groundhog) Hunting (17 Ill. Adm. Code 550)
   - First Notice Published: 34 Ill. Reg. 6270 – 5/7/10
   - Expiration of Second Notice: 8/12/10

8. Muskrat, Mink, Raccoon, Opossum, Striped Skunk, Weasel, Red Fox, Gray Fox, Coyote, Badger, Beaver and Woodchuck (Groundhog) Trapping (17 Ill. Adm. Code 570)
   - First Notice Published: 34 Ill. Reg. 6282 – 5/7/10
   - Expiration of Second Notice: 8/12/10

   - First Notice Published: 34 Ill. Reg. 6293 – 5/7/10
   - Expiration of Second Notice: 8/12/10

    - First Notice Published: 34 Ill. Reg. 6310 – 5/7/10
   - First Notice Published: 34 Ill. Reg. 6324 – 5/7/10
   - Expiration of Second Notice: 8/12/10

   - First Notice Published: 34 Ill. Reg. 6328 – 5/7/09
   - Expiration of Second Notice: 8/12/10

Pollution Control Board

   - First Notice Published: 34 Ill. Reg. 4281 – 4/2/10
   - Expiration of Second Notice: 9/2/10

   - First Notice Published: 34 Ill. Reg. 4335 – 4/2/10
   - Expiration of Second Notice: 9/2/10

   - First Notice Published: 34 Ill. Reg. 4475 – 4/2/10
   - Expiration of Second Notice: 9/2/10

Racing Board

   - First Notice Published: 34 Ill. Reg. 7181 – 5/21/10
   - Expiration of Second Notice: 8/22/10

Revenue

17. Income Tax (86 Ill. Adm. Code 100)
   - First Notice Published: 34 Ill. Reg. 7513 – 5/28/10
   - Expiration of Second Notice: 8/28/10

18. Income Tax (86 Ill. Adm. Code 100)
   - First Notice Published: 34 Ill. Reg. 7189 – 5/21/10
JOINT COMMITTEE ON ADMINISTRATIVE RULES
AUGUST AGENDA

-Expiration of Second Notice: 8/26/10

19. Income Tax (86 Ill. Adm. Code 100)
   -First Notice Published: 34 Ill. Reg. 6339 – 5/7/10
   -Expiration of Second Notice: 8/13/10

20. Income Tax (86 Ill. Adm. Code 100)
   -First Notice Published: 34 Ill. Reg. 6566 – 5/14/10
   -Expiration of Second Notice: 8/13/10

   -First Notice Published: 34 Ill. Reg. 6000 – 4/30/10
   -Expiration of Second Notice: 8/12/10

   -First Notice Published: 34 Ill. Reg. 6038 – 4/30/10
   -Expiration of Second Notice: 8/11/10

State Fire Marshal

23. Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances
    (Repealer) (41 Ill. Adm. Code 170)
   -First Notice Published: 33 Ill. Reg. 16022 – 11/20/09
   -Expiration of Second Notice: 9/12/10

24. Compliance Certification for Underground Storage Tanks (Repealer) (41 Ill. Adm. Code
    171)
   -First Notice Published: 33 Ill. Reg. 16196 – 11/20/09
   -Expiration of Second Notice: 9/12/10

25. General Requirements for Underground Storage Tanks and the Storage, Transportation,
    Sale and Use of Petroleum and Other Regulated Substances (41 Ill. Adm. Code 174)
   -First Notice Published: 33 Ill. Reg. 16205 – 11/20/09
   -Expiration of Second Notice: 9/12/10

26. Technical Requirements for Underground Storage Tanks and the Storage, Transportation,
    Sale and Use of Petroleum and Other Regulated Substances (41 Ill. Adm. Code 175)
   -First Notice Published: 33 Ill. Reg. 16244 – 11/20/09
   -Expiration of Second Notice: 9/12/10
27. Administrative Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances (41 Ill. Adm. Code 176)
   -First Notice Published: 33 Ill. Reg. 16352 – 11/20/09
   -Expiration of Second Notice: 9/12/10

