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INTRODUCTION

The Illinois Register is the official State document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register. The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings. The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

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**Editor's Note:** The Secretary of State Index Department is providing this opportunity to remind you that the next filing period for your Regulatory Agenda will occur from October 15, 2010 to January 3, 2011.
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:
   - 140.461 Amendment

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:** The proposed rulemaking allows HFS to reimburse hospital clinics or outpatient departments that are not located on a hospital campus the same as on-site locations. Currently, HFS only provides reimbursement for services provided at hospital owned clinics or outpatients departments that are located on or adjacent to a hospital’s campus. Although HFS is not compelled by state or federal statute, this policy mirrors federal rule and better accommodates the current structure of health care delivery. Although it is difficult to determine, the Department believes the fiscal impact to be negligible.

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.
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

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 45 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: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this Rulemaking was Summarized: July 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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140.14 Denial of Application to Participate in the Medical Assistance Program
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DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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(Recodified)

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Section 140.461 Clinic Participation, Data and Certification Requirements

a) Hospital-based organized clinics must:

1) Have an administrative structure, staff program, physical setting, and equipment to provide comprehensive medical care;

2) Agree to assume complete responsibility for diagnosis and treatment of the patients accepted by the clinic, or provide, at no additional cost to the Department, for the acquisition of these services through contractual arrangements with external medical providers;

3) Meet the following requirements:

A) be adjacent to or on the premises of the hospital and be licensed under the Hospital Licensing Act or the University of Illinois Hospital Act; or

B) have provider-based status under Medicare pursuant to 42 CFR 413.65; or

C) be clinically integrated as evidenced by the following:

i) professional staff of the clinic have clinical privileges at the main hospital; the main hospital maintains the same monitoring and oversight of the clinic as it does for any other department of the hospital; medical staff committees or other professional committees at the main hospital are responsible for medical activities in the clinic, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the clinic and the main hospital; medical records for patients treated in the clinic are integrated into a unified retrieval system of the main hospital, or cross reference that retrieval system; and inpatient and outpatient services of the clinic and the main hospital are integrated, and patients treated at the clinic who require further care have full access to all services of the main hospital and are referred
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when appropriate to the corresponding inpatient or outpatient department or service of the main hospital; and

ii) fully integrated within the financial system of the main hospital, as evidenced by shared income and expenses between the main hospital and the clinic; and

iii) held out to the public and other payers as part of the main hospital; and

iv) operated under the ownership and control of the main hospital, as evidenced by the following: the business enterprise that constitutes the clinic is 100 percent owned by the main hospital; the main hospital and the clinic have the same governing body; the clinic is operated under the same organizational documents (e.g., bylaws and operating decisions) as the main hospital; and the main hospital has final responsibility for personnel policies (such as fringe benefits or code of conduct), and final approval for medical staff appointments in the clinic; and

v) located within a 35 mile radius of the main hospital campus as defined in 42 CFR 413.65.

4) Meet the applicable requirements of 89 Ill. Adm. Code 148.40(d).

b) Encounter rate clinics must participate in the Medical Assistance Program as an encounter rate clinic as of July 1, 1998, or be a clinic operated by a county with a population of over three million. Individual practitioners associated with such centers may apply for participation in the Medical Assistance Program in their individual capacities. In order to participate in the Maternal and Child Health Program, as described in Subpart G, encounter rate clinics shall be required to meet the additional participation requirements described in Section 140.924(a)(2).

c) Rural health clinics must be certified by the Health Care Financing Administration as meeting the requirements for Medicare participation.

d) Federally Qualified Health Centers (FQHC):
1) Must be Health Centers which:

A) receive a grant under Section 329, 330 or 340 of the Public Health Service Act; or

B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, are determined to meet the requirements for receiving such a grant.

2) Section 4602 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), which amended Section 1902(a)(55) of the Social Security Act (42 USC Section 1396a(a)(55)), requires states to receive and initially process Medicaid applications from low-income pregnant women and children under 19 years of age at locations other than the local Department of Human Services (DHS) office. Such a site is referred to as an outstation.

A) Outstations will be located at those FQHCs which the Department determines serve heavy Medicaid populated areas. For areas in which the Department determines that maintaining outstation workers is not economical, the DHS local office will continue to be the application location.

B) The FQHCs, which will provide outstation eligibility staff to accept and assist in the initial processing of the Medicaid application for pregnant women and children, will forward the completed application to the appropriate DHS local office. Initial processing means accepting and completing the application, providing information and referrals, obtaining required documentation to complete processing of the application, assuring that the information contained on the application form is complete and conducting any necessary interviews. Neither the FQHCs nor the outstation workers will evaluate the information contained on the application, nor make any determination of eligibility or ineligibility. The DHS local office is responsible for these functions.

C) Costs allowable under the federal outstation mandate for completing the Medicaid application will be itemized in Section B of Schedule I of the FQHC Medicaid cost report and will be
provided annually in the FQHC cost reporting process. These allowable costs will be collected, computed and calculated, and will result in the establishment of an outstation administrative rate and a Medicaid rate. The allowable costs are:

i) Salary of outstation worker;

ii) Fringe benefits;

iii) Training;

iv) Travel; and

v) Supplies.

D) FQHC outstation workers must receive certification through Maternal and Child Health (MCH) process training by the Department before they begin to perform eligibility processing functions. Failure to become certified results in any MCH application completed by an ineligible worker being non-allowed on the cost report.

E) FQHCs must have adequate staff trained with proper backup to accommodate unforeseen problems. FQHCs must be able to meet the demand of this initiative, either using staff at one location or rotating staff as dictated by workload or staffing availability. The FQHC must have staff available at each outstation location during regular office operating hours.

F) Outstation intake staff may perform other FQHC intake processing functions, but the time spent on outstation activities must be documented and must be identifiable for cost reporting and auditing purposes.

G) The FQHC must display a notice in a prominent place at the outstation location advising potential applicants of the times that outstation intake workers will be available. The notice must include a telephone number that applicants may call for assistance.
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H) The FQHC must comply with federal and State laws and regulations governing the provision of adequate notice to persons who are blind or deaf or who are unable to read or understand the English language.

e) Individual practitioners associated with such centers may apply for participation in the Medical Assistance Program in their individual capacities.

f) Maternal and Child Health Clinics

1) Types of Clinics
The following clinics shall qualify as Maternal and Child Health Clinics:

A) Certified Hospital Ambulatory Primary Care Centers (CHAPCC) that, which are hospital-based organized outpatient clinics, as described in subsection (a) above, meeting the participation, data and certification requirements described in subsections (f)(2) through (f)(5) below, that, through staff and supporting resources, provide ambulatory primary care to Medicaid children from birth through 20 years of age, and pregnant women in a non-emergency room setting. At least 50 percent of all staff physicians providing care in a CHAPCC must routinely provide obstetric, pediatric, internal medicine, or family practice care in the clinic setting, and at least 50 percent of patient visits to the CHAPCC must be for primary care.

B) Certified Hospital Organized Satellite Clinics (CHOSC) that, which are clinics meeting the participation, data and certification requirements described in subsections (f)(2) through (f)(5) below, that are owned, operated, and/or managed by a hospital but do not qualify as hospital-based organized clinics, as described in subsection (a) above, because they are not located adjacent to or on the premises of the hospital or are not licensed under the Hospital Licensing Act or the University of Illinois Hospital Act. Through staff and supporting resources, these clinics provide ambulatory primary care in a non-emergency setting to Medicaid children from birth through 20 years of age, and to pregnant women. At least 50 percent of all staff physicians providing care in a CHOSC must routinely provide obstetric, pediatric, internal medicine, or family
practice care in the clinic setting, and at least 50 percent of patient visits to the CHOSC must be for primary care. Primary care consists of basic health services provided by a physician or other qualified medical professional to maintain the day-to-day health status of a patient, without requiring the level of medical technology and specialized expertise necessary for the provision of secondary and tertiary care. CHOSCs shall meet the requirements in subsections (a)(1) and (a)(2) above.

C) Certified Obstetrical Ambulatory Care Centers (COBACC) that, which are hospital-based organized clinic entities, as described in subsection (a) above, meeting the participation, data and certification requirements described in subsections (f)(2) through (f)(5) below, that, through staff and supporting resources, provide primary care and specialty services to Medicaid-eligible pregnant women, especially those determined to be non-compliant or at high risk, in an outpatient setting.

D) Certified Pediatric Ambulatory Care Centers (CPACC) that, which are hospital-based organized clinic entities, as described in subsection (a) above, owned and operated by a hospital as described in 89 Ill. Adm. Code 149.50(c)(3), and meeting the participation, data and certification requirements described in subsections (f)(2) through (f)(5) below, that, through staff and supporting resources, provide pediatric primary care and specialty services as described in Section 140.462(e)(3)(C) to Medicaid enrolled children with specialty needs, from birth through 20 years of age in an outpatient setting. Hospitals with CPACCs must also provide primary care for at least 1,500 children, either through its CPACC or through a CHAPCC, CHOSC or encounter rate clinic operated by the same hospital. Hospitals unable to meet this volume requirement must agree to serve as a specialty referral site for another hospital operating a CPACC through a written agreement submitted to the Department.

2) General Participation Requirements
In addition to the Maternal and Child Health participation requirements described in Section 140.924(a)(1), the Maternal and Child Health clinics identified in subsection (f)(1) above must:
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A) Be operated by a disproportionate share hospital, as described in 89 Ill. Adm. Code 148.120, be staffed by board certified/eligible physicians who have hospital admitting and/or delivery privileges, be operated by a hospital in an organized corporate network of hospitals having a total of more than 1,000 staffed beds, and agree to provide care for a minimum of 100 pregnant women or children; or be a primary care teaching site of an organized academic department of:

i) In the case of clinics described in subsections (f)(1)(A) and (f)(1)(B) above, a pediatric or family practice residency program accredited by the American Accreditation Council for Graduate Medical Education or other published source of accrediting information.

ii) In the case of clinics described in subsection (f)(1)(C) above, an obstetrical residency program accredited by the American Accreditation Council for Graduate Medical Education or other published source of accrediting information with at least 130 full-time equivalent residents.

iii) In the case of clinics described in subsection (f)(1)(D) above, a pediatric or family practice residency program accredited by the American Accreditation Council for Graduate Medical Education or other published source of accrediting information with at least 130 full-time equivalent residents.

B) Under the direction of a board certified/eligible physician who has hospital admitting and/or delivery privileges and provides direct supervision to residents practicing in the certified ambulatory site, provide:

i) In the case of clinics described in subsections (f)(1)(A) and (f)(1)(B) above, primary care.

ii) In the case of clinics described in subsection (f)(1)(C) above, obstetric and specialty services.
iii) In the case of clinics described in subsection (f)(1)(D) above, primary care and specialty services.

C) Maintain a formal, ongoing quality assurance program that meets the minimum standards of the Joint Commission on Accreditation of Health Care Organizations (JCAHO);

D) Provide historical evidence of fiscal solvency and financial projections for the future, in a manner specified by the Department; and

E) Utilize a formal client tracking and care management system that affords timely maintenance of, access to, and continuity of medical records without compromising client confidentiality.

3) Special Participation Requirements

In addition to the Maternal and Child Health provider participation requirements described in Section 140.924(a)(1), and the general participation requirements described in subsection (f)(2) above, special participation requirements shall apply as follows:

A) Clinics described in subsections (f)(1)(A) and (f)(1)(B) above must:

i) Serve a total population that includes at least 20 percent Medicaid and medically indigent clients;

ii) Perform a risk assessment on pregnant women assigned to them in order to determine if the woman is at high risk; and

iii) Provide or arrange for specialty services when needed by pregnant women or children.

B) Clinics described in subsection (f)(1)(C) must:

i) Be a distinct department of a hospital that also operates as a Level II or Level III perinatal center;
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ii) Provide services to pregnant women demonstrating the need for extensive health care services due to complicated medical conditions placing them potentially at high risk of abnormal delivery, including substance abuse or addiction problems. Hospital clinics will not qualify to participate unless they provide both primary and specialty services to women who currently are Medicaid clients, or Medicaid-eligible women who receive services at the COBACC; in this capacity, COBACCs, as perinatal centers, shall serve pregnant women determined to be at high risk of abnormal delivery;

iii) Operate a designated 24-hour per day emergency referral site with a defined practice for the care of obstetric emergencies;

iv) Have an established program of services for the treatment of substance-abusing pregnant women;

v) Integrate an accredited obstetrical residency program with subspecialty residency programs to encourage future physicians to devote part of their professional services to disadvantaged and underserved high-risk pregnant women; and

vi) Operate organized ambulatory clinics for pregnant women that are easily accessible to the medically underserved.

C) Clinics described in subsection (f)(1)(D) above must:

i) Provide primary and specialty services for children demonstrating the need for extensive health care services due to a chronic condition as described in Section 140.462(e)(3)(C);

ii) Operate a designated 24-hour per day emergency referral site with a defined practice for the care of pediatric emergencies;
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iii) Provide access to necessary pediatric primary and specialty services within 24 hours after referral;

iv) Be a distinct department of a disproportionate share hospital, as described in 89 Ill. Adm. Code 148.120(a)(5);

v) Integrate an accredited pediatric or family practice residency program with subspecialty residency programs to encourage future physicians to devote part of their professional services to disadvantaged and underserved children with specialty needs; and

vi) Operate organized ambulatory clinics for children that are easily accessible to the medically underserved.

4) Data Requirements

The Maternal and Child Health clinics described in subsection (f)(1) above shall be required to submit patient level historical data to the Department, which may include, but shall not be limited to historical data on the use of the hospital emergency room department.

5) Certification Requirements

Certification of qualifying status of a Maternal and Child Health clinic identified in subsection (f)(1) above shall occur annually during the first two years of participation and every other year thereafter. In addition:

A) The certification process shall consist of a review of the completed application and related materials to determine provisional certification status. Those centers submitting approved applications shall then be reviewed on-site by Department staff within 60 days after application approval. Final notification of certification status shall be rendered within 30 days after the site review, pending provider submittal of a written plan of correction for any deficiencies discovered during the entire application process.

B) Entities interested in becoming a Maternal and Child Health clinic must direct a written request for an application packet to the following address:
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Maternal and Child Health Clinic Certification
Bureau of Comprehensive Health Services
Illinois Department of Public Aid
201 South Grand Avenue East, Concourse
Springfield, Illinois 62763-0001

C) Certification status shall be suspended for Maternal and Child
Health clinics identified in subsection (f)(1) above that do not
submit data to the Department, as required under subsection (f)(4)
above, within 180 days after the Department's request for the
submittal of such data.

g) School Based/Linked Health Clinics (centers) must be certified by the Department
of Human Services (DHS) that they are meeting the minimum standards
established by DHS (77 Ill. Adm. Code 2200). Examples of certification
requirements include:

1) School based health centers must be located in schools or on school
grounds, serving at least the students attending that school.

2) School linked health centers are located off school grounds, but a formal
relationship must exist to serve students attending a particular school or
multiple schools within the district.

3) All medical services performed by mid-level practitioners (i.e., medical
services providers who are not physicians), such as nurse practitioners (see
Section 140.400), must be under the direction of a physician.

4) The center must have a medical director. The medical director of the
center must be a qualified physician, licensed in Illinois to practice
medicine in all its branches. Each center's medical director must develop
standing orders and protocols for services provided at the center. The
medical director shall ensure compliance with the policies and procedures
pertaining to medical procedures and health care services. The medical
director shall supervise the medical protocols involving direct care of
students. The center must have consultant or back-up physicians with
hospital admitting privileges. The consultant provider of the clinic for
obstetrical care, as appropriate, must have delivery privileges. All medical
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services must be delivered in accordance with the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the American Academy of Family Practice Guidelines and the standards established by outside regulatory agencies.

5) All laboratory services must be in compliance with the Clinical Laboratory Improvement Amendments (CLIA) of 1988 (42 USC 263a). DHS will provide ongoing monitoring to assure that appropriate standards are followed.

6) The center shall be staffed by Illinois licensed, registered, and/or certified health professionals who are trained and experienced in community and school health, and who have knowledge of health promotion and illness prevention strategies for children and adolescents. The center must ensure that staff are assigned responsibilities consistent with their education and experience, supervised, evaluated annually and trained in the policies and procedures of the center.

7) The center must establish procedures for the availability of primary care providers and for 24-hour per day, 12-month per year access to routine, urgent and emergency care, telephone appointments and advice. The center must have in place telephone answering methods that notify students and parents/guardians where and how to access 24-hour back-up services when the center is not open.

8) Services may be provided to eligible students who have obtained written parental consent, or who are 18 years of age, and/or who are otherwise able to give their own consent.

9) The center must coordinate care and the exchange of information necessary for the provision of health care of the student, between the center and a student's primary care practitioner, medical specialist or managed care entity. Written policies must address obtaining student and/or parental consent to share information regarding a student's health care.

10) The center must operate in accordance with a systematic process for referring students to community-based health care providers when the center is not able to provide the services required by the student. The
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center may provide medical care to a Managed Care Entity (MCE) enrolled student. The center shall refer that MCE enrolled student to the MCE primary care provider for continuing and definitive care.

A) The center shall refer a student who requires specialty medical and/or surgical services to his or her primary care provider or MCE to obtain a referral for a specialist.

B) The center shall document in the student's record that the referral was made, and document follow-up on the outcome of the referral when relevant to the health care provided by the center.

11) The center must develop a collaborative relationship with other health care providers, insurers, managed care organizations, the school health program, students and parents or guardians with the goal of assuring continuity of care, pertinent medical record sharing and reducing duplication and fragmentation of services.

12) Data Requirements
The center shall maintain a health record system that provides for consistency, confidentiality, storage and security of records for documenting significant student health information and the delivery of health care services.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)
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1) **Heading of the Part:** Hospital Services

2) **Code Citation:** 89 Ill. Adm. Code 148

3) **Section Numbers:** Proposed Action:
   - 148.40 Amendment
   - 148.117 Amendment
   - 148.126 Amendment
   - 148.140 Amendment
   - 148.295 Amendment
   - 148.700 New Section
   - 148.710 New Section
   - 148.720 New Section
   - 148.730 New Section
   - 148.740 New Section
   - 148.750 New Section
   - 148.760 New Section

4) **Statutory Authority:** Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and P.A. 96-1382

5) **Complete Description of the Subjects and Issues Involved:** This proposed rulemaking consist of the following changes:

   The proposed amendment increases payments to Critical Access Hospitals as authorized by P.A. 96-1382. This legislation authorizes the Department to reimburse critical access hospitals for outpatient services at an amount no less than the cost of providing such services, based upon Medicare cost principles. The amount of this increase will be approximately $33.5 million annually.

   IMD Classification - These changes are necessary in order to assure federal compliance. There is no fiscal impact as a result of this rule change.

   Hospital Specific Requests – The total fiscal impact as a result of the rule change is $7.1 million.

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

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

9) Does this rulemaking contain incorporations by reference? 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 may affect hospitals that are owned by 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 45 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:
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A) Types of small businesses, small municipalities and not-for-profit corporations affected: Government-owned hospitals and Medicaid funded hospitals

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this Rulemaking was Summarized: July 2010

The full text of the Proposed Amendments begins on the next page:
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CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 148
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148.25 Definitions and Applicability
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148.50 Covered Hospital Services
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148.85 Supplemental Tertiary Care Adjustment Payments
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148.285 Excellence in Academic Medicine Payments
148.290 Adjustments and Reductions to Total Payments
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148.300 Payment
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148.340 Subacute Alcoholism and Substance Abuse Treatment Services
148.350 Definitions (Repealed)
148.360 Types of Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
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days; amended at 34 Ill. Reg. 17737, effective November 8, 2010; amended at 35 Ill. Reg. _____, effective ____________.

SUBPART A: GENERAL PROVISIONS

Section 148.40 Special Requirements

a) Inpatient Psychiatric Services

1) Payment for inpatient hospital psychiatric services shall be made only to:
   A) A hospital that is a general hospital, as defined in Section 148.25(b), with a functional unit, as defined in Section 148.25(c)(1), that specializes in, and is enrolled with the Department to provide, psychiatric services; or
   B) A hospital, as defined in Section 148.25(b), that holds a valid license as, and is enrolled with the Department as, a psychiatric hospital, as defined in 89 Ill. Adm. Code 149.50(c)(1).

2) Inpatient psychiatric services are those services provided to patients who are in need of short-term acute inpatient hospitalization for active treatment of an emotional or mental disorder.

3) Inpatient psychiatric services are not covered for Family and Children Assistance (formerly known as General Assistance) program participants who are 18 years of age or older.

4) Hospitals classified as IMDs pursuant to 89 Ill. Adm. Code 148, Subpart E may not receive reimbursement for services provided to patients over the age of 20 or under the age of 65, except as described in Section 148.750. Federal Medicaid regulations preclude payment for patients over 20 or under 65 years of age in any Institution for Mental Diseases (IMD). Therefore, psychiatric hospitals may not receive reimbursement for services provided to patients over the age of 20 and under the age of 65. In the case of a patient receiving psychiatric services immediately preceding his/her 21st birthday, reimbursement for psychiatric services shall be provided until the earliest of the following:
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A) The date the patient no longer requires the services; or

B) The date the patient reaches 22 years of age.

5) A psychiatric hospital must be accredited by the Joint Commission on the Accreditation of Health Care Organizations to provide services to program participants under 21 years of age or be Medicare certified to provide services to program participants 65 years of age and older. Distinct part psychiatric units and psychiatric hospitals located in the State of Illinois, or within a 100 mile radius of the State of Illinois, must execute an interagency agreement with a Department of Human Services (DHS) operated mental health center (State-operated facility) for coordination of services including, but not limited to, crisis screening and discharge planning to ensure linkage to aftercare services with private practitioners or community mental health services, as described in subsection (a)(6) of this Section.

6) Coordination of Care – Purpose. In accordance with subsection (a)(5) of this Section, distinct part psychiatric units and psychiatric hospitals located in the State of Illinois, or within a 100 mile radius of the State of Illinois, must execute a Coordination of Care Agreement in order to participate as a provider of inpatient psychiatric services. The Coordination of Care Agreement shall set forth an agreement between the DHS operated mental health center (State-operated facility) and the hospital for the coordination of services, including but not limited to crisis screening and discharge planning to ensure efficient use of inpatient care. The agreement shall also set forth the manner in which linkage to aftercare services with community mental health agencies or private practitioners shall be carried out.

7) Coordination of Care – General Provisions. The general provisions of the Coordination of Care Agreement described in subsection (a)(6) of this Section are as follows:

A) The hospital shall agree, on a continuing basis, to comply with applicable licensing standards as contained in State laws or regulations and shall maintain accreditation by JCAHO;

B) The provider shall comply with Title VI of the Civil Rights Act of
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1964 and the Rehabilitation Act of 1973 and regulations promulgated thereunder which prohibit discrimination on the grounds of sex, race, color, national origin or handicap;

C) The provider shall comply with the following applicable federal, State and local statutes pertaining to equal employment opportunity, affirmative action, and other related requirements: 42 USCA 2000e, 29 USCA 203 et seq. and 775 ILCS 25;

D) The Coordination of Care Agreement shall remain in effect until amended by mutual consent or cancelled in writing by either party having given 30 days prior notification.

8) Coordination of Care – Special Requirements. The hospital shall:

A) Provide on its premises, the facilities, staff, and programs for the diagnosis, admission, and treatment of persons who may require inpatient care and/or assessment of mental status, mental illness, emotional disability, and other psychiatric problems;

B) Notify the community mental health agency that serves the geographic area from which the recipient originated to allow the agency to prescreen the case prior to referring the individual to the designated State-operated facility. The community mental health agency's resources and other appropriate community alternatives shall be considered prior to making a referral to the State-operated facility for admission;

C) Complete any forms necessary and consistent with the Mental Health and Developmental Disabilities Code in the event of a referral for involuntary or judicial admission;

D) Notify the community mental health agency or private practitioner of the date and time of discharge and invite their participation in the discharge planning process;

E) Refer to the State-operated facility only those individuals for whom less restrictive alternatives are documented not to be appropriate at the time based on a clinical determination by the
community mental health agency, a private practitioner (if applicable), or the hospital; and

F) Notify the State-operated facility prior to planned transfer of an individual and transfer the individual at such time as to assure arrival of the person prior to 11 a.m. Monday through Friday. In unusual situations, transfers may be made at other times after prior discussion between the hospital and the State-operated facility. The individual will only be transported to the State-operated facility when, based on a clinical determination, he/she is medically stable as determined by the transferring physician. A copy of the transfer summary from the hospital must accompany the recipient at the time of admission to the State-operated facility.

9) Coordination of Care – Special Requirements of the State-Operated Facility. The State-operated facility shall:

A) Admit individuals who have been screened as defined in the Coordination of Care Agreement and are appropriate for admission consistent with the provisions of the Mental Health and Developmental Disabilities Code.

B) Evaluate individuals for whom the hospital has executed a Petition and Certificate for involuntary/judicial admission consistent with the Mental Health and Developmental Disabilities Code.

C) Consider for admission voluntary individuals for whom less restrictive alternatives are documented not to be appropriate at the time, based on a clinical determination by the community mental health agency, private practitioner (if applicable), the hospital, or the State-operated facility.

10) Coordination of Care – Special Requirements for the Children's Mental Health Screening, Assessment and Support Services (SASS) Program. For patients under 21 years of age, all inpatient admissions must be authorized through the SASS Program. The hospital shall:

A) Prior to admission, contact the Crisis and Referral Entry Service (CARES), the Department's Statewide centralized intake and
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referral point for a mental health screening and assessment of the patient, pursuant to 59 Ill. Adm. Code 131.40;

B) For admissions authorized through a SASS screening, involve the SASS provider in the patient's treatment plan during the inpatient stay and in the development of a discharge plan in order to facilitate linkage to appropriate aftercare resources.

11) A participating hospital not enrolled for inpatient psychiatric services may provide psychiatric care as a general inpatient service only on an emergency basis for a maximum period of 72 hours or in cases in which the psychiatric services are secondary to the services for which the period of hospitalization is approved.

b) Inpatient Rehabilitation Services

1) Payment for inpatient rehabilitation services shall be made only to a general hospital, as defined in Section 148.25(b), with a functional unit of the hospital, as defined in Section 148.25(c)(2), which specializes in, and is enrolled with the Department to provide, physical rehabilitation services or a hospital, as defined in 89 Ill. Adm. Code 149.50(c)(2), which holds a valid license as, and is enrolled with the Department as, a physical rehabilitation hospital.

2) The primary reason for hospitalization is to provide a structured program of comprehensive rehabilitation services, furnished by specialists, to the patient with a major handicap for the purpose of habilitating or restoring the person to a realistic maximum level of functioning.

3) Inpatient rehabilitation services are not covered for Family and Children Assistance (formerly known as General Assistance) program participants who are 18 years of age or older.

4) For payment to be made, a rehabilitation facility, which includes a distinct part unit as described in Section 148.25(c)(2), must be certified by the Health Care Financing Administration for participation under the Medicare Program (Title XVIII) and must be licensed and/or certified by the Department of Public Health (DPH) to provide comprehensive physical rehabilitation services. Out-of-state hospitals that specialize in
physical rehabilitation services must be licensed or certified to provide comprehensive physical rehabilitation services by the authorized licensing agency in the state in which the hospital is located.

5) A rehabilitation facility must meet the following criteria:

A) Have a full-time (at least 35 hours per week) director of rehabilitation; a participating general hospital with a functional rehabilitation unit must have a part-time (at least 20 hours per week) director of rehabilitation;

B) Have an organized medical staff;

C) Have available consultants qualified to perform services in appropriate specialties;

D) Have adequate space and equipment to provide comprehensive diagnostic and treatment services;

E) Maintain records of diagnosis, treatment progress (notations must be made at regular intervals) and functional results; and

F) Submit reports as required by the Department of Healthcare and Family Services Public Aid (HFS Public Aid).

6) A rehabilitation facility must provide, or have a contractual arrangement with an appropriate entity or agency to provide, the following minimal services:

A) Full-time nursing services under the supervision of a registered nurse formally trained in rehabilitation nursing;

B) Full-time physical therapy and occupational therapy services; and

C) Social casework services as an integral part of the rehabilitation program.

7) A rehabilitation facility must have available the following minimal services:
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A) Psychological evaluation services;
B) Prosthetic and orthotic services;
C) Vocational counseling;
D) Speech therapy;
E) Clinical laboratory and x-ray services; and
F) Pharmacy services.

8) The director of rehabilitation must meet the following criteria:
   A) Provide services to the hospital and its patients as specified in subsection (b)(5) of this Section;
   B) Be a doctor of medicine or osteopathy;
   C) Be licensed under State law to practice medicine or surgery; and
   D) Must have, after completing a one-year hospital internship, at least two years of training or experience in the medical management of inpatients requiring rehabilitation services.

9) Personnel of the rehabilitation facility must meet the following minimum standards:
   A) Physicians shall have unlimited licenses to practice medicine and surgery in the state in which they practice. Consultants shall be Board Qualified or Board Certified in their specialty.
   B) Physical therapists shall be licensed by the Illinois Department of Financial and Professional Regulation.
   C) Occupational therapists shall be licensed by the Illinois Department of Financial and Professional Regulation.
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D) Registered nurses and licensed practical nurses shall be currently licensed by the Illinois Department of Financial and Professional Regulation or comparable licensing agency in the State in which the facility is located.

E) Social workers shall have completed two years of graduate training leading to a Master's Degree in social work from an accredited graduate school of social work.

F) Psychologists shall have a Master's Degree in clinical psychology.

G) Vocational counselors shall have a Master's Degree in Rehabilitation Counseling, Psychology or Guidance from a school accredited by the North Central Association or its equivalent.

H) An orthotist or prosthetist, certified by the American Board of Certification in Orthotics and Prosthetics, shall fabricate or supervise the fabrication of all limbs and braces.

c) End-Stage Renal Disease Treatment (ESRDT) Services. The Department provides payment to hospitals, as defined in Section 148.25(b), for ESRDT services only when the hospital is Medicare certified for ESRDT and services are provided as follows:

1) Inpatient hospital care is provided for the evaluation and treatment of acute renal disease;

2) Outpatient chronic renal dialysis treatments are provided in the outpatient renal dialysis department of the hospital, a satellite unit of the hospital that is professionally associated with the center for medical direction and supervision, or a free-standing chronic dialysis center certified by Medicare, pursuant to 42 CFR 405, Subpart U (1994); or

3) Home dialysis treatments are provided through the outpatient renal dialysis department of the hospital, a satellite unit of the hospital that is professionally associated with the center for medical direction and supervision, in a patient's home, or through a free-standing chronic dialysis center certified by Medicare, pursuant to 42 CFR 405, Subpart U (1994).
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d) Hospital-Based Organized Clinic Services. Hospital-based clinics, as described in Section 148.25(b)(4), must meet the requirements of 89 Ill. Adm. Code 140.461(a). The following two categories of hospital-based organized clinic services are recognized in the Medical Assistance Program:

1) Psychiatric Clinic Services

A) Psychiatric Clinic Services (Type A). Type A psychiatric clinic services are clinic service packages consisting of diagnostic evaluation; individual, group and family therapy; medical control; optional Electroconvulsive Therapy (ECT); and counseling, provided in the hospital clinic setting.

B) Psychiatric Clinic Services (Type B). Type B psychiatric clinic services are active treatment programs in which the individual patient is participating in no less than social, recreational, and task-oriented activities at least four hours per day at a minimum of three half days of active treatment per week. The duration of an individual patient's participation in this treatment program is limited to six months in any 12 month period.

C) Coverage. Psychiatric clinic services are covered for all Medicaid-eligible individuals. The services are not covered for TANF Family and Children Assistance (formerly known as General Assistance) program participants who are 18 years of age or older.

D) Approval. The Department of Human Services and HFS DPA are responsible for approval and enrollment of community hospitals providing psychiatric clinic services. In order to participate as a provider of psychiatric clinic services, a hospital must have previously been enrolled with the Department for the provision of inpatient psychiatric services on or after June 1, 2002 or must be currently enrolled for the provision of inpatient psychiatric services and execute a Psychiatric Clinic Services Type A and B Enrollment Assurance with DHS and HFS DPA, which assures that the hospital is enrolled for the provision of inpatient psychiatric services and meets the following requisites:
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i) The hospital must be accredited by, and be in good standing with, the Joint Commission on Accreditation of Health Care Organizations (JCAHO);

ii) The hospital must have executed a Coordination of Care Agreement between the hospital and the designated DHS State-operated facility serving the mentally ill in the appropriate geographic area;

iii) The clinical staff of the psychiatric clinic must collaborate with the mental health service network to provide discharge, linkage and aftercare planning for recipients of outpatient services;

iv) The hospital must agree to participate in Local Area Networks in compliance with P.L. 99-660 and P.A. 86-844; and

v) The hospital must be enrolled to participate in Medicaid Program (Title XIX) and must meet all conditions and requirements set forth by HFS DPA.

E) Duration of Approval. The approval described in subsection (d)(1)(D) of this Section shall be in effect for a period of two years from the date HFS DPA approves the psychiatric clinic's enrollment. The approval may be terminated by HFS DPA or DHS with cause upon 30 days written notice to the hospital. Accordingly, the hospital must submit a 30 day written notification to HFS DPA and DHS when terminating delivery of psychiatric clinic services.

2) Physical Rehabilitation Clinic Services

A) Physical rehabilitation clinic services include the same rehabilitative services provided to inpatients by hospitals enrolled to provide the services described in Section 148.40(b). Clinic services should be utilized when the patient's condition is such that it does not necessitate inpatient care and adequate care and treatment can be obtained on an outpatient basis through the
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hospital's specialized clinic.

B) Physical rehabilitation clinic services are not covered for TANF Family and Children Assistance (formerly known as General Assistance) program participants who are 18 years of age or older.

e) Maternal and Child Health Managed Care Clinics. Maternal and Child Health Managed Care Clinics, as described in 89 Ill. Adm. Code 140.461(f) and Section 148.25(b)(5), must meet the requirements of 89 Ill. Adm. Code 140.461(f).

f) Transition to the Diagnosis Related Grouping Prospective Payment System (DRG PPS) (see 89 Ill. Adm. Code 149)

1) Effective with admissions occurring on or after September 1, 1991, and before October 1, 1992, hospitals shall be reimbursed in accordance with the statutes and administrative rules governing the time period when the services were rendered.

2) Effective with admissions occurring on or after October 1, 1992, hospitals that, on August 31, 1991, had a contract in effect with the Department under the Illinois Health Finance Reform Act [20 ILCS 2215] and that elected, effective September 1, 1991, to be reimbursed at rates stated in such contracts, may elect to continue to be reimbursed at rates stated in such contracts for general and specialty care in accordance with subsection (g) of this Section.

3) In the case of a hospital that was determined by the Department to be a rural hospital at the beginning of the rate period described in Section 148.25(g)(2)(A), those hospitals that shall be treated as sole community hospitals, as described in 89 Ill. Adm. Code 149.125(b), shall elect one of the following payment methodologies to be used by the Department in reimbursing that hospital for inpatient services during the rate period described in Section 148.25(g)(2)(A):

A) the DRG PPS, as described in 89 Ill. Adm. Code 149, or

B) the rate calculated under Section 148.260.

4) In the case of a hospital that was not determined by the Department to be a
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rural hospital at the beginning of the rate period described in Section 148.25(g)(2)(A), but was subsequently reclassified by the Department as a rural hospital, as described in Section 148.25(g)(3), on July 14, 1993, those hospitals that shall be treated as sole community hospitals, as described in 89 Ill. Adm. Code 149.125(b), shall elect one of the following payment methodologies to be used by the Department in reimbursing that hospital for inpatient admissions, or, if applicable, for inpatient services provided on October 1, 1993, and for the duration of the rate period described in Section 148.25(g)(2)(A):

A) the DRG PPS, as described in 89 Ill. Adm. Code 149, subject to the provisions of 89 Ill. Adm. Code 149.100(c)(1), or

B) the rate calculated under Section 148.260 that would have been in effect for the rate period described in Section 148.25(g)(2)(A) if the hospital had been designated as a sole community hospital on October 1, 1992.

5) For the rate periods described in Section 148.25(g)(2)(B), hospitals, as described in 89 Ill. Adm. Code 149.125(b), shall elect one of the following payment methodologies to be used by the Department in reimbursing that hospital for inpatient admissions, or, if applicable, for inpatient services provided during such rate periods described in Section 148.25(g)(2)(B):

A) the DRG PPS, as described in 89 Ill. Adm. Code 149, subject to the provisions of 89 Ill. Adm. Code 149.100(c)(1), or

B) the rate calculated under Section 148.260.

g) Annual Irrevocable Election

1) Hospitals described in subsections (f)(2) and (f)(3) of this Section may elect to be reimbursed under the special arrangements described in subsections (f)(2) and (f)(3) at the beginning of each rate period.

2) Hospitals described in subsection (f)(4) of this Section may elect to be reimbursed under the special arrangements described in subsection (f)(4) effective with admissions, or, if applicable, with inpatient services provided, on October 1, 1993, and for the duration of the rate period.
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described in Section 148.25(g)(2)(A).

3) Hospitals described in subsection (f)(5) of this Section may elect to be reimbursed under the special arrangements described in subsection (f)(5) at the beginning of each rate period described in Section 148.25(g)(2)(B).

4) Once a sole community hospital elects to be reimbursed under the DRG PPS, it may not later in that rate period elect to be classified as exempt. Once a sole community hospital elects to be reimbursed as exempt, it may not later in that rate period elect to be reimbursed under the DRG PPS.

5) Hospitals that, on August 31, 1991, had a contract with the Department under the Illinois Health Finance Reform Act may elect to continue to be reimbursed at rates stated in such contracts for general and specialty care. Once such election has been made, the hospital may not later in that rate period elect to be reimbursed under any other methodology.

6) Hospitals that, on August 31, 1991, had a contract with the Department under the Illinois Health Finance Reform Act and have elected to be reimbursed under the DRG PPS may not later elect to be reimbursed at rates stated in such contracts.

h) Notification of Reimbursement Methodology

1) Hospitals shall receive notification from the Department with respect to the reimbursement methodologies that shall be in effect for admissions occurring during the rate period.

2) Hospitals described in subsections (f)(2), (f)(3), (f)(4), and (f)(5) of this Section shall receive notification of their reimbursement options accompanied by a Choice of Reimbursement form. Each hospital described in subsections (f)(2), (f)(3), (f)(4), and (f)(5) shall have 30 days after the date of such notification to file, with the Department, the reimbursement method of choice for the rate period. In the event the Department has not received the hospital's Choice of Reimbursement form within 30 days after the date of notification, as described in this Section, the hospital will automatically be reimbursed for the rate period under the reimbursement methodology that would have been in effect without benefit of the election described in subsection (g) of this Section.
i) Zero Balance Bills. The Department requires a hospital to submit a bill for any inpatient service provided to an Illinois Medicaid eligible person, including newborns, regardless of payor. A "zero balance bill" is one on which the total "prior payments" are equal to or exceed the Department's liability on the claim. The Department requires that zero balance bills be submitted subsequent to discharge in the same manner as are other bills so that information can be available for the maintenance of accurate patient profiles and diagnosis-related grouping (DRG) data, and information needed for calculation of disproportionate share and other rates. The provisions of this subsection apply to all hospitals regardless of the reimbursement methodology under which they are reimbursed.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section 148.117 Outpatient Assistance Adjustment Payments

a) Qualifying Criteria. Outpatient Assistance Adjustment Payments, as described in subsection (b) of this Section, shall be made to Illinois hospitals meeting one of the criteria identified in this subsection (a):

1) A hospital that qualifies for Disproportionate Share Adjustment Payments for rate year 2007, as defined in Section 148.120, has an emergency care percentage greater than 70% and has provided greater than 10,500 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

2) A general acute care hospital that qualifies for Disproportionate Share Adjustment Payments for rate year 2007, as defined in Section 148.120, has an emergency care percentage greater than 85%.

3) A general acute care hospital that does not qualify for Medicaid Percentage Adjustment Payments for rate year 2007, as defined in Section 148.122, located in Cook County, outside the City of Chicago, has an emergency care percentage greater than 63%, has provided more than 10,750 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year and has provided more than 325 Medicaid
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surgical group outpatient ambulatory procedure listing services in the outpatient assistance base year.

4) A general acute care hospital located outside of Cook County that qualifies for Medicaid Percentage Adjustment Payments for rate year 2007 as defined in Section 148.122, is a trauma center recognized by the Illinois Department of Public Health (IDPH) as of July 1, 2006, has an emergency care percentage greater than 58%, and has provided more than 1,000 Medicaid Non-emergency/Screening outpatient ambulatory procedure listing services in the outpatient assistance base year.

5) A hospital that has an MIUR of greater than 50% and an emergency care percentage greater than 80%, and that provided more than 6,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

6) A hospital that has an MIUR of greater than 70% and an emergency care percentage greater than 90%.

7) A general acute care hospital, not located in Cook County, that is not a trauma center recognized by IDPH as of July 1, 2006 and did not qualify for Medicaid Percentage Adjustment payments for rate year 2007, as defined in Section 148.122, has an MIUR of greater than 25% and an emergency care percentage greater than 50%, and that provided more than 8,500 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

8) A general acute care hospital, not located in Cook County, that is a Level I trauma center recognized by IDPH as of July 1, 2006, has an emergency care percentage greater than 50%, and provided more than 16,000 Medicaid outpatient ambulatory procedure listing services, including more than 1,000 non-emergency screening outpatient ambulatory procedure listing services, in the outpatient assistance base year.

9) A general acute care hospital, not located in Cook County, that qualified for Medicaid Percentage Adjustment payments for rate year 2007, as defined in Section 148.122, has an emergency care percentage greater than 55%, and provided more than 12,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.
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procedure listing services, including more than 600 surgical group outpatient ambulatory procedure listing services and 7,000 emergency services in the outpatient assistance base year.

10) A general acute care hospital that has an emergency care percentage greater than 75% and provided more than 15,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

11) A rural hospital that has an MIUR of greater than 40% and provided more than 16,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

12) A general acute care hospital, not located in Cook County, that is a trauma center recognized by DPH as of July 1, 2006, had more than 500 licensed beds in calendar year 2005, and provided more than 11,000 Medicaid outpatient ambulatory procedure listing services, including more than 950 surgical group outpatient ambulatory procedure listing services, in the outpatient assistance base year.

13) A general acute care hospital located outside of Illinois that provided more than 300 high tech diagnostic Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

14) A general acute care hospital is recognized as a Level I trauma center by DPH on the first day of the OAAP rate period, has Emergency Level I services greater than 2,000, Emergency Level II services greater than 8,000, and greater than 19,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

b) Outpatient Assistance Adjustment Payments

1) For hospitals qualifying under subsection (a)(1), the rate is $139.00.

2) For hospitals qualifying under subsection (a)(2), the rate is $850.00.

3) For hospitals qualifying under subsection (a)(3), the rate is $425.00.
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4) For hospitals qualifying under subsection (a)(4), the rate is $665.00 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $375.00.

5) For hospitals qualifying under subsection (a)(5), the rate is $250.00.

6) For hospitals qualifying under subsection (a)(6), the rate is $336.25.

7) For hospitals qualifying under subsection (a)(7), the rate is $110.00

8) For hospitals qualifying under subsection (a)(8), the rate is $200.00.

9) For hospitals qualifying under subsection (a)(9), the rate is $128.50 through June 30, 2010. For dates of service on or after July 1, 2010 through June 30, 2012, the rate is $202.50. For dates of service on or after July 1, 2012, the rate is $48.50.

10) For hospitals qualifying under subsection (a)(10), the rate is $135.00.

11) For hospitals qualifying under subsection (a)(11), the rate is $65.00.

12) For hospitals qualifying under subsection (a)(12), the rate is $90.00.

13) For hospitals qualifying under subsection (a)(13) that have an emergency care percentage greater than 19% but less than 25%, the rate is $141.00. For hospitals qualifying under subsection (a)(13) that have an emergency care percentage greater than 25%, the rate is $494.00.

14) For hospitals qualifying under subsection (a)(14), the rate is $47.00 for dates of service on or after July 1, 2010 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $0.00.

c) Payment to a Qualifying Hospital

1) The total annual payments to a qualifying hospital shall be the product of the hospital's rate multiplied by the Medicaid outpatient ambulatory procedure listing services in the outpatient assistance adjustment base year.
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2) For the outpatient assistance adjustment period for fiscal year 2010 and after, total payments will equal the amount determined using the methodologies described in subsection (c)(1) of this Section and shall be paid to the hospital, at least, on a quarterly basis.

3) Payments described in subsections (b)(5) through (b)(12) of this Section are subject to federal approval, contingent upon approval of federal funding for such payments.

d) Definitions

1) "Emergency care percentage" means a fraction, the numerator of which is the total Group 3 ambulatory procedure listing services as described in Section 148.140(b)(1)(C), excluding services for individuals eligible for Medicare, provided by the hospital in State fiscal year 2005 contained in the Department's data base adjudicated through June 30, 2006, and the denominator of which is the total ambulatory procedure listing services as described in Section 148.140(b)(1), excluding services for individuals eligible for Medicare, provided by the hospital in State fiscal year 2005 contained in the Department's data base adjudicated through June 30, 2006.

2) "General acute care hospital" is a hospital that does not meet the definition of a hospital contained in 89 Ill. Adm. Code 149.50(c).

3) "Outpatient Ambulatory Procedure Listing Payments" means, for a given hospital, the sum of payments for ambulatory procedure listing services as described in Section 148.140(b)(1), excluding payments for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

4) "Outpatient assistance year" means, beginning January 1, 2007, the 6-month period beginning on January 1, 2007 and ending June 30, 2007, and beginning July 1, 2007, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

5) "Outpatient assistance base period" means the 12-month period beginning
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on July 1, 2004 and ending June 30, 2005.

6) "Surgical group outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b)(1)(A), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

7) "Non-emergency/screening outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b)(1)(C)(iii), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

8) "High tech diagnostic Medicaid outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services described in Section 148.140(b)(1)(B)(ii), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 148.126 Safety Net Adjustment Payments

a) Qualifying criteria: Safety net adjustment payments shall be made to a qualifying hospital, as defined in this subsection (a), unless the hospital does not provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on or after July 1, 2006, but did provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on January 1, 2006. A hospital not otherwise excluded under subsection (b) of this Section shall qualify for payment if it meets one of the following criteria:

1) The hospital has, as provided in subsection (e)(6) of this Section, an
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MIUR equal to or greater than 40 percent.

2) The hospital has the highest number of obstetrical care days in the safety net hospital base year.

3) The hospital is, as of October 1, 2001, a sole community hospital, as defined by the United States Department of Health and Human Services (42 CFR 412.92).

4) The hospital is, as of October 1, 2001, a rural hospital, as described in Section 148.25(g)(3), that meets all of the following criteria:

   A) Has an MIUR greater than 33 percent.
   B) Is designated a perinatal level two center by the Illinois Department of Public Health.
   C) Has fewer than 125 licensed beds.

5) The hospital is a rural hospital, as described in Section 148.25(g)(3).

6) The hospital meets all of the following criteria:

   A) Has an MIUR greater than 30 percent.
   B) Had an occupancy rate greater than 80 percent in the safety net hospital base year.
   C) Provided greater than 15,000 total days in the safety net hospital base year.

7) The hospital meets all of the following criteria:

   A) Does not already qualify under subsections (a)(1) through (a)(6) of this Section.
   B) Has an MIUR greater than 25 percent.
   C) Had an occupancy rate greater than 68 percent in the safety net hospital base year.
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hospital base year.

D) Provided greater than 12,000 total days in the safety net hospital base year.

8) The hospital meets all of the following criteria in the safety net base year:

A) Is a rural hospital, as described in Section 148.25(g)(3).
B) Has an MIUR greater than 18 percent.
C) Has a combined MIUR greater than 45 percent.
D) Has licensed beds less than or equal to 60.
E) Provided greater than 400 total days.
F) Provided fewer than 125 obstetrical care days.

9) The hospital meets all of the following criteria in the safety net base year:

A) Is a psychiatric hospital, as described in 89 Ill. Adm. Code 149.50(c)(1).
B) Has licensed beds greater than 120.
C) Has an average length of stay less than ten days.

10) The hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(9) of this Section.
B) Has an MIUR greater than 17 percent.
C) Has licensed beds greater than 450.
D) Has an average length of stay less than four days.
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11) The hospital meets all of the following criteria in the safety net base year:
    A) Does not already qualify under subsections (a)(1) through (a)(10) of this Section.
    B) Has an MIUR greater than 21 percent.
    C) Has licensed beds greater than 350.
    D) Has an average length of stay less than 3.15 days.

12) The hospital meets all of the following criteria in the safety net base year:
    A) Does not already qualify under subsections (a)(1) through (a)(11) of this Section.
    B) Has an MIUR greater than 34 percent.
    C) Has licensed beds greater than 350.
    D) Is designated a perinatal Level II center by the Illinois Department of Public Health.

13) The hospital meets all of the following criteria in the safety net base year:
    A) Does not already qualify under subsections (a)(1) through (a)(12) of this Section.
    B) Has an MIUR greater than 35 percent.
    C) Has an average length of stay less than four days.

14) The hospital meets all of the following criteria in the safety net base year:
    A) Does not already qualify under subsections (a)(1) through (a)(13) of this Section.
    B) Has a Combined MIUR greater than 25 percent.
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C) Has an MIUR greater than 12 percent.

D) Is designated a perinatal Level II center by the Illinois Department of Public Health.

E) Has licensed beds greater than 400.

F) Has an average length of stay less than 3.5 days.

15) A hospital provider that would otherwise be excluded from payment by subsection (a) because it does not operate a comprehensive emergency room, if the hospital provider operates within 1 mile of an affiliate hospital provider that is owned and controlled by the same governing body that operates a comprehensive emergency room, as defined in 77 Ill. Adm. Code 250.710(a), and the provider operates a standby emergency room, as defined in 77 Ill. Adm. Code 250.710(c), and functions as an overflow emergency room for its affiliate hospital provider.

16) The hospital has an MIUR greater than 90% in the safety net hospital base year.

17) The hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(16) of this Section.

B) Is located outside HSA 6.

C) Has an MIUR greater than 16%.

D) Has licensed beds greater than 475.

E) Has an average length of stay less than five days.

18) The hospital meets all of the following criteria in the safety net base year:

A) Provided greater than 5,000 obstetrical care days.

B) Has a combined MIUR greater than 80%.
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19) The hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(18) of this Section.

B) Has a CMIUR greater than 28 percent.

C) Is designated a perinatal Level II center by the Illinois Department of Public Health.

D) Has licensed beds greater than 320.

E) Had an occupancy rate greater than 37 percent in the safety net hospital base year.

F) Has an average length of stay less than 3.1 days.

20) The hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(19) of this Section.

B) Is a general acute care hospital.

C) Is designated a perinatal Level II center by the Illinois Department of Public Health.

D) Provided greater than 1,000 rehabilitation days in the safety net hospital base year.

b) The following five classes of hospitals are ineligible for safety net adjustment payments associated with the qualifying criteria listed in subsections (a)(1) through (a)(4), subsections (a)(6) through (a)(8), subsections (a)(10) through (a)(15) and subsections (a)(17) through (a)(19) of this Section:

1) Hospitals located outside of Illinois.

2) County-owned hospitals, as described in Section 148.25(b)(1)(A).
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3) Hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B).

4) Psychiatric hospitals, as described in 89 Ill. Adm. Code 149.50(c)(1).

5) Long term stay hospitals, as described in 89 Ill. Adm. Code 149.50(c)(4).

c) Safety Net Adjustment Rates

1) For a hospital qualifying under subsection (a)(1) of this Section, the rate is the sum of the amounts for each of the following criteria for which it qualifies:

A) A qualifying hospital – $15.00.

B) A rehabilitation hospital, as described in 89 Ill. Adm. Code 149.50(c)(2) – $20.00.

C) A children's hospital, as described in 89 Ill. Adm. Code 149.50(c)(3) – $20.00.

D) A children's hospital that has an MIUR greater than or equal to 80 per centum that is:

i) Located within HSA 6 or HSA 7 – $296.00.

ii) Located outside HSA 6 or HSA 7 – $35.00.

E) A children's hospital that has an MIUR less than 80 per centum, but greater than or equal to 60 per centum, that is:

i) Located within HSA 6 or HSA 7 – $35.00.

ii) Located outside HSA 6 or HSA 7 – $15.00.

F) A children's hospital that has an MIUR less than 60 per centum, but greater than or equal to 45 per centum, that is:
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i) Located within HSA 6 or HSA 7 – $12.00.

ii) Located outside HSA 6 or HSA 7 – $5.00.

G) A children's hospital with more than 25 graduate medical education programs, as listed in the "2000-2001 Graduate Medical Education Directory" – $160.25.

H) A children's hospital that is a rural hospital – $145.00.

I) A qualifying hospital that is neither a rehabilitation hospital nor a children's hospital that is located in HSA 6 and that:

i) Provides obstetrical care – $10.00.

ii) Has at least one graduate medical education program, as listed in the "2000-2001 Graduate Medical Education Directory" – $5.00.

iii) Has at least one obstetrical graduate medical education program, as listed in the "2000-2001 Graduate Medical Education Directory" – $5.00.

iv) Provided more than 5,000 obstetrical days during the safety net hospital base year – $35.00.

v) Provided fewer than 4,000 obstetrical days during the safety net hospital base year and its average length of stay is: less than or equal to 4.50 days – $5.00; less than 4.00 days – $5.00; less than 3.75 days – $5.00.

vi) Provides obstetrical care and has an MIUR greater than 65 percent – $11.00.

vii) Has greater than 700 licensed beds – $37.75.

J) A qualifying hospital that is neither a rehabilitation hospital nor a children's hospital, that is located outside HSA 6, that has an MIUR greater than 50 per centum, and that:
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i) Provides obstetrical care – $280.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be $70.00.

ii) Does not provide obstetrical care – $120.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be $30.00.

iii) Is a trauma center, recognized by the Illinois Department of Public Health (IDPH), as of July 1, 2005 – $173.50.

K) A qualifying hospital that provided greater than 35,000 total days in the safety net hospital base year – $43.25.

L) A qualifying hospital with two or more graduate medical education programs, as listed in the "2000-2001 Graduate Medical Education Directory", with an average length of stay fewer than 4.00 days – $48.00.

2) For a hospital qualifying under subsection (a)(2) of this Section, the rate shall be $123.00.

3) For a hospital qualifying under subsection (a)(3) of this Section, the rate is the sum of the amounts for each of the following criteria for which it qualifies:

A) A qualifying hospital – $40.00.

B) A hospital that has an average length of stay of fewer than 4.00 days, and:

   i) More than 150 licensed beds – $20.00.

   ii) Fewer than 150 licensed beds – $40.00.

C) A qualifying hospital with the lowest average length of stay – $15.00.
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D) A hospital that has a CMIUR greater than 65 per centum – $35.00.

E) A hospital that has fewer than 25 total admissions in the safety net hospital base year – $160.00.

4) For a hospital qualifying under subsection (a)(4) of this Section, the rate shall be $110.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be $55.00.

5) For a hospital qualifying under subsection (a)(5) of this Section, the rate is the sum of the amounts for each of the following for which it qualifies, divided by the hospital's total days:

A) The hospital that has the highest number of obstetrical care admissions – $30,840.00.

B) The greater of:

i) The product of $115.00 multiplied by the number of obstetrical care admissions.

ii) The product of $11.50 multiplied by the number of general care admissions.

6) For a hospital qualifying under subsection (a)(6) of this Section, the rate is $56.00 if federal approval is received by the Department for such a rate; otherwise, the rate shall be $53.00.

7) For a hospital qualifying under subsection (a)(7) of this Section, the rate is $315.50 through June 30, 2012 if federal approval is received by the Department for that rate; otherwise, the rate shall be $210.50. For dates of service on or after July 1, 2012, the rate is $210.50.

8) For a hospital qualifying under subsection (a)(8) of this Section, the rate is $124.50.

9) For a hospital qualifying under subsection (a)(9) of this Section, the rate is $133.00 through June 30, 2010 through June 30, 2012, the rate is $205.00. For dates of service on
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or after July 1, 2012, the rate is $85.50.

10) For a hospital qualifying under subsection (a)(10) of this Section, the rate is $38.75 for dates of service on or after July 1, 2010 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $13.75.

11) For a hospital qualifying under subsection (a)(11) of this Section, the rate is $421.00 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $39.50.