28. Compliance Certification for Underground Storage Tanks (41 Ill. Adm. Code 177)
   -First Notice Published: 33 Ill. Reg. 16392 – 11/20/09
   -Expiration of Second Notice: 9/12/10

**EMERGENCY RULEMAKINGS**

**Agriculture**

   -Notice Published: 34 Ill. Reg. 10532 – 7/23/10

**Commerce and Economic Opportunity**

30. Small Business Job Creation Tax Credit Act (SBJC) (14 Ill. Adm. Code 529)
   -Notice Published: 34 Ill. Reg. 10210 – 7/16/10

**Education**

31. Public Schools Evaluation, Recognition and Supervision (23 Ill. Adm. Code 1)
   -Notice Published: 34 Ill. Reg. 9533 – 7/9/10

**Gaming Board**

32. Video Gaming (General) (11 Ill. Adm. Code 1800)
   -Notice Published: 34 Ill. Reg. 8589 – 7/2/10

**Human Services**

33. Child Care (89 Ill. Adm. Code 50)
   -Notice Published: 34 Ill. Reg. 8619 – 7/2/10

**Workers' Compensation Commission**

34. Miscellaneous (50 Ill. Adm. Code 7110)
PEREMPTORY RULEMAKINGS

Central Management Services

35. Pay Plan (80 Ill. Adm. Code 310)
   -Notice Published: 34 Ill. Reg. 8633 – 7/2/10

36. Pay Plan (80 Ill. Adm. Code 310)
   -Notice Published: 34 Ill. Reg. 10536 – 7/23/10

ADOPTED RULEMAKINGS

Environmental Protection Agency

37. Public Information, Rulemaking and Organization (2 Ill. Adm. Code 1825)
    -Notice Published: 34 Ill. Reg. 9019 – 7/9/10

    -Notice Published: 34 Ill. Reg. 9028 – 7/9/10

Racing Board

    -Notice Published: 34 Ill. Reg. 10168 – 7/16/10

Student Assistance Commission

40. Public Information, Rulemaking and Organization (2 Ill. Adm. Code 5375)
    -Notice Published: 34 Ill. Reg. 8530 – 7/2/10

AGENCY RESPONSES

Commerce Commission

42. Renewable Portfolio Standard and Clean Coal Standard for Alternative Retail Electric Suppliers and Utilities Operating Outside Their Service Areas (83 Ill. Adm. Code 455; 34 Ill. Reg. 3115)

State Universities Civil Service System

43. State Universities Civil Service System (80 Ill. Adm. Code 250; 33 Ill. Reg. 16669)
The following second notice were received by the Joint Committee on Administrative Rules during the period of July 20, 2010 through July 26, 2010 and have been scheduled for review by the Committee at its August 10, 2010 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.

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<td>9/2/10</td>
<td>Pollution Control Board, Organic Material Emission Standards and Limitations for the Metro East Area (35 Ill. Adm. Code 219)</td>
<td>4/2/10 34 Ill. Reg. 4475</td>
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<td>Pollution Control Board, Organic Material Emission Standards and Limitations for the Chicago Area (35 Ill. Adm. Code 218)</td>
<td>4/2/10 34 Ill. Reg. 4335</td>
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<td>Pollution Control Board, Definitions and General Provisions (35 Ill. Adm. Code 211)</td>
<td>4/2/10 34 Ill. Reg. 4281</td>
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WHEREAS, violence ultimately is a community problem and requires a community solution that considers the needs and perspectives of everyone who lives in fear of violent crime; and

WHEREAS, when violence claims a life, the impact of that loss ripples throughout the entire community for years to come, shattering hopes and devastating families; and

WHEREAS, those who have endured the aftermath of deadly violence bring a deeply personal perspective to issues of crime, prevention and punishment, and they represent an extraordinary resource of wisdom and experience that should be considered in shaping government programs intended to prevent violence and protect neighborhoods; and

WHEREAS, under the basic principles of participatory democracy, those who are most personally affected by any issue of grave general concern have the greatest right to be heard when their government considers that issue; and

WHEREAS, the rising tide of deadly violence threatening many Illinois communities demands and deserves an effective, thoughtful, grassroots response from government at every level;

THEREFORE I, Pat Quinn, Governor of Illinois, hereby order the following:

I. CREATION

There is hereby established the Illinois Anti-Violence Commission (hereinafter "Commission").