12) For a hospital qualifying under subsection (a)(12) of this Section, the rate is $240.50 if federal approval is received by the Department for such a rate; otherwise, the rate shall be $120.25.

13) For a hospital qualifying under subsection (a)(13) of this Section, for dates of service on or after April 1, 2009, the rate is $815.00.

14) For a hospital qualifying under subsection (a)(14) of this Section, the rate is $443.75 if federal approval is received by the Department for such a rate; otherwise, the rate shall be $343.75.

15) For a hospital qualifying under subsection (a)(16) of this Section, the rate is $39.50.

16) For a hospital qualifying under subsection (a)(17) of this Section, the rate is $69.00. This reimbursement rate is contingent on federal approval.

17) For a hospital qualifying under subsection (a)(18) of this Section, the rate is $56.00 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $16.00. This reimbursement rate is contingent on federal approval.

18) For a hospital qualifying under subsection (a)(19) of this Section, the rate is $229.00 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $145.00.

19) For a hospital qualifying under subsection (a)(20) of this Section, the rate is $71.00 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $0.00.
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d) Payment to a Qualifying Hospital

1) The total annual payments to a qualifying hospital shall be the product of the hospital's rate multiplied by two multiplied by total days.

2) For the safety net adjustment period occurring in State fiscal year 2010, total payments will be determined through application of the methodologies described in subsection (c) of this Section.

3) For safety net adjustment periods occurring after State fiscal year 2010, total payments made under this Section shall be paid in installments on, at least, a quarterly basis.

e) Definitions

1) "Average length of stay" means, for a given hospital, a fraction in which the numerator is the number of total days and the denominator is the number of total admissions.

2) "CMIUR" means, for a given hospital, the sum of the MIUR plus the Medicaid obstetrical inpatient utilization rate, determined as of October 1, 2001, as defined in Section 148.120(i)(6).

3) "General care admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under Title XIX of the Social Security Act, as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department by June 30, 2001, excluding admissions for: obstetrical care, as defined in subsection (e)(7) of this Section; normal newborns; psychiatric care; physical rehabilitation; and those covered in whole or in part by Medicare (Medicaid/Medicare crossover admissions).

4) "HSA" means Health Service Area, as defined by the Illinois Department of Public Health.

5) "Licensed beds" means, for a given hospital, the number of licensed beds, excluding long term care and substance abuse beds, as listed in the July
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6) "MIUR", for a given hospital, has the meaning as defined in Section 148.120(i)(5) and shall be determined in accordance with Section 148.120(c) and (f). For purposes of this Section, the MIUR determination that was used to determine a hospital's eligibility for Disproportionate Share Hospital Adjustment payments in rate year 2002 shall be the same determination used to determine a hospital's eligibility for safety net adjustment payments in the Safety Net Adjustment Period.

7) "Obstetrical care admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under Title XIX of the Social Security Act, as tabulated from the Department's claims data, for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001, and were assigned by the Department a diagnosis related grouping (DRG) code of 370 through 375.

8) "Obstetrical care days" means, for a given hospital, days of hospital inpatient service associated with the obstetrical care admissions described in subsection (e)(7) of this Section.

9) "Occupancy rate" means, for a given hospital, a fraction, the numerator of which is the hospital's total days, excluding long term care and substance abuse days, and the denominator of which is the hospital's total beds, excluding long term care and substance abuse beds, multiplied by 365 days. The data used for calculation of the hospital occupancy rate is as listed in the July 25, 2001, Illinois Department of Public Health report entitled "Percent Occupancy by Service in Year 2000 for Short Stay, Non-Federal Hospitals in Illinois".


11) "Safety net adjustment period" means, beginning July 1, 2002, the 12 month period beginning on July 1 of a year and ending on June 30 of the following year.
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12) "Total admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover admissions), as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001.

13) "Total days" means, for a given hospital, the sum of days of inpatient hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001.

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 148.140 Hospital Outpatient and Clinic Services

a) Fee-For-Service Reimbursement

1) Reimbursement for hospital outpatient services shall be made on a fee-for-service basis, except for:

A) Those services that meet the definition of the Ambulatory Procedure Listing (APL) as described in subsection (b) of this Section.

B) End stage renal disease treatment (ESRDT) services, as described in subsection (c) of this Section.

C) Those services provided by a Certified Pediatric Ambulatory Care Center (CPACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(D) and Section 148.25(b)(5)(D).

D) Those services provided by a Critical Clinic Provider as described in subsection (e) of this Section.
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2) Except for the procedures under the APL groupings described in subsection (b) of this Section, fee-for-service reimbursement levels shall be at the lower of the hospital's usual and customary charge to the public or the Department's statewide maximum reimbursement screens. Hospitals will be required to bill the Department utilizing specific service codes. However, all specific client coverage policies (relating to client eligibility and scope of services available to those clients) that pertain to the service billed are applicable to hospitals in the same manner as to non-hospital providers who bill fee for service.

3) With respect to those hospitals described in Section 148.25(b)(2)(A), the reimbursement rate described in subsection (a)(2) of this Section shall be adjusted on a retrospective basis. The retrospective adjustment shall be calculated as follows:

A) The reimbursement rates described in subsection (a)(2) of this Section shall be no less than the reimbursement rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports.

B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

4) Maternal and Child Health Program rates, as described in 89 Ill. Adm. Code 140, Table M, shall be paid to Certified Hospital Ambulatory Primary Care Centers (CHAPCC), as described in 89 Ill. Adm. Code 140.461(f)(1)(A) and Section 148.25(b)(5)(A), Certified Hospital Organized Satellite Clinics (CHOSC), as described in 89 Ill. Adm. Code 140.461(f)(1)(B) and Section 148.25(b)(5)(B), and Certified Obstetrical Ambulatory Care Centers (COBACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(C), and Section 148.25(b)(5)(C). Maternal and Child Health Program rates shall also be paid to Certified Pediatric Ambulatory Care Centers (CPACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(D) and Section 148.25(b)(5)(D), for covered services as described in 89 Ill. Adm. Code 140.462(e)(3), that are provided to non-assigned Maternal and Child
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Health Program clients, as described in 89 Ill. Adm. Code 140.464(b)(1).

5) Certified Pediatric Ambulatory Care Centers (CPACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(D) and Section 148.25(b)(5)(D), shall be reimbursed in accordance with 89 Ill. Adm. Code 140.464(b)(2) for assigned clients.

6) Hospitals described in Sections 148.25(b)(2)(A) and 148.25(b)(2)(B) shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year.

7) With the exception of the retrospective adjustment described in subsection (a)(3) of this Section, no year-end reconciliation is made to the reimbursement rates calculated under this Section.

b) Ambulatory Procedure Listing (APL)

Effective January 1, 2006, the Department will reimburse hospitals for certain hospital outpatient procedures as described in subsection (b)(1) of this Section.

1) APL Groupings

Under the APL, a list was developed that defines those technical procedures that require the use of the hospital outpatient setting, its technical staff or equipment. These procedures are separated into separate groupings based upon the complexity and historical costs of the procedures. The groupings are as follows:

A) Surgical Groups

i) Surgical group 1(a) consists of intense surgical procedures. Group 1(a) surgeries require an operating suite with continuous patient monitoring by anesthesia personnel. This level of service involves advanced specialized skills and highly technical operating room personnel using high technology equipment. The rate for this surgical procedure group shall be $1,794.00.

ii) Surgical group 1(b) consists of moderately intense surgical procedures. Group 1(b) surgeries generally require the use of an operating room suite or an emergency room treatment
suite, along with continuous monitoring by anesthesia personnel and some specialized equipment. The rate for this surgical procedure group shall be $1,049.00.

iii) Surgical group 1(c) consists of low intensity surgical procedures. Group 1(c) surgeries may be done in an operating suite or an emergency room and require relatively brief operating times. Such procedures may be performed for evaluation or diagnostic reasons. The rate for this surgical procedure group shall be $752.00.

iv) Surgical group 1(d) consists of surgical procedures of very low intensity. Group 1(d) surgeries may be done in an operating room or emergency room, have a low risk of complications, and include some physician-administered diagnostic and therapeutic procedures. Certain dental procedures performed by dentists are included in this group. In order for a dental procedure to be eligible for reimbursement in the outpatient setting, the following criteria must be met: patient requires general anesthesia or conscious sedation; patient has a medical condition that places the patient at an increased surgical risk, such as, but not limited to, cardiopulmonary disease, congenital anomalies, history of complications associated with anesthesia, such as hyperthermia or allergic reaction, or bleeding diathesis; or the patient cannot be safely managed in an office setting because of behavioral, developmental, or mental disorder. The rate for this surgical procedure group shall be $287.00.

B) Diagnostic and Therapeutic Groups

i) Diagnostic and therapeutic group 2(a) consists of advanced or evolving technologically complex diagnostic or therapeutic procedures. Group 2(a) procedures are typically invasive and must be administered by a physician. The rate for this surgical procedure group shall be $941.00.

ii) Diagnostic and therapeutic group 2(b) consists of
technologically complex diagnostic and therapeutic procedures that are typically non-invasive. Group 2(b) procedures typically include radiological consultation or a diagnostic study. The rate for this procedure group shall be $304.00.

iii) Diagnostic and therapeutic group 2(c) consists of other diagnostic tests. Group 2(c) procedures are generally non-invasive and may be administered by a technician and monitored by a physician. The rate for this procedure group shall be $176.00.

iv) Diagnostic and therapeutic group 2(d) consists of therapeutic procedures. Group 2(d) procedures typically involve parenterally administered therapeutic agents. Either a nurse or a physician is likely to perform such procedures. The rate for this procedure group shall be $136.00.

C) Group 3 reimbursement for services provided in a hospital emergency department will be made in accordance with one of the three levels described in this Section. Emergency Services mean those services that are for a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect that the absence of immediate attention would result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. The determination of the level of service reimbursable by the Department shall be based upon the circumstances at the time of the initial examination, not upon the final determination of the client's actual condition, unless the actual condition is more severe.

i) Emergency Level I refers to Emergency Services provided in the hospital's emergency department for the alleviation of severe pain or for immediate diagnosis and/or treatment
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of conditions or injuries that pose an immediate significant threat to life or physiologic function or requires an intense level of physician or nursing intervention. An "intense level" is defined as more than two hours of documented one-on-one nursing care or interactive treatment. The rate for this service shall be $181.00.

ii) Emergency Level II refers to Emergency Services that do not meet the definition in this Section of Emergency Level I care, but that are provided in the hospital emergency department for a medical condition manifesting itself by acute symptoms of sufficient severity. The rate for this service shall be $67.00.

iii) Non-Emergency/Screening Level means those services provided in the hospital emergency department that do not meet the requirements of Emergency Level I or II stated in this Section. For such care, the Department will reimburse the hospital either applicable current FFS rates for the services provided or a screening fee, but not both. The rate for this service shall be $26.00.

D) Group 4 for observation services is established to reimburse such services that are provided when a patient's current condition does not warrant an inpatient admission but does require an extended period of observation in order to evaluate and treat the patient in a setting that provides ancillary resources for diagnosis or treatment with appropriate medical and skilled nursing care. The hospital may bill for both observation and other APL procedures but will be reimbursed only for the procedure (group) with the highest reimbursement rate. Observation services will be reimbursed under one of three categories:

i) for at least 60 minutes but less than six hours and 31 minutes of services, the rate shall be $74.00;

ii) for at least six hours and 31 minutes but less than 12 hours and 31 minutes of services, the rate shall be $222.00; or
iii) for at least 12 hours and 31 minutes or more of services, the rate shall be $443.00.

E) Group 5 for psychiatric treatment services is established to reimburse for certain outpatient treatment psychiatric services that are provided by a hospital that is enrolled with the Department to provide inpatient psychiatric services. Under this group, the Department will reimburse, at different rates, Type A and Type B Psychiatric Clinic Services, as defined in Section 148.40(d)(1). A different rate will also be reimbursed to children's hospitals as defined in 89 Ill. Adm. Code 149.50(c)(3)(A).

i) The rate for Type A psychiatric clinic services shall be $68.00.

ii) The rate for Type A psychiatric clinic services provided by a Children's Hospital shall be $102.00.

iii) The rate for Type B psychiatric clinic services shall be $101.00.

iv) The rate for Type B psychiatric clinic services provided by a Children's Hospital shall be $102.00.

F) Group 6 for physical rehabilitation services is established to reimburse for certain outpatient physical rehabilitation services. Under this group, the Department will reimburse for services provided by a hospital enrolled with the Department to provide outpatient physical rehabilitation services at a different rate than will be reimbursed for physical rehabilitation services provided by a hospital that is not enrolled with the Department to provide physical rehabilitation services. A different rate will also be reimbursed to children's hospitals as defined in 89 Ill. Adm. Code 149.50(c)(3)(A).

i) The rate for rehabilitation services provided by a hospital enrolled with the Department to provide outpatient physical rehabilitation shall be $130.00.
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ii) The rate for rehabilitation services provided by a hospital that is not enrolled with the Department to provide physical rehabilitation shall be $115.00.

iii) The rate for rehabilitation services provided by Children's Hospitals shall be $130.00.

2) Each of the groups described in subsection (b)(1) of this Section will be reimbursed by the Department considering the following:

A) The Department will provide cost outlier payments for specific devices and drugs associated with specific APL procedures. Such payments will be made if:

i) The device or drug is on an approved list maintained by the Department. In order to be approved, the Department will consider requests from medical providers and shall base its decision on medical appropriateness of the device or drug and the costs of such device or drug; and

ii) The provision of such devices or drugs is deemed to be medically appropriate for a specific client, as determined by the Department's physician consultants.

B) Additional payment for such devices or drugs, as described in subsection (b)(2)(A) of this Section, will require prior authorization by the Department unless it is determined by the Department's professional medical staff that prior authorization is not warranted for a specific device or drug. When such prior authorization has been denied for a specific device or drug, the decision may be appealed as allowed by 89 Ill. Adm. Code 102.80(a)(7) and in accordance with the provisions for assistance appeals at 89 Ill. Adm. Code 104.

C) The amount of additional payment for devices or drugs, as described in subsection (b)(2)(A) of this Section, will be based on the following methodology:

i) The product of a cost to charge ratio that, in the case of cost
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reporting hospitals as described in Section 148.130(d), or in the case of other non-cost reporting providers, equals 0.5 multiplied by the provider's total covered charges on the qualifying claim, less the APL payment rate multiplied by four;

ii) If the result of subsection (b)(2)(C)(i) of this Section is less than or equal to zero, no additional payment will be made. If the result is greater than zero, the additional payment will equal the result of subsection (b)(2)(C)(i) of this Section, multiplied by 80 percent. In such cases, the provider will receive the sum of the APL payment and the additional payment for such high cost devices or drugs.

D) For county-owned hospitals located in an Illinois county with a population greater than three million, reimbursement rates for each of the reimbursement groups shall be equal to the amounts described in subsection (b)(1) of this Section multiplied by a factor of 2.72, except that physical rehabilitation services provided by a general care hospital not enrolled with the Department to provide outpatient physical rehabilitation services shall be reimbursed at a rate of $230.00 and the reimbursement rate for Type B psychiatric clinic services shall be $224.00.

E) Reimbursement rates for hospitals not required to file an annual cost report with the Department may be lower than those listed in this Section.

F) Reimbursement for each APL group described in this subsection (b) shall be all-inclusive for all services provided by the hospital, regardless of the amount charged by a hospital. No separate reimbursement will be made for ancillary services or the services of hospital personnel. Exceptions to this provision are that hospitals shall be allowed to bill separately, on a fee-for-service basis, for professional outpatient services of a physician providing direct patient care who is salaried by the hospital; chemotherapy services provided in conjunction with radiation therapy services; and occupational or speech therapy services provided in conjunction with rehabilitation services as described in subsection
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(b)(1)(F) of this Section. For the purposes of this Section, a salaried physician is a physician who is salaried by the hospital; a physician who is reimbursed by the hospital through a contractual arrangement to provide direct patient care; or a group of physicians with a financial contract to provide emergency department care. Under APL reimbursement, salaried physicians do not include radiologists, pathologists, nurse practitioners, or certified registered nurse anesthetists and no separate reimbursement will be allowed for such providers.

3) The assignment of procedure codes to each of the reimbursement groups in subsection (b)(1) of this Section are detailed in the Department's Hospital Handbook and in notices to providers.

4) A one-time fiscal year 2000 payment will be made to hospitals. Payment will be based upon the services, specified in this Section, provided on or after July 1, 1998, and before July 1, 1999, which were submitted to the Department and determined eligible for payment (adjudicated) by the Department on or prior to April 30, 2000, excluding services for Medicare/Medicaid crossover claims and claims that resulted in a zero payment by the Department. A one-time amount of:

A) $27.75 will be paid for each service for procedure code W7183 (Psychiatric clinic Type A for adults).

B) $24.00 will be paid for each service for APL Group 5 (Psychiatric clinic Type A only) provided by a children's hospital as defined in 89 Ill. Adm. Code 149.50(c)(3)(A).

C) $15.00 will be paid for each service for APL Group 6 (Physical rehabilitation services) provided by a children's hospital as defined in 89 Ill. Adm. Code 149.50(c)(3)(A).

5) County Facility Outpatient Adjustment

A) Effective for services provided on or after July 1, 1995, county owned hospitals in an Illinois county with a population of over three million shall be eligible for a county facility outpatient adjustment payment. This adjustment payment shall be in addition
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to the amounts calculated under this Section and are calculated as follows:

i) Beginning with July 1, 1995, hospitals under this subsection shall receive an annual adjustment payment equal to total base year hospital outpatient costs trended forward to the rate year minus total estimated rate year hospital outpatient payments, multiplied by the resulting ratio derived when the value 200 is divided by the quotient of the difference between total base year hospital outpatient costs trended forward to the rate year and total estimated rate year hospital outpatient payments divided by one million.

ii) The payment calculated under this subsection (b)(5)(A) may be adjusted by the Department to ensure compliance with aggregate and hospital specific federal payment limitations.

iii) The county facility outpatient adjustment under this subsection shall be made on a quarterly basis.

B) County Facility Outpatient Adjustment Definition. The definitions of terms used with reference to calculation of the county facility outpatient adjustment are as follows:

i) "Base Year" means the most recently completed State fiscal year.

ii) "Rate Year" means the State fiscal year during which the county facility adjustment payments are made.

iii) "Total Estimated Rate Year Hospital Outpatient Payments" means the Department's total estimated outpatient date of service liability, projected for the upcoming rate year.

iv) "Total Hospital Outpatient Costs" means the statewide sum of all hospital outpatient costs derived by summing each hospital's outpatient charges derived from actual paid
claims data multiplied by the hospital's cost-to-charge ratio.

6) **Critical Access Hospital Adjustment**
Hospitals designated by the Illinois Department of Public Health in accordance with 42 CFR 485, Subpart F shall have the rate identified in subsection (b)(1) of this Section adjusted by a factor (ratio) calculated as follows:

   A) **Adjustment Factor**
      i) The denominator of which shall be the estimated annual cost of outpatient care for the rate year pursuant to the State's federally approved methodology.
      ii) The numerator of which shall be the estimated annual outpatient care rate of reimbursement for the rate year, plus all outpatient supplemental adjustment payments.

   B) **Final Rate Determination**
Final rates for hospital providers identified in this Subpart shall be the quotient of:

      i) The rates identified in subsection (b)(1) of this Section divided by;
      ii) The lesser of 1.0 or the adjustment factor identified in subsection (b)(6)(A) of this Section.

   C) **Non-State Government Owned Provider Adjustment**
Final APL rates for hospitals identified as non-State government owned or operated providers in the State's upper payment limits demonstration shall be adjusted when necessary to assure compliance with federal upper payment limits as stated in 42 CFR 447.304.

   D) **Applicability**
The rates calculated in accordance with subsection (b)(6)(A) of this Section shall be effective for dates of service beginning
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January 1, 2011 and shall be recalculated annually for the subsequent rate periods:

i) For State fiscal year 2011, the rate year shall begin January 1, 2011 and end June 30, 2011;

ii) For State fiscal year 2012 and beyond, the rate year shall be for dates of service beginning July 1 through June 30 of the subsequent year.

No Year-End Reconciliation
With the exception of the retrospective rate adjustment described in subsection (b)(9) of this Section, no year-end reconciliation is made to the reimbursement rates calculated under this subsection (b).

Rate Adjustments
With respect to those hospitals described in Section 148.25(b)(2)(A), the reimbursement rates described in subsection (b)(5) of this Section shall be adjusted on a retrospective basis. The retrospective adjustment shall be calculated as follows:

A) The reimbursement rates described in subsection (b)(5) of this Section shall be no less than the reimbursement rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports.

B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

Services are available to all clients in geographic areas in which an encounter rate hospital or a county-operated outpatient facility is located. All specific client coverage policies (relating to client eligibility and scope of services available to those clients) that pertain to the service billed are applicable to hospitals reimbursed under the Ambulatory Care Program in the same manner as to encounter rate hospitals and to non-hospital and hospital providers who bill and receive reimbursement on a fee-for-service
Hospitals described in Section 148.25(b)(2)(A) and (b)(2)(B) shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year.

c) Payment for outpatient end-stage renal disease treatment (ESRDT) services provided pursuant to Section 148.40(c) shall be made at the Department's payment rates, as follows:

1) For inpatient hospital services provided pursuant to Section 148.40(c)(1), the Department shall reimburse hospitals pursuant to Sections 148.240 through 148.300 and 89 Ill. Adm. Code 149.

2) For outpatient services or home dialysis treatments provided pursuant to Section 148.40(c)(2) or (c)(3), the Department will reimburse hospitals and clinics for ESRDT services at a rate that will reimburse the provider for the dialysis treatment and all related supplies and equipment, as defined in 42 CFR 405.2163 (1994). This rate will be that rate established by Medicare pursuant to 42 CFR 405.2124 and 413.170 (1994).

3) Payment for non-routine services. For services that are provided during outpatient or home dialysis treatment pursuant to Section 148.40(c)(2) or (c)(3) but are not defined as a routine service under 42 CFR 405.2163 (1994), separate payment will be made to independent laboratories, pharmacies, and medical supply providers pursuant to 89 Ill. Adm. Code 140.430 through 140.434, 140.440 through 140.450, and 140.475 through 140.481, respectively.

4) Payment for physician services relating to ESRDT will be made separately to physicians, pursuant to 89 Ill. Adm. Code 140.400.

5) With respect to those hospitals described in Section 148.25(b)(2)(A), the reimbursement rates described in this subsection (c) shall be adjusted on a retrospective basis. The retrospective adjustment shall be calculated as follows:

A) The reimbursement rates described in this subsection (c) shall be no less than the reimbursement rates in effect on June 1, 1992,
except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports.

B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

6) With the exception of the retrospective rate adjustment described in subsection (c)(5) of this Section, no year-end reconciliation is made to the reimbursement rates calculated under this subsection (c).

7) Hospitals described in Section 148.25(b)(2)(A) and (b)(2)(B) of this Section shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year.

d) Non Hospital-Based Clinic Reimbursement

1) County-Operated Outpatient Facility Reimbursement
Reimbursement for all services provided by county-operated outpatient facilities, as described in Section 148.25(b)(2)(C), that do not qualify as either a Maternal and Child Health Program managed care clinics, as described in 89 Ill. Adm. Code 140.461(f), or as a Critical Clinic Provider, as described in subsection (e) of this Section, shall be on an all-inclusive per encounter rate basis as follows:

A) Base Rate. The per encounter base rate shall be calculated as follows:

i) Allowable direct costs shall be divided by the number of direct encounters to determine an allowable cost per encounter delivered by direct staff.

ii) The resulting quotient, as calculated in subsection (d)(1)(A)(i) of this Section, shall be multiplied by the Medicare allowable overhead rate factor to calculate the overhead cost per encounter.
iii) The resulting product, as calculated in subsection (d)(1)(A)(ii) of this Section, shall be added to the resulting quotient, as calculated in subsection (d)(1)(A)(i) of this Section to determine the per encounter base rate.

iv) The resulting sum, as calculated in subsection (d)(1)(A)(iii) of this Section, shall be the per encounter base rate.

B) Supplemental Rate

i) The supplemental service cost shall be divided by the total number of direct staff encounters to determine the direct supplemental service cost per encounter.

ii) The supplemental service cost shall be multiplied by the allowable overhead rate factor to calculate the supplemental overhead cost per encounter.

iii) The quotient derived in subsection (d)(1)(B)(i) of this Section shall be added to the product derived in subsection (d)(1)(B)(ii) of this Section, to determine the per encounter supplemental rate.

iv) The resulting sum, as described in subsection (d)(1)(B)(iii) of this Section, shall be the per encounter supplemental rate.

C) Final Rate

i) The per encounter base rate, as described in subsection (d)(1)(A)(iv) of this Section, shall be added to the per encounter supplemental rate, as described in subsection (d)(1)(B)(iv) of this Section, to determine the per encounter final rate.

ii) The resulting sum, as determined in subsection (d)(1)(C)(i) of this Section, shall be the per encounter final rate.

iii) The per encounter final rate, as described in subsection
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(d)(1)(C)(ii) of this Section, shall be adjusted in accordance with subsection (d)(2) of this Section.

2) Rate Adjustments
Rate adjustments to the per encounter final rate, as described in subsection (d)(1)(C)(iii) of this Section, shall be calculated as follows:

A) The reimbursement rates described in subsections (d)(1)(A) through (d)(1)(C) and (e)(2) of this Section shall be no less than the reimbursement rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports. The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

C) The final rate described in subsection (d)(1)(C) of this Section shall be no less than $147.09 per encounter.

3) County-operated outpatient facilities, as described in Section 148.25(b)(2)(C), shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year. No year-end reconciliation is made to the reimbursement calculated under this subsection (d).

4) Services are available to all clients in geographic areas in which an encounter rate hospital or a county-operated outpatient facility is located. All specific client coverage policies (relating to client eligibility and scope of services available to those clients) that pertain to the service billed are applicable to encounter rate hospitals in the same manner as to hospitals reimbursed under the Ambulatory Care Program and to non-hospital and hospital providers who bill and receive reimbursement on a fee-for-service basis.
e) Critical Clinic Providers

1) Effective for services provided on or after September 27, 1997, a clinic owned or operated by a county with a population of over three million, that is within or adjacent to a hospital, shall qualify as a Critical Clinic Provider if the facility meets the efficiency standards established by the Department. The Department's efficiency standards under this subsection (e) require that the quotient of total encounters per facility fiscal year for the Critical Clinic Provider divided by total full time equivalent physicians providing services at the Critical Clinic Provider shall be greater than:

- A) 2700 for reimbursement provided during the facility's cost reporting year ending during 1998,
- B) 2900 for reimbursement provided during the facility's cost reporting year ending during 1999,
- C) 3100 for reimbursement provided during the facility's cost reporting year ending during 2000,
- D) 3600 for reimbursement provided during the facility's cost reporting year ending during 2001, and
- E) 4200 for reimbursement provided during the facility's cost reporting year ending during 2002.

2) Reimbursement for all services provided by any Critical Clinic Provider shall be on an all-inclusive per-encounter rate that shall equal reported direct costs of Critical Clinic Providers for each facility's cost reporting period ending in 1995, and available to the Department as of September 1, 1997, divided by the number of Medicaid services provided during that cost reporting period as adjudicated by the Department through July 31, 1997.

3) Critical Clinic Providers, as described in this subsection (e), shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year. No year-end reconciliation is made to the reimbursement calculated under this subsection (e).
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4) The reimbursement rates described in this subsection (e) shall be no less than the reimbursement rates in effect on July 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports. The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

f) Critical Clinic Provider Pharmacies
Prescribed drugs, dispensed by a pharmacy that is a Critical Clinic Provider, that are not part of an encounter reimbursable under subsection (e) of this Section shall be reimbursed at the rate described in subsection (e)(2) of this Section.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 148.295 Critical Hospital Adjustment Payments (CHAP)

Critical Hospital Adjustment Payments (CHAP) shall be made to all eligible hospitals excluding county-owned hospitals, as described in Section 148.25(b)(1)(A), unless otherwise noted in this Section, and hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), for inpatient admissions occurring on or after July 1, 1998, in accordance with this Section.

a) Trauma Center Adjustments (TCA)
The Department shall make a TCA to hospitals recognized, as of the first day of July in the CHAP rate period, as a Level I or Level II trauma center by the Illinois Department of Public Health (IDPH) in accordance with the provisions of subsections (a)(1) through (a)(4) of this Section. For the purpose of a TCA, a children's hospital, as defined under 89 Ill. Adm. Code 149.50(c)(3), operating under the same license as a hospital designated as a trauma center, shall be deemed to be a trauma center.

1) Level I Trauma Center Adjustment.

A) Criteria. Hospitals that, on the first day of July in the CHAP rate period, are recognized as a Level I trauma center by IDPH shall receive the Level I trauma center adjustment. Hospitals
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qualifying under subsection (a)(2) are not eligible for payment under this subsection.

B) Adjustment. Hospitals meeting the criteria specified in subsection (a)(1)(A) of this Section shall receive an adjustment as follows:

i) Hospitals with Medicaid trauma admissions equal to or greater than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) of this Section, shall receive an adjustment of $21,365.00 per Medicaid trauma admission in the CHAP base period.

ii) Hospitals with Medicaid trauma admissions less than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) of this Section, shall receive an adjustment of $14,165.00 per Medicaid trauma admission in the CHAP base period.

2) Level I Trauma Center Adjustment for hospitals located in the same city, that alternate their Level I trauma center designation.

A) Criteria. Hospitals that are located in the same city and participate in an agreement in effect as of July 1, 2007, whereby their designation as a Level I trauma center by the Illinois Department of Public Health is rotated among qualifying hospitals from year to year or during a year, that are in the following classes:

i) A children's hospital – All children's hospitals as defined in 89 Ill. Adm. Code 149.50(c)(3), in a given city, qualifying under subsection (a)(2)(A) shall be considered one entity for the purpose of calculating the adjustment in subsection (a)(2)(B).

ii) A general acute care hospital – All general acute care adult hospitals, in a given city, affiliated with a children's hospital, as defined in subsection (a)(2)(A)(i), qualifying under subsection (a)(2)(A) shall be considered one entity for the purposes of calculating the adjustment in subsection (a)(2)(B).
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B) Adjustment. Hospitals meeting the criteria specified in subsection (a)(2)(A) shall receive an adjustment as follows:

i) If the sum of Medicaid trauma center admissions within either class, as described in subsection (a)(2)(A), is equal to or greater than the mean Medicaid trauma admissions for the 2 classes under subsection (a)(2)(A) of this Section, then each member of that class shall receive an adjustment of $5,250.00 per Medicaid trauma admission for that class in the CHAP base period.

ii) If the sum of Medicaid trauma center admissions within either class, as described in subsection (a)(2)(A), is less than the mean Medicaid trauma admissions of the 2 classes under subsection (a)(2)(A) of this Section, then each member of that class shall receive an adjustment of $3,625.00 per Medicaid trauma admission for that class in the CHAP base period.

3) Level II Rural Trauma Center Adjustment. Rural hospitals, as defined in Section 148.25(g)(3), that, on the first day of July in the CHAP rate period, are recognized as a Level II trauma center by the Illinois Department of Public Health shall receive an adjustment of $11,565.00 per Medicaid trauma admission in the CHAP base period.

4) Level II Urban Trauma Center Adjustment. Urban hospitals, as described in Section 148.25(g)(4), that, on the first day of July in the CHAP rate period, are recognized as Level II trauma centers by the Illinois Department of Public Health shall receive an adjustment of $11,565.00 per Medicaid trauma admission in the CHAP base period, provided that such hospital meets the criteria described below:

A) The hospital is located in a county with no Level I trauma center; and

B) The hospital is located in a Health Professional Shortage Area (HPSA) (42 CFR 5), as of the first day of July in the CHAP rate period, and has a Medicaid trauma admission percentage at or
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above the mean of the individual facility values determined in subsection (a)(4) of this Section; or the hospital is not located in an HPSA and has a Medicaid trauma admission percentage that is at least the mean plus one standard deviation of the individual facility values determined in subsection (a)(4) of this Section; and

C) The hospital does not qualify under subsection (a)(2).

5) In determining annual payments that are pursuant to the Trauma Center Adjustments as described in this Section, for the CHAP rate period occurring in State fiscal year 2009, total payments will equal the methodologies described in this Section. For the period December 1, 2008 to June 30, 2009, payment will equal the State fiscal year 2009 amount less the amount the hospital received for the period July 1, 2008 to November 30, 2008.

b) Rehabilitation Hospital Adjustment (RHA)
Illinois hospitals that, on the first day of July in the CHAP rate period, qualify as rehabilitation hospitals, as defined in 89 Ill. Adm. Code 149.50(c)(2), and that are accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), shall receive a rehabilitation hospital adjustment in the CHAP rate period that consists of the following three components:

1) Treatment Component. All hospitals defined in subsection (b) of this Section shall receive $4,215.00 per Medicaid Level I rehabilitation admission in the CHAP base period.

2) Facility Component. All hospitals defined in subsection (b) of this Section shall receive a facility component that shall be based upon the number of Medicaid Level I rehabilitation admissions in the CHAP base period as follows:

A) Hospitals with fewer than 60 Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of $229,360.00 in the CHAP rate period.

B) Hospitals with 60 or more Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of $527,528.00 in the CHAP rate period.
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3) Health Professional Shortage Area Adjustment Component. Hospitals defined in subsection (b) of this Section that are located in an HPSA on July 1, 1999, shall receive $276.00 per Medicaid Level I rehabilitation inpatient day in the CHAP base period.

4) Hospitals qualifying under this subsection (b) that are, as of July 1, 2010, designated as a "magnet hospital" by the American Nurses' Credentialing Center will receive a magnet component of $1,500,000 annually for the period July 1, 2010 through June 30, 2012.

c) Direct Hospital Adjustment (DHA) Criteria

1) Qualifying Criteria
Hospitals may qualify for the DHA under this subsection (c) under the following categories unless the hospital does not provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on or after July 1, 2006, but did provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on January 1, 2006:

A) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals and long term stay hospitals, all other hospitals located in Health Service Area (HSA) 6 that either:

i) were eligible for Direct Hospital Adjustments under the CHAP program as of July 1, 1999 and had a Medicaid inpatient utilization rate (MIUR) equal to or greater than the statewide mean in Illinois on July 1, 1999;

ii) were eligible under the Supplemental Critical Hospital Adjustment Payment (SCHAP) program as of July 1, 1999 and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999; or

iii) were county owned hospitals as defined in 89 Ill. Adm. Code 148.25(b)(1)(A), and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999.
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B) Illinois hospitals located outside of HSA 6 that had an MIUR greater than 60 percent on July 1, 1999 and an average length of stay less than ten days. The following hospitals are excluded from qualifying under this subsection (c)(1)(B): children's hospitals; psychiatric hospitals; rehabilitation hospitals; and long term stay hospitals.

C) Children's hospitals, as defined under 89 Ill. Adm. Code 149.50(c)(3), on July 1, 1999.

D) Illinois teaching hospitals, with more than 40 graduate medical education programs on July 1, 1999, not qualifying in subsection (c)(1)(A), (B), or (C) of this Section.

E) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals qualifying in subsection (c)(1)(A), (B), (C) or (D) of this Section, all other hospitals located in Illinois that had an MIUR equal to or greater than the mean plus one-half standard deviation on July 1, 1999 and provided more than 15,000 total days.

F) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A), (B), (C), (D), or (E) of this Section, all other hospitals that had an MIUR greater than 40 percent on July 1, 1999 and provided more than 7,500 total days and provided obstetrical care as of July 1, 2001.

G) Illinois teaching hospitals with 25 or more graduate medical education programs on July 1, 1999 that are affiliated with a Regional Alzheimer's Disease Assistance Center as designated by the Alzheimer's Disease Assistance Act [410 ILCS 405/4], that had an MIUR less than 25 percent on July 1, 1999 and provided 75 or more Alzheimer days for patients diagnosed as having the disease.
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H) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A) through (c)(1)(G) of this Section, all other hospitals that had an MIUR greater than 50 percent on July 1, 1999.

I) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A) through (c)(1)(H) of this Section, all other hospitals that had an MIUR greater than 23 percent on July 1, 1999, had an average length of stay less than four days, provided more than 4,200 total days and provided 100 or more Alzheimer days for patients diagnosed as having the disease.

J) A hospital that does not qualify under subsection (c)(1) of this Section because it does not operate a comprehensive emergency room will qualify if the hospital provider operates a standby emergency room, as defined in 77 Ill. Adm. Code 250.710(c), and functions as an overflow emergency room for its affiliate hospital provider, owned and controlled by the same governing body, that operates a comprehensive emergency room, as defined in 77 Ill. Adm. Code 250.710(a), within one mile of the hospital provider.

2) DHA Rates

A) For hospitals qualifying under subsection (c)(1)(A) of this Section, the DHA rates are as follows:

i) Hospitals that have a Combined MIUR that is equal to or greater than the Statewide mean Combined MIUR, but less than one standard deviation above the Statewide mean Combined MIUR, will receive $69.00 per day for hospitals that do not provide obstetrical care and $105.00 per day for hospitals that do provide obstetrical care.

ii) Hospitals that have a Combined MIUR that is equal to or greater than one standard deviation above the Statewide
mean Combined MIUR, but less than one and one-half standard deviation above the Statewide mean Combined MIUR, will receive $105.00 per day for hospitals that do not provide obstetrical care and $142.00 per day for hospitals that do provide obstetrical care.

iii) Hospitals that have a Combined MIUR that is equal to or greater than one and one-half standard deviation above the Statewide mean Combined MIUR, but less than two standard deviations above the Statewide mean Combined MIUR, will receive $124.00 per day for hospitals that do not provide obstetrical care and $160.00 per day for hospitals that do provide obstetrical care.

iv) Hospitals that have a Combined MIUR that is equal to or greater than two standard deviations above the Statewide mean Combined MIUR will receive $142.00 per day for hospitals that do not provide obstetrical care and $179.00 per day for hospitals that do provide obstetrical care.

B) Hospitals qualifying under subsection (c)(1)(A) of this Section will also receive the following rates:

i) County owned hospitals as defined in Section 148.25 with more than 30,000 total days will have their rate increased by $455.00 per day.

ii) Hospitals that are not county owned with more than 30,000 total days will have their rate increased by $354.00 per day for dates of service on or after April 1, 2009.

iii) Hospitals with more than 80,000 total days will have their rate increased by an additional $423.00 per day.

iv) Hospitals with more than 4,500 obstetrical days will have their rate increased by $101.00 per day.

v) Hospitals with more than 5,500 obstetrical days will have their rate increased by an additional $194.00 per day.
vi) Hospitals with an MIUR greater than 74 percent will have their rate increased by $147.00 per day.

vii) Hospitals with an average length of stay less than 3.9 days will have their rate increased by $385.00 per day through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $131.00.

viii) Hospitals with an MIUR greater than the statewide mean plus one standard deviation that are designated a Perinatal Level 2 Center and have one or more obstetrical graduate medical education programs as of July 1, 1999 will have their rate increased by $360.00 per day for dates of service on or after April 1, 2009.

ix) Hospitals receiving payments under subsection (c)(2)(A)(ii) of this Section that have an average length of stay less than four days will have their rate increased by $650.00 per day for dates of service on or after April 1, 2009.

x) Hospitals receiving payments under subsection (c)(2)(A)(ii) of this Section that have an MIUR greater than 60 percent will have their rate increased by $320.50 per day.

xi) Hospitals receiving payments under subsection (c)(2)(A)(iv) of this Section that have an MIUR greater than 70 percent and have more than 20,000 days will have their rate increased by $185.00 per day for dates of service on or after April 1, 2009.

xii) Hospitals with a Combined MIUR greater than 75 percent that have more than 20,000 total days, have an average length of stay less than five days and have at least one graduate medical program will have their rate increased by $148.00 per day.

C) Hospitals qualifying under subsection (c)(1)(B) of this Section will receive the following rates:
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i) Qualifying hospitals will receive a rate of $421.00 per day.

ii) Qualifying hospitals with more than 1,500 obstetrical days will have their rate increased by $824.00 per day through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $369.00.

D) Hospitals qualifying under subsection (c)(1)(C) of this Section will receive the following rates:

i) Hospitals will receive a rate of $28.00 per day.

ii) Hospitals located in Illinois and outside of HSA 6 that have an MIUR greater than 60 percent will have their rate increased by $55.00 per day.

iii) Hospitals located in Illinois and inside HSA 6 that have an MIUR greater than 80 percent will have their rate increased by $573.00 per day for dates of service through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $573.00.

iv) Hospitals that are not located in Illinois that have an MIUR greater than 45 percent will have their rate increased by:

- For hospitals that have fewer than 4,000 total days, $32.00 per day.

- For hospitals that have more than 4,000 total days but fewer than 8,000 total days, $363.00 per day for dates of service through June 30, 2012; for dates of service on or after July 1, 2012, the rate is $246.00 per day.

- For hospitals that have more than 8,000 total days, $295.00 per day for dates of service through June 30, 2012; for dates of service on or after July 1, 2012, the rate is $178 per day.
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v) Hospitals with more than 3,200 total admissions will have their rate increased by $328.00 per day.

E) Hospitals qualifying under subsection (c)(1)(D) of this Section will receive the following rates:

i) Hospitals will receive a rate of $41.00 per day.

ii) Hospitals with an MIUR between 18 percent and 19.75 percent will have their rate increased by an additional $14.00 per day.

iii) Hospitals with an MIUR equal to or greater than 19.75 percent will have their rate increased by an additional $191.00 per day for dates of service on or after April 1, 2009.

iv) Hospitals with a combined MIUR that is equal to or greater than 35 percent will have their rate increased by an additional $95.00 per day for dates of service on or after July 1, 2010 through June 30, 2012. For dates of service on or after July 1, 2012, the rate is $41.00 per day.

F) Hospitals qualifying under subsection (c)(1)(E) of this Section will receive $188.00 per day.

G) Hospitals qualifying under subsection (c)(1)(F) of this Section will receive a rate of $55.00 per day.

H) Hospitals that qualify under subsection (c)(1)(G) of this Section will receive the following rates:

i) Hospitals with an MIUR greater than 19.75 percent will receive a rate of $69.00 per day.

ii) Hospitals with an MIUR equal to or less than 19.75 percent, will receive a rate of $11.00 per day.
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I) Hospitals qualifying under subsection (c)(1)(H) of this Section will receive a rate of $268.00 per day.

J) Hospitals qualifying under subsection (c)(1)(I) of this Section will receive a rate of $328.00 per day if federal approval is received by the Department for such a rate; otherwise, the rate shall be $238.00 per day.

K) Hospitals that qualify under subsection (c)(1)(A)(iii) of this Section will have their rates multiplied by a factor of two. The payments calculated under this Section to hospitals that qualify under subsection (c)(1)(A)(iii) of this Section may be adjusted by the Department to ensure compliance with aggregate and hospital specific federal payment limitations. A portion of the payments calculated under this Section may be classified as disproportionate share adjustments for hospitals qualifying under subsection (c)(1)(A)(iii) of this Section.

3) DHA Payments

A) Payments under this subsection (c) will be made at least quarterly, beginning with the quarter ending December 31, 1999.

B) Payment rates will be multiplied by the total days.

C) For the CHAP rate period occurring in State fiscal year 2011, total payments will equal the methodologies described in subsection (c)(2) of this Section.

d) Rural Critical Hospital Adjustment Payments (RCHAP)
RCHAP shall be made to rural hospitals, as described in 89 Ill. Adm. Code 140.80(j)(1), for certain inpatient admissions. The hospital qualifying under this subsection that has the highest number of Medicaid obstetrical care admissions during the CHAP base period shall receive $367,179.00 per year. The Department shall also make an RCHAP to hospitals qualifying under this subsection at a rate that is the greater of:

1) the product of $1,367.00 multiplied by the number of RCHAP Obstetrical Care Admissions in the CHAP base period, or
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2) the product of $138.00 multiplied by the number of RCHAP General Care Admissions in the CHAP base period.

e) Total CHAP Adjustments
Each eligible hospital's critical hospital adjustment payment shall equal the sum of the amounts described in subsections (a), (b), (c) and (d) of this Section. The critical hospital adjustment payments shall be paid at least quarterly.

f) Critical Hospital Adjustment Limitations
Hospitals that qualify for trauma center adjustments under subsection (a) of this Section shall not be eligible for the total trauma center adjustment if, during the CHAP rate period, the hospital is no longer recognized by the Illinois Department of Public Health as a Level I trauma center as required for the adjustment described in subsection (a)(1) of this Section, or a Level II trauma center as required for the adjustment described in subsection (a)(2) or (a)(3) of this Section. In these instances, the adjustments calculated shall be pro-rated, as applicable, based upon the date that such recognition ceased. This limitation does not apply to hospitals qualifying under subsection (a)(2). Payments under this Section are subject to federal approval.

g) Critical Hospital Adjustment Payment Definitions
The definitions of terms used with reference to calculation of the CHAP required by this Section are as follows:

1) "Alzheimer days" means total paid days contained in the Department's paid claims database with a ICD-9-CM diagnosis code of 331.0 for dates of service occurring in State fiscal year 2001 and adjudicated through June 30, 2002.

2) "CHAP base period" means State Fiscal Year 1994 for CHAP calculated for the July 1, 1995 CHAP rate period; State Fiscal Year 1995 for CHAP calculated for the July 1, 1996 CHAP rate period; etc.

3) "CHAP rate period" means, beginning July 1, 1995, the 12 month period beginning on July 1 of the year and ending June 30 of the following year.

4) "Combined MIUR" means the sum of Medicaid Inpatient Utilization Rate (MIUR) as of July 1, 1999, and as defined in Section 148.120(k)(5), plus
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the Medicaid obstetrical inpatient utilization rate, as described in Section 148.120(k)(6), as of July 1, 1999.

5) "Medicaid general care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns, Medicare/Medicaid crossover admissions, psychiatric and rehabilitation admissions.

6) "Medicaid Level I rehabilitation admissions" means those claims billed as Level I admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal diagnosis code of: 054.3, 310.1 through 310.2, 320.1, 336.0 through 336.9, 344.0 through 344.2, 344.8 through 344.9, 348.1, 801.30, 803.10, 803.84, 806.0 through 806.19, 806.20 through 806.24, 806.26, 806.29 through 806.34, 806.36, 806.4 through 806.5, 851.06, 851.80, 853.05, 854.0 through 854.04, 854.06, 854.1 through 854.14, 854.16, 854.19, 905.0, 907.0, 907.2, 952.0 through 952.09, 952.10 through 952.16, 952.2, and V57.0 through V57.89, excluding admissions for normal newborns.

7) "Medicaid Level I rehabilitation inpatient day" means the days associated with the claims defined in subsection (g)(5) of this Section.

8) "Medicaid obstetrical care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of Social Security Act, with Diagnosis Related Grouping (DRG) of 370 through 375; and specifically excludes Medicare/Medicaid crossover claims.

9) "Medicaid trauma admission" means those claims billed as admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal
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diagnosis code of: 800.0 through 800.99, 801.0 through 801.99, 802.0 through 802.99, 803.0 through 803.99, 804.0 through 804.99, 805.0 through 805.98, 806.0 through 806.99, 807.0 through 807.69, 808.0 through 808.9, 809.0 through 809.1, 828.0 through 828.1, 839.0 through 839.31, 839.7 through 839.9, 850.0 through 850.9, 851.0 through 851.99, 852.0 through 852.59, 853.0 through 853.19, 854.0 through 854.19, 860.0 through 860.5, 861.0 through 861.32, 862.8, 863.0 through 863.99, 864.0 through 864.19, 865.0 through 865.19, 866.0 through 866.13, 867.0 through 867.9, 868.0 through 868.19, 869.0 through 869.1, 887.0 through 887.7, 896.0 through 896.3, 897.0 through 897.7, 900.0 through 900.9, 902.0 through 904.9, 925 through 925.2, 926.8, 929.0 through 929.99, 958.4, 958.5, 990 through 994.99.

10) "Medicaid trauma admission percentage" means a fraction, the numerator of which is the hospital's Medicaid trauma admissions and the denominator of which is the total Medicaid trauma admissions in a given 12 month period for all Level II urban trauma centers.

11) "RCHAP general care admissions" means Medicaid General Care Admissions, as defined in subsection (g)(4) of this Section, less RCHAP Obstetrical Care Admissions, occurring in the CHAP base period.

12) "RCHAP obstetrical care admissions" means Medicaid Obstetrical Care Admissions, as defined in subsection (g)(7) of this Section, with a Diagnosis Related Grouping (DRG) of 370 through 375, occurring in the CHAP base period.

13) "Total admissions" means total paid admissions contained in the Department's paid claims database, including obstetrical admissions multiplied by two and excluding Medicare crossover admissions, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.

14) "Total days" means total paid days contained in the Department's paid claims database, including obstetrical days multiplied by two and excluding Medicare crossover days, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.
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15) "Total obstetrical days" means hospital inpatient days for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5th digit of 1 or 2; 650; 651.0 through 659.9 with a 5th digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5th digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5th digit of 1 or 2; V27 through V27.9; V30 through V39.9; or any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART E: INSTITUTION FOR MENTAL DISEASES
PROVISIONS FOR HOSPITALS

Section 148.700 General Provisions

Section 1905(a)(16) and (a)(28)(B) of the Social Security Act provides that federal financial participation (FFP) is not available for any medical assistance under Title XIX for services provided to any individual who is older than 21 years of age and under 65 years of age and who is a patient in an IMD. The purpose of this Subpart E is to set forth the process by which the Department shall identify hospitals that are IMDs or that are at risk of becoming IMDs, the preventive measures to be taken to avoid classification of a hospital as an IMD, and the actions to be taken if a hospital is identified as an IMD.

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 148.710 Definitions

For purposes of this Part, the following terms shall be defined as follows:

"Current Need for Hospitalization Results from Mental Disease" means that a review of the patient's diagnoses, the character and nature of his or her problems, functional status, and care needs indicate that the patient's need for hospitalization results from his or her mental disease and not a physical or medical reason.

"IMD" means a hospital that is considered to be an Institution for Mental Diseases (IMD) under section 1905(i) of the Social Security Act (42 USC 1396d(i)). Federal regulations provide that: An IMD is primarily engaged in providing
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diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. An IMD has an overall character of a facility established and maintained primarily for the care and treatment of individuals with mental diseases.

"IMD Guidelines" means the Guidelines in Section 4390 of the Health Care Financing Administration State Medicaid Manual relating to Institutions for Mental Diseases (Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore MD 21244-1850 (1994, no later amendments or editions included)). Criteria used in determining whether the overall character of a hospital is that of an IMD include whether the current need for institutionalization for more than 50 percent of all the patients in the hospital results from mental diseases and whether the hospital specializes in providing psychiatric/psychological care and treatment.

"Mental Disease" means mental disease or mental illness as defined in the IMD Guidelines. Mental disease includes those diseases listed as mental disorders in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Hyattsville MD 20782-2003 (2011, no later amendments or editions included)), with the exception of mental retardation, senility and organic brain syndrome.

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 148.720 Hospital Census Reviews

a) Annually, hospitals defined in Section 148.25(b), that are not enrolled as a psychiatric hospital as defined in Section 148.40(a)(1)(B), shall submit to the Department, or its designated agent, daily census data for the month of July. The daily census data for the entire month shall be submitted within 10 calendar days after the end of the month and shall be comprised of total days for all diagnoses codes and total days for patients with primary diagnosis codes of 291 through 292 and 295 through 316.

b) A hospital, as defined in subsection (a) of this Section, that is not enrolled as a psychiatric hospital as defined in Section 148.40(a)(1)(B) must monitor and report to the Department, or its designated agent, when the current need for hospitalization for more than 40 percent of all patients in the hospital, as reflected
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by the hospital's census, results from mental diseases or substance abuse, as defined in the International Classification of Diseases Clinical Modification (ICD-9-CM) code range 291 through 292 and 295 through 316. ICD-9-CM codes should be used at their highest level of specificity. For example, a three-digit code should only be used if there are no four-digit codes within the coding category.

c) If the census data indicates that further information is needed in order to determine the hospital's percent of patients with a primary diagnosis of mental disease or substance abuse, the Department, or its designated agent, may contact the hospital or make an on-site visit to obtain additional information. The Department, or its designated agent, will verify the census data and make a determination of the hospital's IMD status based on the IMD Guidelines.

(Source: Added at 35 Ill. Reg. _______, effective ____________)

Section 148.730 Watch List for Hospitals at Risk of Becoming IMDs

a) If the annual, subsequent, or any other Department review of a hospital's average daily census for the month being reported indicates that at least 40 percent, but less than 50 percent, of the hospital's patients have a primary diagnosis of mental disease or substance abuse, the Department, or its designated agent, shall notify the hospital that it is at risk of becoming an IMD, advise the hospital of the consequences of becoming an IMD, and place the hospital on an "at risk" list.

b) Hospitals whose daily census data reflect that at least 40 percent, but less than 50 percent, of their patients have a primary diagnosis of mental disease or substance abuse shall be placed on an "at risk" list and shall submit monthly reports to the Department, or its designated agent, as follows:

1) Within 10 calendar days after the end of each month, the hospital shall submit to the Department, or its designated agent, average daily census data for the entire previous month.

2) The census data shall be comprised of total days for all diagnoses and total days for patients with primary diagnosis codes of 291 through 292 and 295 through 316 for the entire month.
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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3) Monthly reports shall be submitted until the hospital has demonstrated for three consecutive months that less than 40 percent of its patients have a primary diagnosis of mental disease or substance abuse.

e) A change in ownership or operator shall not change or otherwise affect the designation of a hospital as an IMD under this Section.

d) The Department shall notify the Illinois Department of Human Services when a hospital is at risk of becoming an IMD.

(Source: Added at 35 Ill. Reg. _____, effective ____________)

Section 148.740  IMD Classification

a) A hospital whose census data, as reported pursuant to Sections 148.720 and 148.730, reflects that 50 percent or more of its patients have a primary diagnosis of mental disease or substance abuse shall be classified as an IMD.

b) A hospital classified as an IMD shall receive written notification of the IMD classification from the Department.

c) The IMD classification shall be effective on the first day of the month following the Department's determination that a hospital is an IMD.

d) A hospital classified as an IMD shall submit monthly reports to the Department, or its designated agent, as required in Section 148.730(b).

e) The IMD classification shall remain in effect for a minimum of three months, unless the IMD classification is removed pursuant to the redetermination review process set forth in Section 148.760.

f) If the Department determines that the hospital is not an IMD as the result of a redetermination review, the hospital shall be reclassified to non-IMD status effective the first day of the month following the redetermination review.

g) A hospital, as defined in Section 148.25(b), that holds a valid license as, and is enrolled with the Department as, a psychiatric hospital is an IMD.

(Source: Added at 35 Ill. Reg. _____, effective ____________)
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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Section 148.750  Reimbursement for Hospitals Classified as IMDs

a) Hospitals classified by the Department to be an IMD may not receive reimbursement for services provided to patients over the age of 21 and under the age of 65. In the case of a patient receiving services immediately preceding his/her 21st birthday, reimbursement for services shall be provided until the earliest of the following:

1) The date the patient no longer requires the services; or
2) The date the patient reaches 22 years of age.

b) Inpatient supplemental payments made under 89 Ill. Adm. Code 148, Subpart B will be reduced for hospitals classified as an IMD as follows:

1) Payments for which the hospital would otherwise have qualified under that Subpart will be reduced by multiplying each payment by a factor, the numerator of which is the number of Title XIX patient days provided to any individual who is older than 21 years of age and under 65 years of age and the denominator of which is all Title XIX patient days.

2) This calculation shall be made using Title XIX patient days from those claims billed that were subsequently adjudicated by the Department for the State fiscal year ending at least nine months prior to the calculation.

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 148.760  Redetermination Reviews

a) Upon receiving notification that it has been classified as an IMD, a hospital may request a review of the Department's determination. The request must be submitted in writing and received by the Department within 30 days after the date of the Department's notice to the hospital that it has been classified as an IMD. The request shall include a clear explanation and supporting documentation of the hospital's basis for considering the Department's determination that it is an IMD to be in error.
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b) The Department shall make a redetermination of the hospital's classification as an IMD by conducting a census review and on-site visit of the hospital, if needed. Upon the request of the Department, a hospital may submit further documentation to the Department in support of its request for review during the course of the Department's review.

c) The Department shall complete its review and issue a final determination of a hospital's IMD status. If the outcome of the redetermination review is to remove the IMD classification, the effective date of the non-IMD status shall be the first of the month following notification of the review outcome.

d) A request for redetermination of the IMD classification shall not delay implementation of the IMD reimbursement requirements set forth in Section 148.750.