II. PURPOSE

The Commission members, combining their own personal, real-life experience with thoughtful input from other individuals at every level who share their commitment to preventing violence and keeping neighborhoods safe and secure, shall develop a set of recommendations to guide the State of Illinois toward wise, effective, community-focused anti-violence programs.

III. DUTIES

The Commission shall make recommendations for developing and implementing community-focused violence prevention programs that address the needs identified by those most personally affected by violent crime and its aftermath.
EXECUTIVE ORDER

The Commission shall make best efforts to:

a. Hold hearings and gather testimony from community members and representatives of neighborhood groups as well as experts in violence prevention and law enforcement.

b. Develop community-based recommendations to strengthen Illinois' existing anti-violence programs and find new, workable solutions to save lives and rebuild neighborhoods.

c. Identify opportunities to increase community input into the development and delivery of the State of Illinois' violence prevention programs.

IV. MEMBERSHIP

The Commission shall be limited to Illinois residents who have lost family members to deadly violence; its membership shall reflect diversity to ensure representation of the needs of all Illinois citizens. The Governor appoints all members of the Commission.

Members shall serve for the duration of the Commission. The Commission shall convene within 30 days after the effective date of this Order. The initial meeting of the Commission shall be convened by the chairperson selected by the Governor. Subsequent meetings will convene at the call of the chairperson.

V. REPORT

The Commission shall report its findings and recommendations to the Governor and General Assembly no later than November 16, 2010. The Commission and the terms of its members shall expire upon delivery of the final report.

VI. TRANSPARENCY

In addition to whatever policies or procedures it may adopt, all operations of the Commission will be subject to the provisions of the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) and the Illinois Open Meetings Act (5 ILCS 120/1 et seq.). This section shall not be construed so as to preclude other statutes from applying to the Commission and its activities.

VII. SAVINGS CLAUSE
EXECUTIVE ORDER

Nothing in this Executive Order shall be construed to contravene any state or federal law.

VIII. SEVERABILITY

If any provision of this Executive Order is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

IX. EFFECTIVE DATE

This Executive Order shall be effective upon filing with the Secretary of State.

Issued by the Governor: July 25, 2010
Filed with the Secretary of State July 26, 2010
A series of severe storms with high wind and torrential rain moved through northern Illinois from the Mississippi River to Lake Michigan on July 23 and 24, 2010. The rainfall resulted in widespread damage to homes and businesses as a result of flash flooding and sewer back up. The damage to roads, bridges, sewers, flood control facilities and other public infrastructure in both the urban and rural areas resulted in a disruption of essential services and posed a threat to public health and safety. The clean-up and recovery from these severe storms will continue for weeks, if not months, and the impact to many individuals, households, businesses and local governments will be devastating.

In the interest of aiding the citizens of Illinois and the local governments responsible for ensuring public health and safety, I hereby proclaim that a disaster exists within the State of Illinois, and specifically, declare Carroll, Cook, DuPage, Henderson, Jo Daviess, Lee, Mercer, Ogle, Rock Island, Stephenson, Whiteside, Winnebago counties as a disaster area, pursuant to the provisions of the Illinois Emergency Management Agency Act, 20ILCS 3305/7.

This gubernatorial proclamation of disaster will aid the Illinois Emergency Management Agency in coordinating State resources to support local governments in disaster response and recovery operations. In addition, this proclamation can facilitate a request for federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.

Date: July 26, 2010
Filed: July 26, 2010
ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 34, Issue 32 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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# ORDER FORM

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  - Department of Index
  - Administrative Code Division
  - 111 E. Monroe
  - Springfield, IL 62756

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