(Source: Added at 35 Ill. Reg. ______, effective ____________ )
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NOTICE OF PROPOSED AMENDMENT

1) **Heading of the Part:** Hospital Reimbursement Changes

2) **Code Citation:** 89 Ill. Adm. Code 152

3) **Section Number:** 152.150  **Proposed Action:** Amendment

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:** The proposed amendment modifies outlier payments to better reflect the value of extraordinary inpatient stays. There will be a $100 million reduction in payments as a result of implementing this rule.

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

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

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

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

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

11) **Statement of Statewide Policy Objectives:** 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
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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The Department requests the submission of written comments within 45 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].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Medicaid funded hospitals

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this Rulemaking was Summarized: July 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 e: GENERAL TIME-LIMITED CHANGES

PART 152
HOSPITAL REIMBURSEMENT CHANGES

Section
152.100  Reimbursement Add-on Adjustments (Repealed)
152.150  Diagnosis Related Grouping (DRG) Prospective Payment System (PPS)
152.200  Non-DRG Reimbursement Methodologies
152.250  Appeals (Repealed)


Section 152.150 Diagnosis Related Grouping (DRG) Prospective Payment System (PPS)

a) Notwithstanding any provisions set forth in 89 Ill. Adm. Code 149, the changes described in subsections (b) and (c) of this Section will be effective January 18,
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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b) For the rate periods, as described in 89 Ill. Adm. Code 148.25(g)(2)(B), the DRG weighting factors shall be adjusted by a factor, the numerator of which is the statewide weighted average DRG base payment rate in effect for the base period, as described in 89 Ill. Adm. Code 148.25(g)(2)(A), and the denominator of which is the statewide weighted average DRG base payment rate for the rate period, as described in 89 Ill. Adm. Code 148.25(g)(2)(B). For this adjustment, DRG base payment rate means the product of the PPS base rate, as described in 89 Ill. Adm. Code 149.100(c)(3), and the indirect medical education factor, as described in 89 Ill. Adm. Code 149.150(c)(3).

c) All payments calculated under 89 Ill. Adm. Code 149.140 and 149.150(c)(1), (c)(2) and (c)(4), in effect on January 18, 1994, shall remain in effect hereafter.

d) For hospital inpatient services rendered on or after July 1, 1995, the Department shall reimburse hospitals using the relative weighting factors and the base payment rates calculated pursuant to the methodology described in this Section, that were in effect on June 30, 1995, less the portion of such rates attributed by the Department to the cost of medical education.

e) Notwithstanding the provisions set forth in 89 Ill. Adm. Code 149 (DRG PPS), the changes described in this subsection (e) shall be effective January 1, 2001. Payments for hospital inpatient and outpatient services shall not exceed charges to the Department. This payment limitation shall not apply to government owned or operated hospitals or children's hospitals as defined at 89 Ill. Adm. Code 149.50(c)(3). This payment limitation shall not apply to or affect disproportionate share payments as described at 89 Ill. Adm. Code 148.120, payments for outlier costs as described at 89 Ill. Adm. Code 149.105 or payments for Medicaid High Volume Adjustments as described at 89 Ill. Adm. Code 148.290(d).

f) Notwithstanding the provisions of 89 Ill. Adm. Code 149, payment for outlier cases pursuant to 89 Ill. Adm. Code 149.105 shall be determined by using the following factors that were in effect on June 30, 1995:

1) The marginal cost factor (see 89 Ill. Adm. Code 149.5(c)(4)),

2) The Metropolitan Statistical Area (MSA) wage index (see 89 Ill. Adm. Code 148.120(b)),
DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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3) The Indirect Medical Education (IME) factor (see 89 Ill. Adm. Code 148.260(a)(1)(B)(iv)),

4) The cost to charge ratio (see 89 Ill. Adm. Code 149.105(c)(3)), and

5) Outlier Threshold

   A) For admissions on December 3, 2001 through June 30, 2005, the cost outlier threshold (see 89 Ill. Adm. Code 149.5(c)(5)) multiplied by 1.22.

   B) For admissions on or after July 1, 2005 through June 30, 2006, the cost outlier threshold (see 89 Ill. Adm. Code 149.5(c)(5)) multiplied by 1.40.

   C) For admissions on or after July 1, 2006 through December 31, 2007, the cost outlier threshold (see 89 Ill. Adm. Code 149.5(c)(5)) multiplied by 1.47.

   D) For admissions on or after January 1, 2008, the cost outlier threshold (see 89 Ill. Adm. Code 149.5(c)(5)) multiplied by 1.64.

   E) For admissions on or after January 1, 2011, the cost outlier threshold (see 89 Ill. Adm. Code 149.5(c)(5)) multiplied by 2.17.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED RULES

1) **Heading of the Part:** Mandatory Child Only Open Enrollment Period for Individual Market Carriers

2) **Code Citation:** 50 Ill. Adm. Code 5410

3) **Section Numbers:**

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4) **Statutory Authority:** Implementing Section 355a of the Illinois Insurance Code and authorized by Sections 355a and 401 of the Illinois Insurance Code [215 ILCS 5/355a and 401]

5) **A Complete Description of the Subjects and Issues Involved:** The purpose of these rules is to facilitate the implementation of certain provisions of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the "Affordable Care Act" (ACA).

The ACA provides that group and individual health insurance coverage may not impose pre-existing condition exclusions for children under age 19 for policy years beginning on or after September 23, 2010. For the individual health insurance coverage market the federal regulations implementing the ACA require carriers offering individual health insurance coverage, for policy years beginning on or after September 23, 2010, that issue coverage to children under age 19 to do so regardless of the child's prior health. These regulations and the ACA do not prohibit the carrier from assessing premium based on the health of the family and/or child.

The Federal agencies charged with implementation of the ACA (the U.S. Departments of Health and Human Services, Labor, and Treasury, collectively referred to as the "Federal agencies") have also issued guidance stating carriers in the individual market may restrict enrollment of children under age 19, whether in family or child-only coverage, to specific open enrollment periods if allowed under State law. The Federal agencies have further stated that "unless State laws provide such guidance, issuers in the individual market may determine the number and length of open enrollment periods for children under 19."
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The Department is currently aware that several of the major carriers are withdrawing from the Child Only Plan market; carriers have informed the Department that this withdrawal is due, in part, to lack of defined open enrollment periods. The ACA contemplates open enrollment periods, but Illinois currently has no open enrollment periods for the Child Only Plan market. This mandated open enrollment period is imperative to ensure and protect consumers' need for access to individual market health insurance for children under age 19. Open enrollment periods facilitate a fair and competitive marketplace for carriers; lack of defined open enrollment periods minimizes or eliminates consumer choices and options for Child Only Plans.

This proposed rule sets a standard open-enrollment period during which insurers will accept applications for the issuance of child-only (under-19) policies on the individual market. This rule also provides for certain "qualifying events", and requires that insurers accept applications within 30 days of these events. This rule also provides for disincentives and protections against lapses in coverage, risk dumping, and potential subscriber gaming.

6) Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking, in accordance with 1 Ill. Adm. Code 100.355: None

7) Will this rulemaking replace any emergency rulemaking currently in effect? Yes

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

9) Does this rulemaking contain incorporations by reference? No

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

11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

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

Tim Cena, Deputy General Counsel   or   Susan Anders, Rules Coordinator
DEPARTMENT OF INSURANCE

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Department of Insurance
100 W. Randolph St., Suite 9-301
Chicago, IL 60601-3395
312/814-5407-phone
312/814-2862-fax

Department of Insurance
320 W. Washington St., 4th Floor
Springfield, IL 62561
217/785-8220

13) Initial Regulatory Flexibility Analysis:

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

B) Reporting, bookkeeping or other procedures required for compliance: Please review all provisions of this Part.

C) Types of professional skills necessary for compliance: Administrative

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: It was not anticipated.

The full text of the Proposed Rules is identical to the Emergency Rules being published in this issue of the Illinois Register on page 18904:
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

1) **Heading of the Part:** Commercial Fishing and Musseling in Certain Waters of the State

2) **Code Citation:** 17 Ill. Adm. Code 830

3) **Section Number:** 830.13  
   **Proposed Action:** Amendment


5) **A Complete Description of the Subjects and Issues Involved:** This Part is being amended to: add language prohibiting the commercial harvest of shovelnose sturgeon except in the Mississippi River upstream of the Melvin Price Lock and Dam located in Alton (excluding the area from Lock and Dam 19 to the State Highway 9 Bridge in Niota), the Ohio River or the Wabash River; increase the number of permits available; establish new water area zones for commercial roe harvest; update application eligibility and criteria for the first, second and third lottery drawings; and to update information regarding penalties for violations.

6) **Published studies or reports, and sources of underlying data, used to compose this rulemaking:** The U.S. Fish and Wildlife Service issued a final rule (50 CFR 17), effective October 1, listing the shovelnose sturgeon as threatened due to the similarity in appearance to the endangered pallid sturgeon.

7) **Will this rulemaking replace any emergency rulemaking currently in effect?** Yes

   **Section Numbers:** 830.13  
   **Emergency Action:** Amendment  
   **Illinois Register Citation:** 34 Ill. Reg. 15884; October 15, 2010

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

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

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

11) **Statement of Statewide Policy Objective:** This rulemaking does not affect units of local government.
NOTICE OF PROPOSED AMENDMENT

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

   Nick San Diego, Legal Counsel  
   Department of Natural Resources  
   One Natural Resources Way  
   Springfield IL   62702-1271  
   217/782-1809

13) **Initial Regulatory Flexibility Analysis**:

   A) **Types of small businesses, small municipalities and not for profit corporations affected**: Persons issued licenses by the Department of Natural Resources for the commercial harvest of fish and mussels

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

   Commercial fishermen shall submit to the Department by January 31 of the following year, an accurate annual record of the undressed weights of the species of fish and/or crayfish harvested to the Department by January 31 of the following year, whether or not any fish and/or crayfish were harvested.

   Commercial roe harvesters shall submit to the Department by the 5th of the month following harvest, an accurate monthly record of the undressed weight of roe-bearing species, and the unprocessed weight of roe from these fishes to the Department by the 5th of the month following harvest. Submission of these reports is required whether or not roe-bearing species were harvested.

   Commercial roe dealers shall submit to the Department by the 5th of the month following the harvest of these fishes, an accurate monthly record of the unprocessed and processed weight of roe purchased from commercial roe harvesters to the Department by the 5th of the month following the harvest of these fishes. These reports are required whether or not roe was purchased.

   Holders of a commercial mussel harvest license shall submit an accurate record of the types and pounds of each species of mussel and/or relic mussel shells harvested or purchased on a monthly basis during the season by the 10th of each month following harvest, whether or not any mussels or mussel shells were
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harvested. Reports must be submitted on official Department of Natural Resources report forms.

Holders of a commercial mussel dealer’s license shall submit an accurate record of the types and pounds of each species of mussel and/or relic mussel shells purchased on a monthly basis during the season by the 10th of each month following purchase, whether or not any mussels or mussel shells were purchased. Reports must be submitted on official Department of Natural Resources report forms.

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This Part was not listed on either of the most recently filed regulatory agendas because: the Department was not aware at the time that amendments would be necessary.

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

NOTICE OF PROPOSED AMENDMENT

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER b: FISH AND WILDLIFE

PART 830
COMMERCIAL FISHING AND MUSSELING IN CERTAIN WATERS OF THE STATE

Section
830.5 Definitions
830.10 Waters Open to Commercial Harvest of Fish
830.13 Special Regulations for the Commercial Harvest of Roe-Bearing Species
830.15 Waters Open to Commercial Harvest of Crayfish
830.20 Waters Open to Commercial Harvest of Mussels and Seasons
830.30 Special Regulations
830.40 Devices
830.50 Permission
830.60 Species
830.70 Size Limit
830.80 Commercial Fishing and Musseling in Additional Waters
830.90 Revocation and Suspension of Commercial Fishing and Musseling Privileges, Hearings and Appeals and Reporting Requirements


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effective August 30, 2007; amended at 34 Ill. Reg. 2938, effective February 19, 2010; emergency amendment at 34 Ill. Reg. 15884, effective October 1, 2010, for a maximum of 150 days; amended at 35 Ill. Reg. ______, effective ____________.

Section 830.13 Special Regulations for the Commercial Harvest of Roe-Bearing Species

a) Shovelnose sturgeon may not be commercially harvested except in the Mississippi River upstream of the Melvin Price Lock and Dam located in Alton (excluding the area from Lock and Dam 19 to the State Highway 9 Bridge in Niota), the Ohio River or the Wabash River. Shovelnose sturgeon may only be commercially harvested from October 1 through May 31 from the Mississippi and Wabash River and from October 15 through May 15 from the Ohio River.

b) Paddlefish may not be commercially harvested except in the Ohio River, the Illinois River below Route 89, and the Mississippi River below Lock and Dam 19. Paddlefish may only be commercially harvested from October 1 through May 31 from the Mississippi and Illinois Rivers. Paddlefish may only be commercially harvested from November 1 through April 30 from the Ohio River.

c) Shovelnose sturgeon and shovelnose sturgeon X pallid sturgeon hybrids may not be commercially harvested from the Mississippi River downstream of Lock and Dam 26. Pallid sturgeon are federally and State listed endangered fish species that cannot be taken and must be immediately released unharmed back to the water. Any sturgeon belonging to the genus Scaphirhynchus that contains one of the two morphological characteristics listed below shall be considered shovelnose sturgeon X pallid sturgeon hybrid or a pallid sturgeon and cannot be taken and must be immediately released unharmed back to the water:

1) belly completely lacking in scales; or

2) bases (point of insertion) of outer barbels located greater than 2 mm (width of outer barbels) distance behind (posterior) the bases of inner barbels (point of insertion).

d) All commercial roe harvesters engaged in harvesting of roe-bearing species, including shovelnose sturgeon, paddlefish and bowfin, shall:

1) leave the roe of harvested shovelnose sturgeon, paddlefish and bowfin whole, intact and inside the body cavity of the fish while on the water or
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adjacent bank. However, the intact ovaries of paddlefish harvested from the Mississippi or Illinois Rivers may be removed while on the water with the carcasses of the fish the ovary is harvested from being retained for identification purposes;

2) after complete retrieval of fishing tackle, commercial fishermen shall immediately remove all aquatic species that are not in compliance with size limits or are illegal species to take or possess and immediately return them without unnecessary injury to the waters from which taken, unless it is unsafe to remove fish where the net was pulled. In such case, fishermen shall immediately move to a shore area no more than ¼ mile from the location where the net was set, and then remove fish not legal for commercial fishermen to take. "Complete retrieval" means as soon as an individual piece of fishing tackle has been retrieved in whole to the fisherman's boat;

3) not kill roe-bearing species to check for eggs. Commercial roe harvesters may use a 10 or 12 gauge needle to examine roe-bearing species for the presence of eggs;

4) not set any tackle prior to 10:00 a.m. on October 1 on the Mississippi and Wabash Rivers. Any commercial gear that is being operated under a commercial roe harvest permit prior to 10:00 a.m. on the Mississippi or Wabash River shall be considered an illegal device.

e) Commercial Roe Permit

1) Commercial Roe Harvest Permits shall be valid only on the water specified on the permit: the Mississippi River, the Illinois River, the Ohio River or the Wabash River. The Mississippi River will be further divided into two zones, from Lock and Dam 26 upstream to the Wisconsin border (Northern Zone) and from Lock and Dam 26 downstream to the mouth of the Ohio River (Southern Zone). A) Commercial fisherman who harvest shovel-nosed sturgeon under a Mississippi River, Southern Zone, commercial roe harvest permit will also be required to become certified by the Illinois Department of Natural Resources in their ability to discern between lake, shovel-nosed and pallid sturgeon.
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2)B) Commercial fishermen will be allowed to procure permits for additional water bodies at the same commercial roe harvest permit rate as the first permit at no further charge, once their initial commercial roe harvest permit has been issued, based on availability.

3)2) Commercial Roe Harvest Permit holders shall provide an up-to-date listing of all helpers to IDNR on a form provided by IDNR (at the beginning of the commercial season prior to initiation of fishing activities and immediately during the commercial fishing season for any helper changes prior to initiation of fishing activities). An up-to-date helper list must be on file with IDNR prior to the initiation of fishing activities. A helper is defined as anyone aboard the boat of a commercial roe harvester.

4)3) IDNR shall have the authority to restrict the number of permits issued for each body of water in order to establish a limited entry fishery to maintain a sustainable fishery for all caviar-bearing species based on the following criteria:

A) The best biological information available pertaining to maintaining a sustainable level of harvest for target fish species based on the size, structure and abundance of each population of roe-bearing species.

B) A determination of the potential impact of commercial fishing activities on other water-based recreational activities.

C) Harvest Pressure. No more than the following number of permits, unless specifically authorized by IDNR by water area and type, may be issued in each commercial fishing season: 50 permits for the Mississippi North/Mississippi South Zones allowing commercial harvest of paddlefish, bowfin and shovelnose sturgeon (shovelnose sturgeon only in the Mississippi North Zone); 10 permits for the Ohio River—30 paddlefish, sturgeon and bowfin permits; Mississippi South Zone allowing commercial harvest sturgeon only in the Ohio River; 35 permits for the—20 paddlefish and bowfin only permits and 10 sturgeon, paddlefish and bowfin permits; Ohio River—10 paddlefish, sturgeon and bowfin permits; Wabash River allowing commercial harvest of shovelnose sturgeon and bowfin; and 15 permits for the Illinois River allowing...
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commercial harvest of paddlefish and bowfin—25 sturgeon and bowfin only permits.

D) Commercial roe harvest permits are not transferable.

5) Application for permit (under a limited entry fishery)

A) Illinois resident and non-resident commercial fishermen from states who share reciprocal waters (with commercial fishing reciprocal agreements, including the states of Iowa, Indiana, Missouri and Kentucky) who held a commercial roe harvest permit in the previous year are eligible to obtain a commercial roe harvest permit in the first lottery drawing. To be eligible for this drawing, fishermen must provide the following information to the Department: name, current address, date of birth, choice of water body (Mississippi River North/Mississippi River South, Wabash River, Illinois River, or Ohio River/Mississippi River South). The date of this drawing will be determined by the Department and announced by newspaper, Internet and other means of notification. Illinois resident commercial fishermen may apply for a commercial roe harvest permit in June of each year. Applicants must have been issued a permit in at least one of the previous two years in order to be eligible to be issued one of the available permits.

B) Any Illinois legally licensed commercial fisherman is eligible to obtain a commercial roe harvest permit in the second lottery drawing. To be eligible for this drawing, fishermen must provide the following information to the Department: name, current address, date of birth, choice of water body (Mississippi River North/Mississippi River South, Wabash River, Illinois River, or Ohio River/Mississippi River South). The date of this drawing will be determined by the Department and announced by newspaper, Internet and other means of notification. A second drawing for Illinois residents desiring a second permit will be held in July for any remaining unallocated permits and successful applicants will be issued a permit. Applicants must have been issued a permit in at least one of the previous 2 years in order to be eligible to be issued one of the available permits.
C) Any non-resident legally licensed commercial fisherman is eligible to obtain a commercial roe harvest permit in the third lottery drawing. To be eligible for this drawing, fishermen must provide the following information to the Department: name, current address, date of birth, choice of water body (Mississippi River North/Mississippi River South, Wabash River, Illinois River, or Ohio River/Mississippi River South). The date of this drawing will be determined by the Department and announced by newspaper, Internet and other means of notification. Non-residents and Illinois residents who did not obtain a permit in the previous drawings, or who desire permits for additional water bodies, and who have remaining unallocated permits, may apply for a Commercial Roe Harvest Permit from the first business day in August until August 15. A third drawing will be held August 31, and successful applicants will be issued a permit.

6) Penalties for Violations
Any commercial fisherman who is in violation of or found guilty (including supervision or conditional discharge) of violating any of the regulations in this Section or of taking any of the species listed in 17 Ill. Adm. Code 1010.30(a) or (b) shall be subject to having his or her commercial roe harvest privileges suspended or ineligible to obtain a Commercial Roe Harvest Permit for a period of up to 36 months from the date of the Department's final administrative decision pursuant to 17 Ill. Adm. Code 2530.490 if commercial fisherman is found guilty.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
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1) **Heading of the Part:** Illinois List of Endangered and Threatened Fauna

2) **Code Citation:** 17 Ill. Adm. Code 1010

3) **Section Numbers:**
   - 1010.25 Amendment
   - 1010.30 Amendment

4) **Statutory Authority:** Implementing and authorized by Section 7 of the Illinois Endangered Species Protection Act [520 ILCS 10/7]

5) **A Complete Description of the Subjects and Issues Involved:** This Part is being amended to update the criteria used for listing by adding language stating that species or subspecies designated as federally endangered or threatened shall be included on the Official List. Additionally, the Northern Riffleshell is being added to the Official List as the result of the Department's recent reintroduction of the species into two Illinois streams.

6) **Published studies or reports, and sources of underlying data, used to compose this rulemaking:** The U.S. Fish and Wildlife Service issued a final rule (50 CFR 17), effective October 1, listing the shovelnose sturgeon as threatened due to the similarity in appearance to the endangered pallid sturgeon.

7) **Will this rulemaking replace any emergency rulemaking currently in effect?** Yes

   **Section Numbers:**
   - 1010.25 Amendment
   **Illinois Register Citation:** 34 Ill. Reg. 15892; October 15, 2010

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

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

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

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

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

NOTICE OF PROPOSED AMENDMENTS

Nick San Diego, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL  62702-1271

217/782-1809

13) Initial Regulatory Flexibility Analysis:

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

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This Part was not listed on either of the two most recently filed regulatory agendas because: the Department was not aware that amendments would be necessary at the time the Agendas were filed.

The full text of the Proposed Amendments begins on the next page:
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER c: ENDANGERED SPECIES

PART 1010
ILLINOIS LIST OF ENDANGERED AND THREATENED FAUNA

Section 1010.10 Official List
1010.20 Definitions
1010.25 Criteria Used for Listing
1010.30 List
1010.40 Effective Date (Repealed)

AUTHORITY: Implementing and authorized by Section 7 of the Illinois Endangered Species Protection Act [520 ILCS 10/7].


Section 1010.25 Criteria Used for Listing

a) A species shall be included on the Official List when one or more of the following criteria exist:

1) Species or subspecies designated as federally endangered or threatened included in the Federal list of Endangered or Threatened species.

2) Species proposed for Federal Endangered or Threatened status that occur in Illinois.
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

3) Species that formerly were widespread in Illinois but have been nearly extirpated from the State due to habitat destruction, collecting, or other pressures resulting from the development of Illinois.

4) Species exhibit very restricted geographic ranges of which Illinois is a part.

5) Species exhibit restricted habitats or low populations in Illinois.

6) Species are significant disjuncts in Illinois, i.e., the Illinois population is far removed from the rest of the species' range.

b) A species will be removed from the Official List if it no longer fulfills one or more of the criteria in subsection (a), except for a species that no longer fulfills the criteria because it no longer inhabits Illinois. The determination will be made pursuant to Section 7 of the Endangered Species Protection Act [520 ILCS 10/7].

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 1010.30 List

a) ENDANGERED FISHES OF ILLINOIS

- Northern Brook Lamprey
- Lake Sturgeon
- Pallid Sturgeon**
- River Chub
- Sturgeon Chub
- Bigeye Chub
- Pallid Shiner
- Pugnose Shiner
- Bigeye Shiner
- Blacknose Shiner
- Taillight shiner
- Weed Shiner
- Cypress Minnow
- Greater Redhorse
- Northern Madtom

- Ichthyomyzon fossor
- Acipenser fulvescens
- Scaphirhynchus albus
- Nocomis micropogon
- Macrhybopsis gelida
- Hybopsis amblops
- Hybopsis amnis
- Notropis anogenus
- Notropis boops
- Notropis heterolepis
- Notropis maculatus
- Notropis texanus
- Hybognathus hayi
- Moxostoma valenciennesi
- Noturus stigmosus
b) THREATENED FISHES OF ILLINOIS

Least Brook Lamprey
Cisco
Gravel Chub
Ironcolor Shiner
Blackchin Shiner
River Redhorse
Eastern Sand Darter
Longnosed Sucker
Banded Killifish
Starhead Topminnow
Bantam Sunfish
Iowa Darter

b) ENDANGERED AMPHIBIANS AND REPTILES OF ILLINOIS

Salamanders

Eastern Hellbender
Silvery Salamander
Spotted Dusky Salamander

Turtles

Alligator Snapping Turtle
Blanding's Turtle
Yellow Mud Turtle
Smooth Softshell
Spotted Turtle
River Cooter

Snakes

Coachwhip
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Broad-banded Watersnake Nerodia fasciata
Great Plains Ratsnake Pantherophis emoryi
Eastern Massasauga Sistrurus catenatus

d) THREATENED AMPHIBIANS AND REPTILES OF ILLINOIS

Salamanders
Jefferson Salamander Ambystoma jeffersonianum
Four-toed Salamander Hemidactylium scutatum
Mudpuppy Necturus maculosus

Frogs and Toads
Bird-voiced Treefrog Hyla avivoca
Illinois Chorus Frog Pseudacris illinoensis
Eastern Narrowmouth Toad Gastrophyne carolinensis

Turtles
Ornate Box Turtle Terrapene ornata

Snakes
Lined Snake Tropidoclonion lineatum
Plains Hog-Nosed Snake Heterodon nasicus
Mississippi Green Watersnake Nerodia cyclopion
Flathead Snake Tantilla gracilis
Kirtland's Snake Clonophis kirtlandi
Eastern Ribbonsnake Thamnophis sauritus
Timber Rattlesnake Crotalus horridus

e) ENDANGERED BIRDS OF ILLINOIS

American Bittern Botaurus lentiginosus
Snow Egret Egretta thula
Little Blue Heron Egretta caerulea
Black-crowned Night Heron Nycticorax nycticorax
Yellow-crowned Night Heron Nyctanassa violacea
Osprey Pandion haliaetus
Northern Harrier Circus cyaneus
Swainson's Hawk Buteo swainsoni
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Greater Prairie Chicken
Black Rail
King Rail
Piping Plover**
Upland Sandpiper
Wilson's Phalarope
Common Moorhen
Loggerhead Shrike
Common Tern
Forster's Tern
Least Tern**
Black Tern
Barn Owl
Short-eared Owl
Bewick's Wren
Swainson's Warbler
Yellow-headed Blackbird

Tympanuchus cupido
Laterallus jamaicensis
Rallus elegans
Charadrius melodus
Bartramia longicauda
Phalaropus tricolor
Gallinula chloropus
Lanius ludovicianus
Sterna hirundo
Sterna forsteri
Sterna antillarum
Chlidonias niger
Tyto alba
Asio flammeus
Thryomanes bewickii
Limnothlypis swainsonii
Xanthoncephalus xanthoncephalus

f) THREATENED BIRDS OF ILLINOIS

Least Bittern
Peregrine Falcon
Cerulean Warbler
Mississippi Kite
Black-billed Cuckoo

Ixobrychus exilis
Falco peregrinus
Dendroica carulea
Ictinia mississippiensis
Coccyzus erythrophthalmus

Endangered Mammals of Illinois

Southeastern Myotis
Gray Bat**
Indiana Bat**
Rafinesque's Big-eared Bat
Eastern Wood Rat
Black-tailed Pronghorn

Myotis austroriparius
Myotis grisescens
Myotis sodalis
Corynorhinus rafinesquii
Neotoma floridana

h) THREATENED MAMMALS OF ILLINOIS

Gray/Timber Wolf
Franklin's Ground Squirrel

Canis lupus
Spermophilus franklinii
DEPARTMENT OF NATURAL RESOURCES

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Golden Mouse
Rice Rat

i) ENDANGERED INVERTEBRATE ANIMALS OF ILLINOIS

Snails

Iowa Pleistocene Snail**
Hydrobiid Cave Snail
Shawnee Rocksnaill

Mussels

Spectaclecase
Salamander Mussel
Rabbitsfoot
Orange-foot Pimpleback**
Sheepnose
Clubshell**
Ohio Pigtoe
Kidneyshell
Fanshell**
Fat Pocketbook**
Purple Lilliput
Rainbow
Pink Mucket
Wavy-rayed Lampmussel
Higgins Eye**
Snuffbox

Northern Riffleshell**

Crustaceans

Anomalous Spring Amphipod
Pacard's Cave Amphipod
Illinois Cave Amphipod
Iowa Amphipod
Indiana Crayfish
Kentucky Crayfish
Oxbow Crayfish
Crayfish
Isopod
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Isopod Caecidotea spatulata

Scorpions Centruroides vittatus

Common Striped Scorpion

Dragonflies Somatochlora hineana

Hine's Emerald's Dragonfly**

Springtails Pygmarrhopalites madonnensis

Madonna Cave Springtail

Stoneflies Diploperla robusta

Robust Springfly Prostoia completa

Central Forestfly

Leafhoppers Athysanella incongrua

Leafhopper Paraphlepsius lupalus

Leafhopper

Butterflies and Moths Papaipema eryngii

Eryngium Stem Borer Atrytone arogos

Arogos Skipper Hesperia ottoe

Ottoe Skipper Incisalia polios

Hoary Elfin

Karner Blue Butterfly** Lycaeides melissa samuelis

Swamp Metalmark

Leafhopper Ellipsaria lineolata

Black Sandshell Ligumia recta

Slippershell Alasmidonta viridis

Butterfly Elliptio crassidens

Spike Elliptio dilatata

Ephemeroptera

Ephemeroptera

Mussels Fusconaia ebena

Ebonyshell Cyclonaias tuberculata

Purple Wartyback Elliptio crassidens

Elephant-ear Elliptio dilatata

Spike Alasmidonta viridis

Slippershell Ellipsaria lineolata

Butterfly Ligumia recta

Black Sandshell Villosa lienosa

Little Spectaclecase
DEPARTMENT OF NATURAL RESOURCES

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Dragonflies
Elfin Skimmer Nannothemis bella

Leafhoppers
Redveined Prairie Leafhopper Aflexia rubranura

Butterflies
Cobweb Skipper Hesperia metea
Regal Fritillary Speyeria idalia

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
ATTORNEY GENERAL

NOTICE OF PROPOSED REPEALER

1) **Heading of the Part:** Programmatic and Fiscal Requirements for Administering Funds under the Violent Crime Victims Assistance Act

2) **Code Citation:** 89 Ill. Adm. Code 1100

3) **Section Numbers:**

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4) **Statutory Authority:** Violent Crime Victims Assistance Act [725 ILCS 240]

5) **A Complete Description of the Subjects and Issues Involved:** The Attorney General is repealing Part 1100 in conjunction with the reenactment of revised rules. The revised rules will address amendments to the Violent Crime Victims Assistance Act and the Grant Funds Recovery Act ensuring that the statutes and rules are consistent. The revised rules will also specify mandatory and recommended services to be provided by victim and witness centers.

6) **Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking:** None
NOTICE OF PROPOSED REPEALER

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

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

9) Does this rulemaking contain incorporations by reference? No

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

11) Statement of Statewide Policy Objective: Neither creates nor enlarges a State mandate within the meaning of 30 ILCS 805/3b of the State Mandates Act.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: During the first notice period by writing:

   Cynthia Hora, Chief
   Crime Victim Services Division
   Office of the Attorney General
   100 West Randolph, 13th Floor
   Chicago, IL  60601

   312/814-1427

13) Initial Regulatory Flexibility Analysis:

   A) Types of small businesses, small municipalities and not for profit corporations affected: Municipal agencies and not for profit agencies who provide the targeted victim and witness services

   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 Repealer begins on the next page:
ATTORNEY GENERAL

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TITLE 89: SOCIAL SERVICES
CHAPTER IX: ATTORNEY GENERAL

PART 1100
PROGRAMMATIC AND FISCAL REQUIREMENTS FOR ADMINISTERING FUNDS
UNDER THE VIOLENT CRIME VICTIMS ASSISTANCE ACT (REPEALED)

SUBPART A: GENERAL ADMINISTRATIVE PROVISIONS

Section
1100.10 Administration of the Grant Program of the Violent Crime Victims Assistance Act – General Provisions
1100.20 Grant Application Requirements
1100.30 Funding Priorities
1100.40 Programming for Victim Populations
1100.50 Agency-Community Relations
1100.60 General Program and Staffing Requirements

SUBPART B: SPECIFIC PROGRAMS FOR VICTIM POPULATIONS

Section
1100.100 Victim/Witness Programs
1100.110 Sexual Assault Programs
1100.120 Domestic Violence Programs
1100.122 Child Sexual Assault/Child Abuse Programs
1100.124 Senior Victim Programs
1100.130 Programming for Other Victim Populations
1100.140 Special Project Funding

SUBPART C: FISCAL AND MONITORING REQUIREMENTS

Section
1100.200 Income Documentation and Accounting Requirements
1100.210 Allowable and Non-allowable Expenses
1100.218 Interest
1100.220 Audits
1100.230 Grant Agreement
1100.240 Lapsed Funds
1100.250 Reporting Forms
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1100.260 Appeals Process

AUTHORITY: Implementing and authorized by the Violent Crime Victims Assistance Act [725 ILCS 240].


SUBPART A: GENERAL ADMINISTRATIVE PROVISIONS

Section 1100.10 Administration of the Grant Program of the Violent Crime Victims Assistance Act – General Provisions

a) The Attorney General (the Administrator) – The Illinois Attorney General is charged with the responsibility of administering the disbursement of monies collected within the Violent Crime Victims Assistance Act fund, including the responsibility for selecting applicants who are deemed qualified to receive funding for the establishment and operation of Victim and Witness Assistance Centers.


1) The Advisory Commission consists of 14 members: the Attorney General or his or her designee who shall serve as Chairperson; the Director of Children and Family Services; 2 members of the House of Representatives, 1 to be appointed by the Speaker of the House and 1 to be appointed by the Minority Leader of the House; 2 members of the Senate, 1 to be appointed by the President of the Senate and 1 to be appointed by the Minority Leader of the Senate; and the following to be appointed by the Attorney General: 1 police officer, 1 state's attorney from a county in Illinois; 1 health service professional possessing experience and expertise in dealing with victims of violent crime; and 5 members of the public, one of whom shall be a senior citizen age 60 or over, possessing experience and expertise in dealing with the victims of violent crime including experience with victims of domestic and sexual violence.
2) All Commission members will be appointed biennially for terms expiring on July 1 of each succeeding odd-numbered year. They shall serve until their respective successors are appointed or until termination of their legislative service, whichever comes first. The members will receive no compensation for their services but will be reimbursed for necessary expenses incurred in the performance of their duties.

3) Eight members of the Advisory Commission shall constitute a quorum for the transaction of business. The concurrence of at least 8 members will be necessary to render a determination, decision, or recommendation by the Advisory Commission.

4) The Advisory Commission shall have the following responsibilities relative to victims and witnesses of violent crimes:

A) To study the operation of all Illinois laws, practices, agencies and organizations which affect victims of crime;

B) To promote and conduct studies, research, analysis and investigation of matters affecting the interests of crime victims;

C) To recommend legislation to develop and improve policies which promote the recognition of the legitimate rights, needs and interests of crime victims;

D) To serve as a clearinghouse for public information relating to crime victims' problems and programs;

E) To coordinate, monitor and evaluate the activities of programs operating under the Violent Crime Victims Assistance Act;

F) To make any necessary outreach efforts to encourage the development and maintenance of services throughout the State, with special attention to the regions and neighborhoods with the greatest need for victim assistance services;

G) To perform other activities, in cooperation with the Attorney General, which the Advisory Commission considers useful to the
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furtherance of the stated legislative intent;

H) To make an annual report to the General Assembly. [725 ILCS 240/4 and 5]

c) "Eligible" Agency – Any agency which meets the following criteria may apply for funding pursuant to this Part.

1) "Agency" means any federal, State, local or private entity which provides, operates, or coordinates victim and witness assistance programs. Any public or private non-profit agency may apply to the Attorney General for selection and funding as a Victim and Witness Assistance Center.

2) Private, not-for-profit agencies must have a ruling from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

d) Conflict of Interest

1) Agencies shall develop rules to govern themselves when conflict of interest situations arise and shall incorporate such rules in their constitution or bylaws, or publish such rules as agency policy.

2) Rules governing conflicts of interest shall prohibit salaried internal staff members of the Administrator's Violent Crime Victims Assistance Program from serving on agency boards. To avoid the appearance of impropriety, Advisory Commission members who are affiliated with agencies seeking grants under this fund or who serve on the Board of Directors of such agencies shall refrain from participation in the Commission's consideration of that agency's grant application. An Advisory Commission member is "affiliated" with an agency when he/she serves on the Board of an agency or works for said agency either in a volunteer or paid capacity.

Section 1100.20 Grant Application Requirements

Applicants shall be required, within their grant application, to provide the following information: geographic area to be served; description of existing community needs in relation to victim and witness services and how the program addresses these needs; community support and
involvement in relation to victim and witness services in the applicant's geographic area to be served; existing and proposed networking agreements; definition of victim and witness service population; not-for-profit agencies must submit a copy of their most recent fiscal audit (if an audit has not been performed, the agency must submit a financial statement detailing revenue sources and expenses); and income documentation as required by Section 1100.200(a).

Individual grant applications shall be developed and presented in a manner that reflects how the applicant's program functions in relation to the needs and resources within the specific geographic area to be served.

Section 1100.30 Funding Priorities

a) The Administrator shall consider the following factors in determining which applicants shall receive funding. The Administrator shall compare and contrast the applicants' proposed programs to determine which applicants in the geographic area are best able to achieve the standard, as stated below, of maximizing the number of victims and witnesses served and the types of services available to victims and witnesses:

1) Stated goals of applicants as contained in the grant application. Such goals must be consistent with the services enumerated in Section 1100.60(a)(1);

2) Commitment and ability to provide the services described in Section 1100.60(a)(1). Evidence of commitment and ability includes: programmatic expertise (i.e., qualifications, training, including in-service training for staff and volunteers, and experience of agency staff and Board members) level of resources available to the program and past grant compliance;

3) Number of people served and needs of the community as contained in the grant application;

4) Evidence of community support as contained in the grant application;

5) Organizational structure of the agency as contained in the grant application;

6) Maximization of volunteers as detailed in the grant application;

7) The extent to which a program implements the recommended services set
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forth in Sections 1100.100, 1100.110, 1100.120, 1100.122, 1100.124 and 1100.140.

b) The number of applicants selected for funding will depend upon the amount of money available in the Violent Crime Victims Assistance Fund. The Administrator shall select applicants so as to maximize the number of victims and witnesses served and the types of services available to victims and witnesses statewide, as well as providing opportunities for specialized services and training.

Section 1100.40 Programming for Victim Populations

a) Network of Services
Agencies may contact the Office of the Attorney General, Violent Crime Victims Assistance Program for technical assistance in relation to developing, maintaining, or expanding a planned, organized, and coordinated network for the delivery of victim and witness services.

1) Network Description

A) Each agency applying for a grant shall provide, within the grant application, a description of functioning work relationships with other service providers within the community. Evidence of such functioning work relationships shall also be included and shall consist of:

i) A sample of the agency's networking agreement and a listing of those providers and agencies with whom current agreements exist;

ii) Membership in inter-agency organizations;

iii) Record and data exchange systems; and/or

iv) Designated liaison between agencies.

B) A memorandum of intent describing a proposed network of working relationships may be substituted for new applicants not currently a component of a service network.
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2) Exchanges of case record information deemed confidential by the agency releasing the information must include authorization from the client, parent, or guardian.

3) The agency shall demonstrate an ongoing effort toward publicizing its programs, functions, and location (except when the nature of the services requires that the location not be publicized), to all segments of the community.

b) Development of Services
Technical programmatic assistance shall be provided by the Office of the Attorney General, Violent Crime Victims Assistance Program to agencies requesting such services.

Section 1100.50  Agency-Community Relations

a) Grant recipients are encouraged to develop community support and active involvement in the planning, development, operation and/or funding of victim and witness services.

b) Support of victim and witness services in the form of local revenue, voluntary cash contributions, or "in-kind" contributions is indication of local support.

c) Applicants must submit a listing of their funding support from local revenue sources, voluntary fund raising efforts, other State agencies, federal sources and "in-kind" contributions.

Section 1100.60  General Program and Staffing Requirements

a) Program Requirements

1) A program shall deliver services to violent crime victims and witnesses within a defined geographic area. All programs shall provide services consistent with the following functions, as set forth in Section 8 of the Violent Crime Victims Assistance Act. In addition, programs may provide the following services for witnesses of crime:

A) Coordinate volunteers to work with criminal justice agencies to provide direct victim services or to establish community support;
ATTORNEY GENERAL

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B) Provide assistance to victims of violent crime and their families in obtaining assistance through other official or community resources;

C) Provide elderly victims of crime with services appropriate to their special needs;

D) Provide transportation and/or household assistance to those victims participating in the criminal justice process;

E) Provide victims of domestic and sexual violence with services appropriate to their special needs;

F) Provide courthouse reception and guidance, including explanation of unfamiliar procedures and bilingual information;

G) Provide in-person or telephone hot-line assistance to victims;

H) Provide special counseling facilities and rehabilitation services to victims;

I) Provide other services as the Commission shall deem appropriate to further the purposes of the Act;

J) Provide public education on crime and crime victims;

K) Provide training and sensitization for persons who work with victims of crime. [725 ILCS 240/8]

2) In addition to those policies and procedures outlined in this Section, each program or agency shall develop written policies and procedures pertaining to client rights. For purposes of this subsection(a)(2), the term "client rights" shall in all cases include, but shall not be limited to, the right to confidentiality, the right of personal privacy, and the right to refuse services.

3) Grant recipients shall not deny services to clients on the basis of race, color, sex, age, religion, national origin, ancestry or handicap.
4) Client intake policies and procedures shall be set forth in writing and be available for review by the Administrator, when requested, to determine if the agency's programs and services are being provided to the population described in the grant application.

5) Grant recipients shall comply with all statutory requirements, as well as applicable rules and regulations as specified in their Grant Agreement.

b) Personnel Requirements

1) Grant recipients shall not discriminate in the hiring or promotion of staff on the basis of race, color, national origin, ancestry, sex, age, religion or handicap.

2) Personnel policies shall be set forth in writing and be available for review by the Administrator upon request.

3) Volunteer training procedures shall be set forth in writing and be available for review by the Administrator upon request.

4) A private agency seeking funding under the Violent Crime Victims Assistance Act shall provide for administration and management of its program by an executive appointed by its Board of Directors.

SUBPART B: SPECIFIC PROGRAMS FOR VICTIM POPULATIONS

Section 1100.100 Victim/Witness Programs

a) Target Populations

1) Programs shall be designed to aid violent crime victims and witnesses in their contacts with the criminal justice system and with problems resulting from their victimization. Any limitations on the population served will be determined by the geographic boundaries, existing services and location of the program. (For example, a program may serve a single county or multiple counties.)

2) The Administrator does not require that victim and witness programs be
located in traditional settings (i.e., prosecutor's office or police department).

b) Services Provided
The following list of services is intended to serve as an example for the development of a comprehensive victim and witness program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. However, for a victim and witness program to adequately address the needs of crime victims and witnesses, these services form the basis of a comprehensive program. Programs providing services to these target populations will be examined, in the selection process, pursuant to Section 1100.30(a)(7) to determine the extent to which the program conforms to these recommendations. When a program is providing the type of service contained in the recommendation, the manner in which it provides the service will be examined pursuant to the remaining criteria of Section 1100.30.

1) A program should provide staff to respond to crime scenes and provide intervention and support for victims and witnesses.

2) Information should be provided to victims and witnesses periodically throughout the case investigation, arrest, charging procedures, and court process.

3) The program should provide for notification of victims and witnesses in advance of court dates to minimize inconvenience and unnecessary court appearances whenever possible. An on-call system for victims and witnesses should be utilized.

4) Emotional support, court advocacy and issue counseling to victims and witnesses should be provided in all cases upon request of the victim or witness.

5) Services offered should be coordinated with other community resources. The establishment of service networks will promote the effectiveness of assistance to crime victims.

6) Procedures should be established to aid violent crime victims in the prompt return of their property.
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7) Information should be given to a crime victim to assist in preparing a victim impact statement as provided in Section 6 of the Rights of Crime Victims and Witnesses Act [725 ILCS 120].

8) A program should provide employer and school intervention on behalf of crime victims and witnesses in all cases upon request of the victim or witness.

9) Victims and witnesses should be notified of any available financial assistance, including but not limited to the funds available under the Crime Victims Compensation Act [740 ILCS 45].

10) Special efforts should be made to reduce the burdens that prevent victims and witnesses from participating in the criminal justice system. Appropriate services may include, but need not be limited to, transportation, language interpretation, secure waiting areas, child care, lodging arrangements for out-of-town witnesses, and parking.

11) All programs should provide training to those who have direct contact with the victim in order to increase their sensitivity and their effectiveness in relation to the consequences of victimization and the problems of victim recovery.

12) Programs should provide public education and attempt to increase public awareness of the problems of crime victims in order to improve the relationship between victims and the criminal justice system.

c) Personnel
In order to deal with the number of clients served and the type of services offered, it may be appropriate to use paid staff and trained volunteers together so as to maximize services provided.

1) Paid staff should be utilized for administrative and fiscal management and for training.

2) Volunteers and student interns should be utilized in every aspect of service delivery possible, provided that they receive supervision by a staff member with experience in the type of service the volunteer is providing and ongoing training.
Section 1100.110 Sexual Assault Programs

a) Target Population
Programs or agencies should provide direct services to persons victimized by sexual assault. Women and children, being the overwhelming majority of victims, are the primary focus of services. However, male victims, family members and significant others should be offered the same services afforded the victim. (For the purposes of this Section, "significant others" shall mean those persons who the victim perceives to be close to himself/herself and who have been affected by the crime.)

b) Services Provided
The following list of services is intended to serve as an example for the development of a comprehensive sexual assault program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. However, in order to adequately address the needs of sexual assault victims, these services form the basis of a comprehensive program.

Programs providing services to these target populations will be examined, in the selection process, pursuant to Section 1100.30(a)(7) to determine the extent to which the program conforms to these recommendations. When a program is providing the type of service contained in the recommendation, the manner in which it provides the service will be examined pursuant to the remaining criteria of Section 1100.30.

1) A 24-hour crisis intervention hotline should be available to victims to provide information, referral, crisis intervention, and support. Direct response is preferred but not required.

2) Advocacy
   A) Advocacy at both a personal and system level should be provided to assist in the proper care and treatment of victims of sexual assault, affected family members and significant others during medical, police or criminal justice proceedings.
   
   B) In all cases 24-hour medical advocacy should be available.
3) Counseling

A) In-person, individual counseling for victims, affected family members and significant others should be provided as appropriate.

B) Counseling, both short- and long-term, should be provided by a trained sexual assault counselor, social worker, psychologist, or psychiatrist.

C) Therapy for child and adult victims should be provided by trained professionals, such as certified social workers, registered clinical psychologists, and psychiatrists.

D) Any professional providing counseling or therapy should have specialized training in the dynamics and treatment of sexual assault and sexual abuse.

4) Group counseling and support sessions should be provided on both formal and informal levels. Counseling should be accessible to both recently and previously traumatized victims, affected family members and significant others.

5) Referrals should be provided to appropriate resources within the community to meet the specific needs of the victim, affected family members and significant others.

6) In-service training programs should be provided for professionals, volunteers and other staff who may be working with, or who may come into contact with, victims of sexual assault, affected family members or significant others.

7) Programs should provide employer and school intervention services relating to loss of time from work due to court appearances or to victim recovery.

8) Public education efforts should be an integral part of every program. Information on the personal and societal consequences of sexual assault and abuse, prevention and protective techniques, and program services
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available for victims, affected family members and significant others should be made available to the general public.

9) Programs should assist victims, whenever possible, in obtaining necessary transportation to secure services and assistance.

10) Programs should attempt, either directly or indirectly, to provide clothing or emergency funds to sexual assault victims to meet immediate needs.

11) Follow-up services should be offered, upon request, to the individual, affected family members and significant others.

12) Victims and witnesses should be notified of any available financial assistance, including but not limited to the funds available under the Crime Victims Compensation Act [740 ILCS 45].

c) Personnel to Provide Services

1) Administrative functions, fiscal management and long-term counseling should be handled by paid professional staff and/or trained personnel.

2) The use of trained volunteers is encouraged in all programs. Provided with training, professional guidance and supervision, and continuing in-service training, volunteer staff members serve to expand service opportunities and encourage community involvement.

Section 1100.120 Domestic Violence Programs

a) Target Population
Programs should provide direct service to victims of domestic violence and their families. Women and their dependent children, being the overwhelming majority of domestic violence victims, are the primary focus of services. Male victims and their families cannot be excluded from services.

b) Services Provided
The following list of services is intended to serve as an example for the development of a comprehensive domestic violence program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide additional services. However, in order to adequately address the needs
of domestic violence victims, these services form the basis of a comprehensive program. Programs providing services to these target populations will be examined, in the selection process, pursuant to Section 1100.30(a)(7) to determine the extent to which the program conforms to these recommendations. When a program is providing the type of service contained in the recommendation, the manner in which it provides the service will be examined pursuant to the remaining criteria of Section 1100.30.

1) A 24-hour crisis intervention hotline should be available to victims to provide information, referral, crisis intervention, and support. Direct response is preferred but not required.

2) In-person issue counseling of victims and affected family members should be provided.

3) Advocacy at both a personal and system level should be provided to facilitate access to, and proper treatment by, other agencies and systems affecting victims of domestic violence, such as law enforcement, the medical community, social services, the courts, and governmental agencies.

4) Safe shelter is a critical need of domestic violence victims and their families and should be provided whenever the agency determines it is feasible to do so. Whether directly provided by the program or otherwise made accessible through predetermined channels, shelter is a key element in preventing continued violence and aiding victim recovery.

5) Referrals should be provided to the appropriate sources within the community to meet the specific needs of the victim. When possible, programs should provide assistance in the areas of education and job training for victims.

6) Group counseling and support sessions should be provided on both a formal and an informal level, in order to provide an opportunity for victims and their families to share experiences and knowledge as they deal with their current situations. These sessions should be accessible through all programs.

7) Since transportation is frequently a problem for victims in their attempts to
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secure assistance and progress in their recovery, programs should assist victims in obtaining necessary transportation.

8) Programs should provide employer and school intervention services relating to loss of time from work due to court appearances or to victim recovery.

9) Since education and public awareness of the problem of domestic violence is essential in addressing that problem, all programs should maintain ongoing efforts to inform both victims and the public about the causes and consequences of domestic violence.

10) Programs should make an effort to deal with the trauma experienced by children who live or have lived in a violent domestic environment. Specific children's services must be provided by trained staff. Qualified professionals should be utilized whether through the agency itself or by referral.

11) Follow-up services should be offered to victims and family members in a manner appropriate to their needs and life situation.

12) Because many victims of domestic violence are unable to escape a violent environment due to immediate lack of funds or short-term material needs, programs should attempt to provide assistance in these areas, either directly or indirectly.

13) Domestic violence programs should provide training to others who may come into contact with domestic violence victims and their families.

14) Victims and witnesses should be notified of any available financial assistance, including but not limited to the funds available under the Crime Victims Compensation Act [740 ILCS 45].

c) Personnel to Provide Services

1) Administrative functions, fiscal management, and long-term counseling should be handled by paid professional staff and/or trained personnel.

2) Provided with training, professional supervision, and continuing in-service
programs, volunteer staff serve to expand service opportunities and to encourage community involvement.

Section 1100.122 Child Sexual Assault/Child Abuse Programs

   a) Target Population
   Programs or agencies should provide direct services to child and adolescent victims, as well as non-offending parents and siblings.

   b) Services Provided
   The following list of services is intended to serve as an example for the development of a comprehensive child sexual assault/child abuse program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. However, in order to adequately address the needs of child sexual assault/child abuse victims, these services form the basis of a comprehensive program. Programs providing services to these target populations will be examined, in the selection process, pursuant to Section 1100.30(a)(7) to determine the extent to which the program conforms to these recommendations. When a program is providing the type of service contained in the recommendation, the manner in which it provides the service will be examined pursuant to the remaining criteria of Section 1100.30.

1) Individual, in-office counseling for child/adolescent victims should be provided in a safe, child appropriate setting.

2) Individual, in-office counseling should be provided for non-offending parents and foster/custodial parents in order to ensure the most comprehensive victim services for the child.

3) Joint in-office counseling should be provided for parents and children where indicated.

4) Crisis phone counseling should be available for adolescent victims and for parents of victims.

5) Advocacy services should be provided for parents and children with law enforcement, medical providers, the judiciary, educational institutions, Department of Children and Family Services, public aid and other social service systems.
6) Information and referral services should be provided for parents and victims to appropriate resources within the community to meet the specific needs of children and their parents.

7) Group counseling, where appropriate, should be provided for both children and parents.

8) Public education efforts should be an integral part of every program. Information on the victimization of children and the effects of violence on their lives, as well as program services, should be made available to the general public.

9) Professional training on treatment and clinical interventions for community service agencies, hospitals, mental health centers and other social service providers in order to increase their sensitivity and their effectiveness in relation to the consequences of child victimization and recovery.

10) Networking with other community agencies and participating in coalitions and community groups providing related services to children will promote the development of a more effective comprehensive response to the needs of victims and their families.

11) Victims and witnesses should be notified of any available financial assistance, including but not limited to the funds available under the Crime Victims Compensation Act [740 ILCS 45].

c) Personnel to Provide Services
   All staff should participate in a structured training program that addresses the issues of child sexual assault/child abuse. Direct service staff dealing with children shall have, at minimum, an M.A. in social work, counseling or a related field.

Section 1100.124 Senior Victim Programs

a) Target Population
   Programs or agencies should provide services to senior citizens who are victims of crime. Only agencies designated as an Elder Abuse Provider Agency and
operating under contract with the Regional Administrative Agency of the Illinois Department on Aging will be able to receive and investigate elder abuse cases.

b) Services Provided
The following list of services is intended to serve as an example for the development of a comprehensive senior victim program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. Programs providing services to these target populations will be examined, in the selection process, pursuant to Section 1100.30(a)(7) to determine the extent to which the program conforms to these recommendations. When a program is providing the type of service contained in the recommendation, the manner in which it provides the service will be examined pursuant to the remaining criteria of Section 1100.30.

1) Programs should provide individual assessments to evaluate victim needs and work with the client to develop a care plan to address those needs.

2) Crisis intervention services appropriate to the victim's needs and abilities should be provided.

3) Information on the criminal justice system as well as assistance with pursuing legal options should be provided.

4) Programs should provide or arrange for suitable transportation to necessary services and resources.

5) Individual and family supportive counseling should be provided when needed.

6) Programs should educate victims about community services that are available for seniors.

7) In-service training programs for professionals, volunteers and other staff who may work with or come in contact with senior victims should be provided in order to sensitize them to the specific needs and problems faced by seniors.

8) Programs should participate in multi-disciplinary teams and other community groups and organizations dealing with senior issues.
9) Programs should provide assistance in meeting immediate material or safety needs of victims.

10) Social service, medical, and legal advocacy should be available when requested.

11) Public education should be an integral part of every program. Information on crime prevention, safety issues, and victimization should be made available to the senior population of the community.

12) Victims and witnesses should be notified of any available financial assistance, including but not limited to the funds available under the Crime Victims Compensation Act [740 ILCS 45].

c) Personnel to Provide Services
Direct services should be provided by trained staff, with qualifications being set appropriate to the services provided. Volunteer staff can be utilized effectively for certain functions if carried out under professional supervision.

Section 1100.130 Programming for Other Victim Populations

Program descriptions for other categories of victim populations, such as families of homicide victims, disabled victims, and drunk driving victims are not detailed herein. Specific programs tailored to meet these needs will be evaluated on an individual basis using Section 1100.60. Despite the lack of in-depth program development, these priority populations merit services. Agencies may apply for funding for programs serving other victim populations. The Administrator will give such applicants equal consideration in the selection of agencies to be funded.

Section 1100.140 Special Project Funding

a) Special Projects
Any public or private non-profit agency that provides or coordinates services to victims and witnesses of crime may apply for special project funding under this Section, either separately or in addition to funding for programs described in this Part.

1) Such projects must serve to implement an eligible service as defined in
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Section 8 of the Violent Crime Victims Assistance Act. For example, the translation of educational materials from English to another language may qualify as a special project insofar as it furthers the goal of providing public education on crime and crime victims.

2) Special projects should be designed to last for a specific period of time.

3) Projects eligible for funding should have a specific goal. When this goal is accomplished, the special project is completed. A special project may not be an ongoing service. An example of a special project would be the translation of written materials for distribution to a target population.

b) Target Populations

1) Agencies or programs that provide services to violent crime victims or witnesses, including but not limited to the target populations described in this Part, may apply for special project funding provided that the proposed projects meet the eligibility criteria set forth in this Section.

2) The population to be served must be defined both in terms of the type of victim and/or witness to be served and the victim issue to be addressed. It is recommended that a needs assessment summary accompany such proposals.

3) Agencies or programs requesting funds for training must detail the target population, the victim/witness population to be addressed, materials to be produced or utilized, proposed agendas, and anticipated time frames.

SUBPART C: FISCAL AND MONITORING REQUIREMENTS

Section 1100.200 Income Documentation and Accounting Requirements

a) Income Documentation
Applicants must include, in the grant application, the amount of actual funding support from all local, State, and federal governmental agencies, and individual and private sources.

b) Accounting Requirements
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1) Each Grantee shall establish and maintain a modified accrual accounting system in accordance with generally accepted accounting principles of the Financial Accounting Standards Board created by the Financial Accounting Foundation, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116 (June 30, 1997, no subsequent dates or editions) to include a level of documentation, classification of entries, and audit trails, to meet reporting requirements as prescribed by the Administrator in Section 1100.250(a).

2) All 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.

3) For programs funded by the Administrator, expenses are to be recorded by specific program. All other expenses not funded by the Administrator may be booked in total.

4) All fiscal records must be maintained by the Grantee for five years after the end of each budget period. In instances involving unresolved issues arising from an audit, pending litigation or unresolved tax issues, records related to the unresolved issues must be retained until the issues are resolved.

Section 1100.210 Allowable and Non-allowable Expenses

The Administrator provides funds for services offered by victim and witness centers as specified in this Section with no intention of being the sole funding source. The Administrator will provide funds to programs for the purpose of funding certain items of expense as detailed herein, but in no instances will the Administrator be the sole funding source for the Grantee.

a) The following expenditures are not allowable expenses from grant funds.

1) Research – Research expenses are not allowable expenses from grant funds.

2) Compensation for Agency Board Members – Disbursements of funds to an agency board member who does not also perform in a work capacity on behalf of the agency are not allowable expenses. (This does not preclude the provision of transportation and travel expenses related to attending
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agency board meetings or other official agency-related business.)

3) Entertainment – The expense of non-client entertainment is not allowable from grant funds. A client is a person currently receiving direct services from the agency.

4) Dues and Costs of Attending Professional Meetings – Individual or agency association dues or costs of attending professional meetings which do not involve issues directly related to services being provided by the agency are not allowable expenses from grant funds. Attendance by staff at workshops, seminars, etc., as part of in-service training related to services being provided by the agency, is an allowable expense.

5) Transportation – The use, or reimbursement for use, of agency- or privately-owned automotive equipment, by staff for personal business or non-work-related transportation, is not allowable from grant funds.

6) Fund-raising and Promotional Expense – Fund-raising activities are not allowable expenses from grant funds.

7) Charity, Grants and Professional Discounts – Charity, grants and professional discounts are not allowable expense items from grant funds. Charity is defined as the donation of cash or in-kind services to other organizations and individuals external to the program activities approved by the Administrator. Grants are defined as awards to organizations, programs and/or individuals, external to the program activities of the agency. Professional discounts are defined as reductions in fee assessments to individuals or families because of professional status (i.e., doctor, educator, etc.).

8) Non-client Meals – Non-client meals are not reimbursable expenses from grant funds. Non-client meals are defined as meals consumed by parents, guests and staff when their attendance with the client is not programmatically mandatory.

9) Rentals

A) Rental income – Any rental income received by the Grantee must be used to reduce the allowable expense for the item rented.
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B) Rental costs of buildings and equipment – Rental costs for buildings and equipment that do not exceed the local market value for these items and that are related to program services to clients are allowable expenses.

10) Loan Agreements – The repayment of the principal amount of any loan is not a reimbursable expense. (Example: If a fund recipient borrowed $10,000 for operating expenses, the repayment of the $10,000 principal amount is not a reimbursable expense, but the expenses paid with the principal may be reimbursable.)

11) Lease Agreements – Lease and lease-purchase agreements for items of equipment and buildings are reimbursable from grant funds on an allocation basis to the funded program. If the agreement covers the servicing of the items and/or supplies used in the operation of the leased item, whether as a separate amount or a combined amount, these expenses are reimbursable on the same basis from grant funds.

12) Inventories – The cost of developing supply inventories by an agency is not allowable from grant funds. Inventories are assets rather than expenses of the fiscal year's operations. The grant program is to fund only current expense operations. Usage from inventories is an expense and is reimbursable from grant funds.

13) Sales of Goods or Services – Any expense incurred by a Grantee for the sale of goods or services is not reimbursable and may be offset against sales revenue.

14) In-kind Contributions – The Administrator recognizes in-kind contributions both as a source of income and as an expense of operations. The cost of in-kind services is not a reimbursable expense.

15) Duplicate Funding – Grant funds shall not be used to reimburse expenses that must, in accordance with the requirements of other funding sources, be reimbursed by the other funding source.

16) Contingencies – Contributions to a contingency reserve or any similar provision for unforeseen events are not reimbursable.
b) The following expenditures are allowable expenses from grant funds.

1) Salaries and fringe benefits for employees of the program or support personnel are allowable from grant funds. Examples of employees or support personnel are counselors, advocates, bookkeepers, accountants, etc.

2) Contractual employment for program or support staff is an allowable expense from grant funds.

3) Rental or occupancy costs for space used by the funded program are allowable expenses from grant funds.

4) Purchase of Equipment

A) The purchase of equipment is an allowable expense. Any and all capital equipment purchased with grant funds awarded under the Grant Agreement (including any amendment, modification, or supplement thereto), shall be used exclusively by the Grantee to perform the services agreed upon in the Grant Agreement. If at any time during the term of the Grant Agreement Grantee ceases to use such capital equipment to perform the services agreed upon in the Grant Agreement, Grantee shall immediately deliver and turn over to the Administrator such item or items of capital equipment in the same operating order, repair, condition, and appearance as of the date of purchase, excepting only for reasonable wear and tear and depreciation resulting from the authorized use thereof, and in conjunction therewith, Grantee shall execute and deliver any and all documents necessary to convey marketable title, custody, and possession of such capital equipment to the State of Illinois. After the expiration or earlier termination of the Grant Agreement, if at any time during the useful life of any such capital equipment grantee ceases to use such capital equipment for a purpose consistent with the purposes of the Violent Crime Victims Assistance Act, Grantee shall immediately deliver and turn over to the Administrator such item or items of capital equipment and, in conjunction therewith, Grantee shall execute and deliver any and all documents necessary to convey marketable title, custody, and
possession of such capital equipment to the State of Illinois. This Section shall survive the expiration or earlier termination of the Grant Agreement.

B) As used in this Section, capital equipment means items of personal property used for the conduct of the Grantee's business or used to enable the Grantee to perform the services agreed upon in the Grant Agreement, including, but not necessarily limited to, office furniture, typewriters, copy machines, computers, appliances, and printing machines.

5) Equipment that is rented or leased for program use is an allowable expense from grant funds.

6) General office expenses such as postage, duplicating, office supplies, telephone costs, and maintenance are allowable expenses from grant funds.

7) Advertising costs directly related to program activity are allowable expenses from grant funds.

8) Inservice costs and conference registrations are allowable expenses for training directly related to program activity.

9) Travel expenses and transportation costs are allowable expenses for victims and witnesses and staff members performing work related functions.

10) Program and training supplies are allowable expenses when directly related to the services funded in the Grant Agreement.

11) Printed materials used for informational purposes or to publicize the program are allowable expenses from grant funds. All printed materials paid for, in whole or part, with funds provided pursuant to the Grant Agreement shall specify within such printed materials that the funds utilized in the printing of such materials were received from the Illinois Attorney General's Violent Crime Victims Assistance Program and that the views and statements expressed therein do not necessarily reflect the views and opinions of the Attorney General of the State of Illinois or the
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Illinois Violent Crime Victims Assistance Program [725 ILCS 240].

Section 1100.218 Interest

a) Interest income earned from award funds shall be used for expenses that further the provision of direct services to clients, consistent with the provision of service stated in the Grant Agreement. Such expenses shall not exceed $500 in any fiscal year. Interest income earned in excess of $500 shall be returned to the Administrator with the next quarterly report. Interest income earned from award funds and expenses paid from such interest income shall be reported on quarterly reports as separate items from other expenses against the grant award.

b) In addition to the allowable expenses listed in Section 1100.210(b), interest income may be used to pay interest expenses on borrowed funds used to purchase land, buildings, and/or equipment that are required to provide direct services to clients, or are related to client services. The items purchased must actually be in use.

c) In addition to the non-allowable expenses listed in Section 1100.210(a), interest income shall not be allowed to pay for:

1) Interest expense on funds borrowed for investment purposes;

2) Interest expense on funds borrowed to create working capital in excess of two months operating costs;

3) Interest expense on funds borrowed for the personal benefit of employees, officers, boards of directors, members or owners of the fund recipient.

Section 1100.220 Audits

a) Each Grantee agency shall have an annual audit performed at the close of its fiscal year. This audit is to be performed in accordance with generally accepted auditing standards by an independent certified public accountant registered by the State of Illinois. The resulting audit report is to be prepared in accordance with the Generally Accepted Accounting Principal of the Financial Accounting Standard Board (as incorporated in Section 1100.200(b)(1) of this Part). The report shall contain the basic financial statements presenting the financial position...
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of the agency, the results of its operations, and changes in fund balances. The report shall also contain the auditor's opinion regarding the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed. If the auditor expresses a qualified opinion, a disclaimer of opinion, or an adverse opinion, the reason through must be stated.

b) Audit Report

1) Private not-for-profit agencies must submit a copy of their most recently completed audit with the grant application.

2) Governmental entities must have on site a copy of their most recently completed audit for review by the Administrator during site visits.

3) Agencies with a total budget of under $4,000, or who have been in operation less than a year at the time of filing a grant application, may request an exemption to the audit requirement, but must submit a financial statement detailing revenue sources and expenses.

Section 1100.230 Grant Agreement

a) Definition
The Grant Agreement is the finalized obligating instrument between the Administrator and the Grantee. It serves as the formal statement of mutual expectations between the Administrator and the Grantee. The Grant Agreement is a combination service plan and budget. It identifies what services will be provided or procured, to what target population and within what geographical area.

b) Term
The term of the agreement is as specified in the Grant Agreement unless sooner terminated as provided in this Section.

c) Provision of Services
Those sections of the proposal the Administrator has accepted shall be referenced in section 2 of the Grant Agreement.

1) The Grantee shall maintain an accounting system acceptable to the Administrator, as required by Section 1100.200(b), for the implementation
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and maintenance of the services as provided in the Grant Agreement.

2) Financial and activity reports shall be submitted by the Grantee to the Administrator as set forth in Section 1100.250.

d) Modification of Program

The Grantee shall not change, modify, revise, alter, amend, or delete any part of the services it has agreed to provide in the Grant Agreement without first obtaining the written consent for such change, modification, revision, alteration, amendment, deletion, or extension from the Administrator in the form of a Supplemental Agreement.

1) When the Grantee has demonstrated that in good faith it has attempted to comply with the provisions of the Grant Agreement, but for unforeseen circumstances was not able to comply with the Grantee Agreement, a Supplemental Agreement would be considered. An example will be: funding provided for a new staff position, but the Grantee was not able to locate a qualified candidate to fill the position and has demonstrated an intent to hire a new staff person.

2) Procedures for a Supplemental Agreement

A) The Grantee must notify the Administrator and identify the variance as set forth in Section 1100.230(h).

B) The Grantee shall submit a written explanation for the variance with a solution and a new proposed budget for expending funds with a request for a Supplemental Agreement.

C) The request and explanation is review by the Administrator and approved if the new request is consistent with the original intent of the agency's application and services to victims and witnesses, and is an allowable expense under Section 1100.210(b).

D) Upon approval of the request by the Administrator, the administrator will prepare a Supplemental Agreement is prepared, following the Grant Agreement format, to be signed by both parties.
e) Execution Responsibilities
The Administrator will be responsible for preparing the Grant Agreement and any Supplemental Agreements. The Grantee must sign all copies and return them to the Administrator. The Administrator will then secure the appropriate signature and return a copy to the Grantee.

f) Procedures for Disbursement of Funds
The Administrator will disburse funds to funded programs in accordance with the fully executed Grant Agreement.

1) The Grantee's responsibility is to sign and return the Grant Agreement.

2) The Administrator's responsibility is to forward grant funds in a timely manner upon receipt of the signed Grant Agreement.

g) Principles
All funded programs are responsible for the delivery or procurement of services and the accounting of expenditures specified in the Grant Agreement. Any variance between the Grant Agreement and the program's actual performance will be reviewed by the Administrator's staff.

h) Procedures for Review

1) During the grant year, events may take place that result in variances between the Grant Agreement and the program's actual performance. These variances in performance may be either temporary or permanent in nature.

A) A temporary variance is a difference between the Grant Agreement and actual performance that is caused by a short-lived event or circumstance that will not adversely affect a program's ability to perform as outlined in the Grant Agreement except in the short term. Best estimates of the program's future activity would indicate the appropriateness of staying with the current Grant Agreement rather than changing it to meet the unusual and temporary circumstances. In other words, the causes of temporary variances are, by their nature, not sufficient reason to change the approved Grant Agreement. Examples would be: the replacement or illness of a staff member thereby leaving a position vacant for a short
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period of time or the change in the location of service delivery.

B) A permanent variance is a difference between the Grant Agreement and actual performance that is caused by an event or circumstances that significantly alter expectations about the program's future activity in terms of the program's ability to perform as outlined in the approved Grant Agreement. The causes of a permanent variance are such that a new Supplemental Agreement will have to be negotiated between the program and the Administrator. Examples would be: the abolition of a grant funded staff position or the permanent loss of a facility such as a shelter.

2) It is the responsibility of the Administrator to exercise a review function for all Grantees, assuring accountability for the services and costs established in the Grant Agreement. Review of variances will be a part of this function.

i) Identification and Documentation
Identification of a variance is primarily the responsibility of the Grantee.

1) Upon identifying a permanent variance the Grantee should immediately notify the Grant Monitor and forward any required documentation necessary to negotiate a Supplemental Agreement.

2) Identification of a temporary variance should be noted in the appropriate section of the required reporting forms.

j) Grant Cancellation
The sanctions outlined herein for cancellation of the Grant Agreement will be undertaken only after the Administrator has made reasonable efforts to reach an acceptable resolution with the Grantee.

1) The following are bases for cancellation of a Grant Agreement.

A) Failure to File Required Reporting Forms
This occurs when a Grantee fails to submit the required reporting forms to the Attorney General's Office within the designated time limits and no written exception or extension has been made by the Administrator.
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i) An exception or extension must be requested prior to the end of the reporting period. Extensions will be granted for no more than 15 additional days for reasons related to the Grantee's ability to complete the form on time, not for reasons related to the completion of services.

ii) Exceptions will be granted in instances where the provision of service has been completed and reported in an earlier reporting period. An example would be a funding request for printed materials completed and reported on in the first 3 months.

B) Non-compliance with the Charitable Trust Act and the Solicitation Act
All applicant agencies not exempt under the Charitable Trust Act [760 ILCS 55] and the Solicitation for Charity Act [225 ILCS 460] must demonstrate that they are in compliance with the requirements of those Acts. Compliance shall be verified by having the applicant submit their Charitable Trust number in the application, which will then be forwarded to the Attorney General's Charitable Trust Bureau for verification of their current status.

C) Failure to Repay Lapsed Funds
Non-compliance with any agreement for the repayment of lapsed funds may be cause for cancellation.

D) Non-compliance with the Service Provisions
Non-compliance with the service provisions specified in the Grant Agreement shall be cause for cancellation pursuant to this subsection (j).

2) Non-compliance with the Grant Agreement does not always result in the initiation of cancellation procedures.

A) Non-compliance is not always intentional on the part of a Grantee as described in subsection(d)(1) of this Section. In every instance, efforts are made to secure compliance before cancellation.
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proceedings are initiated.

B) Willful non-compliance by a Grantee will result in cancellation. An example would be: the misappropriation of grant funds (i.e., monies are granted to provide salary for identified staff for program services; funds are instead utilized for personal expenses of non-allowable expenses).

C) If all the Administrator's efforts to obtain the Grantee's compliance are met with negative results, then cancellation proceedings are initiated.

3) Upon decision to cancel an existing Grant Agreement the Administrator will send written notification to the Grantee 30 days prior to the cancellation date. The conditions under which the grant is canceled shall be detailed, as well as the procedure for the repayment of unexpended funds or monies due the Administrator.

4) Failure to comply with the procedures prescribed for repayment of funds due to cancellation of the Grant Agreement will result in the implementation of the provisions of the Illinois Grant Funds Recovery Act [30 ILCS 705].

Section 1100.240 Lapsed Funds

a) Grant funds not expended as outlined in the effective Grant Agreement are considered lapsed.

b) Procedures Governing Lapsed Funds

1) If the programmatic expenses of a Grantee are less than the approved allocation level, the Grantee is to indicate, in writing, one of the following options:

A) Request for Reallocation of Lapsed Funds

i) Lapsed amounts of less than $1,000 of the grant funds shall be reported to the Administrator. The Grantee shall certify in writing that these funds have been reallocated and will
ATTORNEY GENERAL

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be expended in accordance with the Grant Agreement, i.e., reallocated to existing line items in the budget in accordance with the provisions of section 2 of the Grant Agreement. Such changes shall be noted in the reporting forms.

ii) Lapsed amounts of less than $1,000 of the grant funds which a Grantee wishes to reallocate to an expense that creates a new line item in the approved budget must be reported to the Administrator along with a written request for reallocation. The approved budget refers to the two page "Violent Crime Victims Assistance Act Program Project Budget" and the narrative detail of expenditures in section 2 of the Grant Agreement. This document is signed and approved in Section 1100.230.

iii) Lapsed amounts of $1,000 or more shall be reported to the Administrator. The Grantee may submit a written explanation of the underexpenses and a detailed request for reallocation of the funds.

iv) The Administrator may grant a reallocation of lapsed funds when the Grantee demonstrates, pursuant to Subsections (b)1)(A)(ii) and (iii) of this Section, that the funds will be used for allowable expenses. If the Administrator approves the reallocation, it shall so inform the Grantee in writing and shall work with the Grantee to accommodate the reallocation of funds in the form of a Supplemental Agreement in circumstances where appropriate.

v) If the Administrator does not approve a reallocation, it shall inform the Grantee of this decision within 30 days after receipt of the request.

B) Agreement to Lapse
If no explanation for unexpended funds or justification for a reallocation of funds is received by the Administrator, the funds will automatically lapse.
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2) When a lapse occurs without a valid request for reallocation of the funds being approved by the Administrator, the Administrator and Grantee shall negotiate a proper mechanism for the return of the funds consistent with the Illinois Grant Funds Recovery Act [30 ILCS 705]. The lapsed funds, however, must be returned to the Administrator within 45 days following the end of the Grant Agreement (see 30 ILCS 705/5).

Section 1100.250 Reporting Forms

a) Reporting forms provide the following expenditure and client service records: detailed statement of costs, fiscal summary, statistics on the number of clients served and services provided, variances, staffing information, and requested revisions and adjustments. All reporting forms must be received by the designated Grant Monitor no later than 15 days following the end of the reporting period.

b) Required Reports

1) Grantee shall submit to the Administrator financial and activity reports every three months for the previous three-month period. Such reports shall be on forms specified by the Administrator. All reporting forms must be received by the Administrator no later than 15 days following the end of the reporting period. Such reports shall detail clients served, services provided, expenditures, and revisions, if any, of time-tables and activities to reflect the current program status and future activity.

2) Any agency that submits quarterly reports that are more than 3 days late on two occasions during the grant year will be penalized by a 2% reduction in funding during the next grant period.

3) Extensions of up to 2 weeks may be granted by the grant monitors. Written confirmation of an extension from the grant monitor shall be attached to the reporting form when submitted.

c) The Grantee shall also make available all financial records, client contact records, and case records in connection with funded programs. In making case records available the Grantee shall insure the confidentiality of each client pursuant to the Grantee's confidentiality standards.

Section 1100.260 Appeals Process
NOTICE OF PROPOSED REPEALER

a) A Grantee may appeal an action taken by the Administrator that pertains to Section 1100.220, 1100.230, 1100.240 or 1100.250. A Grantee shall appeal the action in writing by filing with the Administrator within 14 days from the day the notice of the action is mailed to the Grantee. The appeal shall be sent to the Office of the Attorney General, Grants Coordinator, Crime Victims Department, 100 West Randolph, 11th floor, Chicago, Illinois 60601. The appeal shall be signed by the Grantee's authorized official. This written appeal shall contain specific reasons stating why the action taken by the Administrator should be modified and shall state the action requested of the Appeals Committee. If no timely appeal is filed on an action, such action shall be deemed to be the final action of the Administrator.

b) When an appeal is timely filed, the Grants Coordinator shall arrange for the Appeals Committee to hear and to decide the appeal within 30 days after the receipt of the written appeal. The Appeals Committee shall consist of the Grants Coordinator, the Chief of the Budget and Fiscal Bureau, two Grant Monitors, two members of the Violent Crime Victims Advisory Commission, and counsel representing the Attorney General's Office. The Grants Coordinator shall serve as the presiding officer of the Appeals Committee. The party shall have the right to appear before the committee and to be represented at the hearing by counsel. The party appealing shall be notified of the hearing date at least 7 days prior to the hearing.

c) At the hearing, the Appeals Committee shall consider the written answer to the action submitted pursuant to subsection (b), any written response to that appeal by staff, and any testimony given by the Grantee or staff to questions posed by the Appeals Committee members. The original decision would have to be found contrary to the evidence originally presented by the Grantee, and a simple majority vote by the Appeals Committee would be desirable. The basis for determination by the Appeals Committee would be: whether the request is realistic and obtainable; availability of funds; quality of program services; previous compliance with the Administrator's requirements; and a majority vote of the Appeals Committee. The Appeals Committee shall render a decision on the appeal before adjourning the hearing. A written statement of the decision will be forwarded to the Grantee within 10 working days after the hearing.
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NOTICE OF PROPOSED RULES

1) **Heading of the Part:** Programmatic and Fiscal Requirements for Administering Funds under the Violent Crime Victims Assistance Act

2) **Code Citation:** 89 Ill. Adm. Code 1100

3) **Section Numbers:**

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4) **Statutory Authority:** Implementing and authorized by the Violent Crime Victims Assistance Act [725 ILCS 240]
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5) A Complete Description of the Subjects and Issues Involved: This reenacts and revises rules relating to the procedures for the distribution of competitive grants paid from the Violent Crime Victims Assistance Fund. Grants will be awarded to public or private nonprofit agencies solely for the purposes of facilitating or providing free advocacy, assistance, or services to victims and witnesses of violent crimes.

The Violent Crime Victims Assistance Act [725 ILCS 240] created a fund and authorized circuit court clerks to assess and collect fees from persons convicted of various criminal offenses.

The proposed rules address amendments to the Violent Crime Victims Assistance Act and the Grant Funds Recovery Act so the rules are consistent with the statutes. The proposed rules include eligible applicants, proposal procedures and content, the criteria for review and approval of the proposals, and the fiscal and monitoring requirements for the awarded grants.

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

11) Statement of Statewide Policy Objectives: Neither creates nor enlarges a State mandate within the meaning of 30 ILCS 805/3b of the State Mandates Act.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: During the first notice period by writing:

Cynthia Hora, Chief
Crime Victim Services Division
Office of the Attorney General
100 West Randolph, 13th Floor
Chicago, IL 60601
13) **Initial Regulatory Flexibility Analysis:**

A) **Types of small businesses, small municipalities and not for profit corporations affected:** Municipal agencies and not for profit agencies who provide the targeted victim and witness services may apply for grants awarded from the Violent Crime Victims Assistance Fund.

B) **Reporting, bookkeeping or other procedures required for compliance:** Grantees shall submit financial and activity reports every three months to the Administrator detailing costs and expenditures, fiscal summary, names of funded staff persons, requested revisions, reallocations and adjustments, clients served, services provided, and revisions, if any, of time-tables and activities to reflect the current program status and future activity. Grantees must also submit the resume of any funded staff person no later than October 15 of the funded year.

   All accounting entries of a grantee must be supported by appropriate source documents, recorded in books of original entry, and posted to a general ledger on a monthly basis.

C) **Types of professional skills necessary for compliance:** The rules set forth the mandatory services to be provided by victim and witness centers. The rules also list recommended services for comprehensive programs. The requirement for applicants to submit an audit has been retained, but the requirement now applies only to agencies with total budget of $300,000 (increased from $4,000 under the current rules).

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

The full text of the Proposed Rules begins on the next page:
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TITLE 89: SOCIAL SERVICES
CHAPTER IX: ATTORNEY GENERAL

PART 1100
PROGRAMMATIC AND FISCAL REQUIREMENTS FOR ADMINISTERING FUNDS UNDER THE VIOLENT CRIME VICTIMS ASSISTANCE ACT

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1100.260 Lapsed Funds
1100.270 Quarterly and Staff Reporting Forms
1100.280 On-site Visits and Inspection of Records and Policies

SUBPART D: SPECIAL PROJECT FUNDING

Section
1100.310 Special Projects
1100.310 Eligible Agencies
1100.320 Special Project Grant Application Requirements
1100.330 Funding Priorities
1100.340 Grant Agreements
1100.350 Fiscal and Monitoring

AUTHORITY: Implementing and authorized by the Violent Crime Victims Assistance Act [725 ILCS 240].


SUBPART A: GENERAL ADMINISTRATIVE PROVISIONS

Section 1100.10 Administration of the Grant Program of the Violent Crime Victims Assistance Act

The Attorney General (the Administrator) is charged with administering the disbursement of monies from the Violent Crime Victims Assistance Act fund, including the selection of qualified applicants to receive funding for the establishment and operation of Victim and Witness Assistance Centers.

Section 1100.20 Eligible Agencies

The following types of agencies may apply for funding under the Violent Crime Victims Assistance Act [725 ILCS 240].
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a) An agency of the United States, the State of Illinois, or a unit of local government that provides, operates or coordinates victim and witness assistance programs.

b) A private non-profit agency that provides, operates or coordinates a victim and witness assistance program, if it:

1) Has a tax exempt ruling from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code (26 USC 501(c)(3)), and

2) Is compliant with the Charitable Trust Act [760 ILCS 55] and the Solicitation for Charity Act [225 ILCS 460] or is exempt from these Acts.

Section 1100.30 Conflict of Interest

a) Applicants for grants under this Part shall have rules to govern themselves when conflict of interest situations arise and shall incorporate those rules in their constitution or bylaws, or publish those rules as agency policy.

b) Rules governing conflicts of interest shall prohibit staff members of the Administrator's Crime Victim Services Division and management of the Administrator above the Division Chief level from serving on boards of agencies that apply for or receive funding.

Section 1100.40 Grant Application Requirements

In order to be considered for an award of grant funds under this Part, applicants must, on or before the first Friday of February preceding the fiscal year for which funding is requested, submit a properly completed grant application form provided by the Administrator. The application shall include at a minimum:

a) The information required under the Illinois Grant Funds Recovery Act [30 ILCS 705];

b) The agency's Illinois Charitable Trust registration number;

c) A description of the applicant and the services it provides;

d) A description of existing needs of the community to be served in relation to crime victims and witnesses;
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e) A proposal describing the services to be provided with grant funding;

f) A request for a specific dollar amount, along with a detailed budget showing income and expenses on the forms prescribed by the Administrator;

g) A description of all funding sources, including in-kind contributions, and the amount provided by sources in the prior fiscal year;

h) A signed certification, with respect to each of the following items, that the applicant has either put in place and is implementing written policies or that the requirement does not apply:

1) A reasonable accommodation policy for persons with disabilities;

2) Drug free workplace policies as required by law;

3) Non-discrimination;

4) Client intake;

5) Client rights;

6) Volunteer training;

7) Personnel policies and procedures;

8) Conflict of interest rules; and

9) A fee schedule with details of charges for specific services (copy to be attached to the application);

i) A copy of the current job description for the positions for which funding is requested;

j) A copy of the most recent fiscal audit and management letter, as required by Section 1100.220;
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k) Three distinctly-worded letters of support specific to the program for which funding is requested stating the interaction with program and dated no more than six months before the date of the application; and

l) A certification, signed by the authorized official of the agency, that the statements in the application are true and correct and submitted in proper format.

Section 1100.50 Funding Priorities

a) The Administrator shall consider the following factors in determining whether and how much to fund a given applicant:

1) The extent to which a program implements the recommended services set forth in Sections 1100.100, 1100.110, 1100.120, 1100.122, 1100.124 and/or 1100.130;

2) The extent to which the applicant's stated goals are consistent with the delivery of services enumerated in Section 8 of the Violent Crime Victims Assistance Act;

3) The commitment and ability to provide the services for which funding is sought. Evidence of commitment and ability includes: programmatic expertise (i.e., qualifications, training, including in-service training for staff and volunteers, and experience of agency staff), level of resources available to the program and past grant compliance;

4) The number of people served, types of services provided and needs of the community as described in the grant application;

5) Evidence of community support exhibited by the grant application;

6) The organizational structure of the agency;

7) The extent to which the applicant proposes to maximize the use of volunteers and student interns;

8) The applicant's history of compliance with reporting, accounting and other requirements pertaining to grants awarded under this Part or under any other governmental program.
b) The Administrator shall compare and contrast the applicants' proposed programs to determine which applicants in a given geographic area are best able to maximize the number of victims and witnesses served and the types of services available to victims and witnesses.

c) The Administrator shall select applicants so as to maximize the number of victims and witnesses served and the types of services available to victims and witnesses statewide, as well as to provide opportunities for specialized services and training.

d) Grants will be made for a term of one year corresponding to the State's fiscal year, unless the Administrator determines that a shorter term is appropriate.

Section 1100.60 Agency-Community Relations

a) Applicants are encouraged to develop community support and active involvement in the planning, development, operation and/or funding of victim and witness services.

b) Applicants should engage in ongoing efforts toward publicizing their programs, functions, and locations (except when the nature of the services requires that the location not be publicized), to all segments of the community.

c) Applicants are encouraged to use volunteers and student interns.

d) Support of victim and witness services in the form of local revenue, voluntary cash contributions, or "in-kind" contributions indicates local support.

e) Applicants are encouraged to be members of multidisciplinary organizations or coalitions.

f) Applicants should have networking agreements with other agencies in the community.

g) Agencies may contact the Office of the Attorney General, Violent Crimes Victims Assistance Program for technical assistance in relation to developing, maintaining or expanding a planned, organized and coordinated network for the delivery of victim and witness services.
Section 1100.70  General Programming and Staffing Requirements

a) Program Requirements

1) A program shall deliver services to violent crime victims and witnesses within a defined geographic area. Any limitations on the population served will be determined by the geographic boundaries, existing services and location of the program. (For example, a program may serve a single county or multiple counties.)

2) All programs shall provide services to victims and witnesses of crime consistent with the criteria set forth in Section 8 of the Violent Crime Victims Assistance Act.

3) All programs must provide, to all victims and witnesses to be served, information regarding the following:

   A) Any available financial assistance, including but not limited to the right to restitution in a criminal case and the funds available under the Crime Victims Compensation Act [740 ILCS 45].

   B) Their rights under Article I, Section 8.1 of the Illinois Constitution and under the Rights of Crime Victims and Witnesses Act [725 ILCS 120] and how to assert those rights.

   C) The availability of the Illinois Automated Victim Notification System, or any other available notification systems, to obtain information regarding offender custody and case status.

4) Grantees shall not charge victims or witnesses for the services funded by the Violent Crimes Victim Assistance fund.

5) Grantees must have in place written policies and procedures pertaining to client rights, including the release of information about a client. For purposes of this subsection (a)(5), the term "client rights" shall in all cases include, but not be limited to, the right to confidentiality and the right of personal privacy.

6) Grantees shall not deny services to clients on the basis of race, color,
ATTORNEY GENERAL

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religion, sex, sexual orientation, national origin, ancestry, citizenship status, marital status, unfavorable military discharge, military status, or physical, mental or perceived handicap.

7) Client intake policies and procedures shall be set forth in writing and be available for review by the Administrator to verify that the agency's services are being provided to the population described in the grant application.

8) Grantees shall comply with the mandatory reporting requirements of the Abused and Neglected Child Reporting Act [325 ILCS 5] and the Elder Abuse and Neglect Act [320 ILCS 20].

9) A private non-profit agency seeking funding under the Violent Crime Victims Assistance Act shall provide for administration and management of its program by an executive appointed by its Board of Directors.

b) Staffing Requirements

1) A program shall use paid staff for administrative functions, fiscal management, therapy, long-term counseling and training.

2) Grantees shall not discriminate in the hiring or promotion of staff based on race, color, national religion, sex, sexual orientation, national origin, ancestry, citizenship status, age, marital status, unfavorable military discharge, military status, or physical, mental or perceived handicap.

3) Personnel policies shall be set forth in writing and demonstrate compliance with equal employment and drug free workplace requirements.

4) A program should use volunteers and student interns in every aspect of service delivery possible, provided that they are supervised by a staff member with experience in the type of service the volunteer is providing and receive ongoing training.

5) Training procedures for volunteers and student interns shall be set forth in writing.
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6) Grantees shall maintain time and attendance records for positions funded by the Grant Agreement on a form prescribed by the Administrator. The records shall reflect the dates and hours the services specified in the Grant Agreement are provided and must be signed by funded staff and a supervisor.

c) Technical Assistance
Agencies may contact the Office of the Attorney General, Violent Crimes Victims Assistance Program for technical assistance in relation to developing, maintaining or expanding services to victims and witnesses.

SUBPART B: SPECIFIC PROGRAMS FOR VICTIM POPULATIONS

Section 1100.100 Victim/Witness Programs

a) Target Populations
Programs shall aid violent crime victims and witnesses in their contacts with the criminal justice system and with problems resulting from their victimization.

b) Mandatory Services for all Victim/Witness Programs
In addition to providing the services set forth in Section 1100.70(a)(3), programs intending to apply for funding to serve all types of violent crime victims and witnesses must:

1) Provide information to victims and witnesses periodically throughout the case investigation, arrest, charging procedures and court process.

2) Provide supportive listening, court advocacy and issue counseling to victims and witnesses in all cases upon request of the victim or witness.

3) Coordinate its services with other community resources in order to promote the effectiveness of assistance to crime victims.

c) Additional Mandatory Services for Programs in Prosecution Offices
Programs in prosecution offices, in addition to the mandatory services set forth in subsection (b), must:

1) Provide for notification of victims and witnesses in advance of court dates to minimize inconvenience and unnecessary court appearances whenever
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possible. A program should utilize an on-call system for victims and witnesses.

2) Establish procedures to aid violent crime victims in the prompt return of their property.

3) Provide information to a crime victim to assist in preparing a victim impact statement as provided in Section 6 of the Rights of Crime Victims and Witnesses Act.

4) Provide employer and school intervention services relating to loss of time from work or school due to court appearances or victim recovery.

d) Recommended Services

The following list is intended to serve as recommendations for the development of a comprehensive victim and witness program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. For a victim and witness program to comprehensively address the needs of crime victims and witnesses, however, these service elements should be provided in addition to the required services:

1) Staff to respond to crime scenes and provide intervention and support for victims and witnesses.

2) Bilingual services; interpretive services for those who have a speech, sight or hearing disability; and promotion of culturally competent responses to victims and witnesses.

3) Special efforts to reduce the burdens that prevent victims and witnesses from participating in the criminal justice system. Appropriate services may include, but need not be limited to, transportation, language interpretation, secure waiting areas, child care, lodging arrangements for out-of-town witnesses and parking.

4) Training to individuals who have direct contact with a victim in order to increase their sensitivity and effectiveness in relation to the consequences of victimization and the problems of victim recovery.

5) Public education to increase public awareness of the problems of crime
victims in order to improve the relationship between victims and the criminal justice system.

Section 1100.110 Sexual Assault Programs

a) Target Population
Programs shall provide direct services to persons victimized by sexual assault, their families and significant others, and witnesses. (For the purposes of this Section, "significant others" shall mean those persons who the victim perceives to be close to the victim and who have been affected by the crime.)

b) Mandatory Services
In addition to providing the services listed in Section 1100.70(a)(3), programs intending to apply for funding to serve victims of sexual assault must:

1) Make available a 24-hour crisis intervention hotline to victims to provide information, referral, crisis intervention and support. Direct response is preferred but not required.

2) Provide advocacy at both a personal and system level to assist in the proper care and treatment of victims of sexual assault, affected family members and significant others during medical, police or criminal justice proceedings.

3) Provide 24-hour medical advocacy.

4) Provide individual issue counseling for victims, affected family members and significant others as appropriate. Any professional providing counseling should have specialized training in the dynamics and treatment of sexual assault and sexual abuse.

5) Provide referrals to appropriate resources within the community to meet the specific needs of the victim, affected family members and significant others.

6) Provide follow-up services, upon request, to the individual, affected family members and significant others.

c) Recommended Services
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The following list is intended to serve as recommendations for the development of a comprehensive sexual assault program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. For a sexual assault program to comprehensively address the needs of victims of sexual assault, their families and significant others, crime victims and witnesses, these service elements should be provided in addition to the required services.

1) Therapy for child and adult victims, which should be provided by trained licensed professionals such as social workers, clinical psychologists and psychiatrists who have received specialized training in the dynamics and treatment of sexual assault and sexual abuse.

2) Group counseling and support sessions on both formal and informal levels. Counseling should be accessible to both recently and previously traumatized victims, affected family members and significant others.

3) In-service training programs for professionals, staff, volunteers and student interns who may be working with, or who may come in contact with, victims of sexual assault, affected family members or significant others.

4) Provision of educational materials to the general public regarding the personal and societal consequences of sexual assault and abuse, prevention and protective techniques, and program services available for victims, affected family members and significant others.

5) Assistance to victims in obtaining necessary transportation to secure services and assistance.

6) Direct and indirect provision of clothing or emergency funds to sexual assault victims to meet immediate needs.

7) Employer and school intervention services relating to loss of time from work or school due to victim recovery.

8) Bilingual services; interpretive services for those who have a speech, sight or hearing disability; and promotion of culturally competent responses to victims and witnesses.
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Section 1100.120 Domestic Violence Programs

a) Target Population
Programs shall provide direct service to victims of domestic violence, their non-offending family members, and witnesses.

b) Mandatory Services
In addition to providing the services in Section 1100.70(a)(3), programs intending to apply for funding to serve victims of domestic violence, their families and witnesses must:

1) Make available a 24-hour crisis intervention hotline to victims to provide information, referral, crisis intervention and support. Direct response is preferred but not required.

2) Provide in-person issue counseling of victims, family members and witnesses.

3) Provide advocacy at both a personal and system level to facilitate access to, and proper treatment by, other agencies and systems affecting victims of domestic violence, such as law enforcement, the medical community, social services, the courts and governmental agencies.

4) Provide safe shelter whenever it is feasible to do so.

5) Provide referrals to the appropriate sources within the community to meet the specific needs of the victim. When possible, programs should provide assistance in the areas of education and job training for victims.

6) Provide group counseling and support sessions on both a formal and an informal level in order to provide an opportunity for victims and their families to share experiences and knowledge as they deal with their current situations.

7) Provide follow-up services to victims and family members in a manner appropriate to their needs and life situations.

c) Recommended Services
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The following list is intended to serve as recommendations for the development of a comprehensive domestic violence program. Not all programs will be able to provide all of the listed services, and some may be able to provide services in addition to those listed. For a domestic violence program to comprehensively address the needs of victims of domestic violence, their families and witnesses, these service elements should be provided in addition to the required services.

1) Assistance to victims in obtaining transportation necessary to secure services and assistance.

2) Ongoing efforts to inform both victims and the public about the causes and consequences of domestic violence.

3) Address the trauma experienced by children who live or have lived in a violent domestic environment. Qualified professionals should be utilized whether through the agency itself or by referral.

4) Direct and indirect assistance to victims who are unable to escape a violent environment due to immediate lack of funds or short-term material needs.

5) Training to others who may come into contact with domestic violence victims and their families.

6) Employer and school intervention services relating to loss of time from work or school due to victim recovery.

7) Bilingual services; interpretive services for those who have a speech, sight or hearing disability; and promotion of culturally competent responses to victims and witnesses.

Section 1100.122  Child Sexual Assault/Child Abuse Programs

a) Target Population
Programs shall provide direct services to child and adolescent victims of sexual assault and abuse, as well as to non-offending parents and siblings.

b) Accreditation
A Children's Advocacy Center program should be accredited by or actively engaged in the accreditation process of the National Children's Alliance.
c) Mandatory Services
In addition to providing the services in Section 1100.70(a)(3), programs intending to apply for funding to serve child sexual abuse/assault victims and their non-offending parents and siblings must:

1) Provide crisis phone counseling for adolescent victims and for non-offending parents of victims.

2) Ensure that forensic interviews are conducted in a neutral, fact-finding manner representing a multidisciplinary approach to avoid duplicative interviews.

3) On behalf of non-offending parents and children, advocate with law enforcement, medical providers, the judiciary, educational institutions, Department of Children and Family Services, Department of Healthcare and Family Services, and other government agencies and social service systems.

4) Provide information and referral services for victims and non-offending parents and siblings to appropriate resources within the community to meet their specific needs.

5) Network with other community agencies and participate in coalitions and community groups providing related services to children in order to promote the development of a more effective comprehensive response to the needs of victims and their families.

d) Recommended Services
The following list is intended to serve as recommendations for the development of a comprehensive child sexual assault/abuse program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. For a child sexual assault/sexual abuse program to comprehensively address the needs of child victims and their non-offending parents and siblings, these service elements should be provided in addition to the required services.

1) Individual, in-office counseling for child/adolescent victims in a safe, child appropriate setting.
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2) Individual, in-office counseling for non-offending parents and foster/custodial parents in order to ensure the most comprehensive services for the child.

3) Joint in-office counseling for non-offending parents and children when indicated.

4) Group counseling, when appropriate, for both children and non-offending parents.

5) Public education by making available to the general public information on the victimization of children and the effects of violence on their lives, as well as program services.

6) Professional training on treatment and clinical interventions for community service agencies, hospitals, mental health centers and other social service providers in order to increase their sensitivity and their effectiveness in relation to the consequences of child victimization and recovery.

7) Employer and school intervention services relating to loss of time from work or school due to victim recovery.

8) Bilingual services; interpretive services for those who have a speech, sight or hearing disability; and promotion of culturally competent responses to child victims and non-offending parents.

e) Personnel
All staff should participate in a structured training program that addresses the issues of child sexual assault/child abuse. Direct service staff dealing with children shall have, at minimum, an M.A. in social work, counseling or a related field.

Section 1100.124 Senior Victim Programs

a) Target Population
Programs or agencies shall provide services to senior citizens who are victims of crime.
b) Mandatory Services
In addition to providing the services in Section 1100.70(a)(3), programs intending to apply for funding to serve senior victims of crime must:

1) Provide individual assessments to evaluate victim needs and work with the victim to develop a care plan to address those needs.

2) Provide crisis intervention services appropriate to the victim's needs and abilities.

3) Provide information on the criminal justice system, as well as assistance with pursuing legal options.

4) Provide individual and family supportive counseling when needed.

5) Educate victims about community services that are available for seniors.

6) Participate in multi-disciplinary teams and other community groups and organizations dealing with senior issues.

7) Provide social service, medical and legal advocacy when requested.

c) Recommended Services
The following list is intended to serve as recommendations for the development of a comprehensive senior victims program. Not all programs will be able to provide all of the listed services, and some programs may be able to provide services in addition to those listed. For a senior victims program to comprehensively address the needs of senior victims, these service elements should be provided in addition to the required services:

1) Assistance in obtaining suitable transportation to necessary services and resources.

2) In-service training programs for professionals, staff, volunteers and student interns who may work with or come in contact with senior victims in order to sensitize them to the specific needs and problems faced by seniors.
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3) Assistance in meeting immediate material or safety needs of victims.

4) Public education to the senior population of the community by disseminating information on crime prevention, safety issues and victimization.

5) Employer and school intervention services relating to loss of time from work or school due to victim recovery.

6) Bilingual services; interpretive services for those who have a speech, sight or hearing disability; and promotion of culturally competent responses to victims and witnesses.

d) Personnel
Direct services should be provided by trained staff, with qualifications being set appropriate to the services provided.

Section 1100.130 Programming for Other Victim Populations

Agencies may apply for funding for programs serving other victim populations. Program descriptions for other categories of victim populations, such as families of homicide victims, disabled victims and drunk driving victims are not detailed in this Part. Specific programs tailored to meet these needs will be evaluated on an individual basis using Section 1100.50. The Administrator will give such applicants equal consideration in the selection of agencies to be funded.

SUBPART C: FISCAL AND MONITORING REQUIREMENTS

Section 1100.200 Accounting Requirements

a) All accounting entries of a Grantee must be supported by appropriate source documents, recorded in books of original entry, and posted to a general ledger on a monthly basis.

b) Expenses paid with grant funds are to be identified to specific services funded by the grant. All other expenses not funded by the Administrator may be booked in total.

c) Each Grantee shall maintain all fiscal records for five years after the end of each
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budget period. In instances involving unresolved issues arising from an audit, pending litigation or unresolved tax issues, records related to the unresolved issues must be at least retained until the issues are resolved.

Section 1100.210 Allowable and Non-allowable Expenses

The Administrator provides funds for services offered by public and non-profit agencies as specified in this Section but will not be the sole funding source for any Grantee. The Administrator will only provide funds to programs for the purpose of funding certain items of expense as set forth in this Section.

a) The following expenditures are the only allowable expenses for which grant funds may be used:

1) Salaries and fringe benefits for Grantee employees;
2) Contractual services;
3) Equipment that is rented or leased for program use;
4) General office expenses;
5) Travel expenses and transportation costs for staff and clients;
6) Printed or promotional materials used for informational purposes or to publicize the program. All printed materials paid for, in whole or part, with funds provided pursuant to the Grant Agreement shall include a statement that they were printed with support from the Illinois Attorney General's Office and that the views and statements expressed in those materials do not necessarily reflect the views and opinions of the Attorney General of the State of Illinois.

b) In particular, the following expenditures are among those for which grant funds may not be used, notwithstanding the potential applicability of subsection (a):

1) The expenses of researching issues and programs and collecting statistics;
2) Compensation to an agency board member other than payment of fair value for services rendered to the agency in a capacity other than board
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3) Individual or agency association dues or costs of attending professional meetings;

4) The use, or reimbursement for use, of agency- or privately-owned automotive equipment by staff for personal business or non-work-related transportation;

5) The expenses of fund-raising activities;

6) Entertainment and meal expenses;

7) Donations of cash or in-kind services to charities, other organizations and individuals;

8) The repayment of any of the principal amount of, and the payment of interest on, any loan;

9) Lease-purchase agreements for items of equipment;

10) The cost of office space or other buildings;

11) The cost of developing supply inventories;

12) Any expense incurred by a Grantee for the sale of goods or services;

13) Reimbursement of expenses that have been funded by a grant from another funding source;

14) Contributions to a contingency reserve or any similar provision for unforeseen events.

Section 1100.218 Interest

a) Interest income earned from award funds shall be used for expenses that further the provision of direct services to clients, consistent with the provision of service stated in the Grant Agreement. These expenses shall not exceed $500 in any fiscal year. Interest income earned in excess of $500 shall be returned to the
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 Administrator with the next quarterly report.

b) Interest income earned from award funds and expenses paid from that interest income shall be reported on quarterly reports as separate items from other expenses against the grant award.

c) In addition to the allowable expenses listed in Section 1100.210(a), interest income may be used to pay interest expenses on borrowed funds used to purchase land, buildings and/or equipment that are required to provide direct services to clients or are related to client services. The items purchased must actually be in use.

Section 1100.220 Audits

a) Each Grantee agency shall have an annual audit of its financial statements performed at the close of its fiscal year by an independent certified public accountant licensed by the State of Illinois. The report shall contain the basic financial statements presenting the financial position of the agency, the results of its operations, and changes in fund balances. The report shall also contain the auditor's opinion regarding the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed. If the auditor expresses a qualified opinion, a disclaimer of opinion, or an adverse opinion, the reason must be stated.

b) Audit Report and Management Letter

1) Private not-for-profit agencies must submit a copy of their most recently completed audit and management letter with the grant application.

2) Governmental entities must have on site a copy of their most recently completed audit for review by the Administrator during site visits.

3) Agencies with a total budget of under $300,000, or who have been in operation less than a year at the time of filing a grant application, may request an exemption to the audit requirement, but must submit a financial statement detailing revenue sources and expenses.

Section 1100.230 Grant Agreement
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a) The Grant Agreement serves as the formal statement of mutual expectations between the Administrator and the Grantee, and shall be drafted by the Administrator. The Grant Agreement is a combination service plan and budget. It identifies what services will be provided or procured, to what target population, and within what geographical area.

b) The Grant Agreement shall contain the certification and information required by the Illinois Grant Funds Recovery Act [30 ILCS 705].

c) The term of the agreement shall be July 1 to June 30, unless a different term is specified in the Grant Agreement and unless sooner terminated as provided in Section 1100.250. Payments under the Grant Agreement will be made quarterly.

d) Those sections of the Grantee's proposal that the Administrator has accepted shall be incorporated into the Grant Agreement.

e) Modification of Program
The Grantee shall not change, modify, revise, alter, amend or delete any part of the services it has agreed to provide in the Grant Agreement without first obtaining written consent for the change, modification, revision, alteration, amendment, deletion or extension from the Administrator in the form of a Supplemental Agreement.

1) When the Grantee has, in good faith, attempted to comply with the provisions of the Grant Agreement, but, for unforeseen circumstances, was not able to comply with the Grant Agreement, the Administrator will consider a Supplemental Agreement.

2) Procedures for a Supplemental Agreement
A) The Grantee shall submit to the Administrator the following:

   i) A written explanation of the circumstances detailing the good faith attempts to comply with the service provisions in the Grant Agreement;

   ii) A proposed solution; and

   iii) A request for a Supplemental Agreement.
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B) The Administrator will grant the request if the request is consistent with the original intent of the grant award and services to victims and witnesses, and the grant funds expenditure is allowable under Section 1100.210(a).

C) The Administrator will prepare a Supplemental Agreement to be signed by both parties if:
   
   i) The Administrator approves the Grantee's request and proposed solution;
   
   ii) The Administrator proposes its own solution that is acceptable to the Grantee; or
   
   iii) The parties agree on a solution.

D) The Administrator will notify the Grantee in writing of the denial of a request for modification of the program.

1) The Grantee has the responsibility to identify instances when funds cannot be expended in accordance with the Grant Agreement budget and to seek reallocation of those funds prior to the expiration of the Grant Agreement.

2) The Grantee must utilize one of the following options in order to reallocate funds.

A) The Grantee may reallocate amounts less than $1,000 of the grant funds to existing line items in the approved budget in the Grant Agreement. The Grantee must submit information relating to the reallocation on a form prescribed by the Administrator.

B) If the Grantee wishes to reallocate amounts less than $1,000 of the grant funds to an expense that creates a new line item in the approved budget, the Grantee must submit to the Administrator a written request and explanation for reallocation on a form
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prescribed by the Administrator.

C) If the Grantee wishes to reallocate amounts of $1,000 or more of grant funds, the Grantee must submit to the Administrator a written request and explanation for the reallocation on a form prescribed by the Administrator.

D) The Administrator will grant a reallocation of funds when it determines that funds will be used for allowable expenses consistent with the funded services.

E) The Administrator shall inform the Grantee of its decision within 30 days after receipt of a request.

Section 1110.240 Payment

a) The Administrator shall complete the processing for payment of 25 percent of the grant award within 45 days after the beginning of the grant term or the execution of the Grant Agreement, whichever is later. The remaining balance of the award shall be processed in three equal installments within 30 days after the end of each of the first three quarters. Payments are subject to the continued availability of appropriated funds.

b) A payment shall be delayed if:

1) The Grantee has not complied with reporting requirements;

2) The Administrator is investigating possible misstatements in the Grantee's reports or application;

3) The Grantee has failed to obtain approval for modification of services or for reallocation of funds;

4) The Grantee becomes non-compliant with the Charitable Trust Act or the Solicitation for Charity Act; or

5) The Grantee has failed to timely submit lapsed funds from a prior grant.

Section 1110.250 Termination of Grant Agreement
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a) The Administrator may terminate the Grant Agreement for good cause, which includes, but is not limited to:

1) Failure to timely submit reports to the Administrator, as required by Section 1100.270;

2) Failure to provide the services specified in the Grant Agreement;

3) Material misrepresentations or misstatements in a grant application or required reports;

4) Failure to comply with accounting or record-keeping requirements;

5) Non-compliance with the Charitable Trust Act or the Solicitation for Charity Act;

6) Use of funding for staff that does not meet the qualifications for the funded positions; and

7) Misappropriation of grant funds.

b) The Administrator will send written notification of the termination of a Grant Agreement to the Grantee 30 days prior to the termination date. The notice shall detail the reasons for termination and the procedure for the repayment of unexpended funds or monies due the Administrator.

c) Failure to comply with the procedures prescribed for repayment of funds due to cancellation of the Grant Agreement will result in the invocation of the provisions of the Illinois Grant Funds Recovery Act.

d) The Grantee may terminate the Grant Agreement by providing written notice to the Administrator. The Grantee will comply with the procedures prescribed for repayment of funds set forth in the Illinois Grant Funds Recovery Act.

Section 1100.260 Lapsed Funds

a) Grant funds not expended or legally obligated by the end of the Grant Agreement are considered lapsed and must be returned within 45 days following the end of
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the Grant Agreement, as required by the Grant Funds Recovery Act.

b) The Grantee shall identify the amount of lapsed funds in the final report submitted to the Administrator.

c) The Administrator shall verify the amount of lapsed funds and notify the Grantee in writing if there is a dispute within 40 days after the end of the grant period.

d) If the Grantee fails to timely return the lapsed funds, the Administrator shall institute proceedings to recover the funds in accordance with the Grant Funds Recovery Act.

Section 1100.270 Quarterly and Staff Reporting Forms

a) A Grantee shall submit to the Administrator financial and activity reports every three months, covering the previous three-month period, on forms provided by the Administrator.

1) The financial report form shall provide a detailed statement of costs and expenditures, fiscal summary, names of funded staff persons, requested revisions and adjustments.

2) The activity report form shall detail clients served, services provided and revisions, if any, of timetables and activities to reflect the current program status and future activity.

3) All reporting forms must be received by the Administrator no later than 15 days following the end of the reporting period. The method of delivery shall be specified by the Administrator.

4) The Administrator may grant extensions of up to 2 weeks for good cause (e.g., inability to complete report due to unavailability of responsible staff as a result of illness or personal or business emergency or due to calamity, natural disaster or weather event). The Administrator will provide written confirmation of any extension. The written confirmation shall be attached to the reporting forms when submitted.

b) Funded Staff Reporting
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1) A Grantee shall submit to the Administrator the resume of any funded staff no later than October 15 of the funded year.

2) If, for any reason, a Grantee finds it necessary or desirable to substitute, add or subtract personnel to perform its services under the Grant Agreement, the Grantee shall submit a written notice to Administrator. The notice must be on a form prescribed by the Administrator and must include the name of any substituted or additional personnel, together with the person's resume and the reason for the change. Any substitutions or additional personnel must meet the qualifications of the written job description on file with the current application.

Section 1100.280 On-Site Visits and Inspection of Records and Policies

a) The Administrator may conduct random or for-cause on-site visits of a Grantee's program.

b) The Grantee shall make available, and the Administrator may inspect, all financial records, audits, time and attendance records of funded staff, client contact records, and case records in connection with funded programs.

c) The Grantee shall make available, and the Administrator may inspect, policies and procedures specified in Section 1100.70.

d) In making case records available, the Grantee shall insure the confidentiality of each client pursuant to the Grantee's confidentiality standards.

SUBPART D: SPECIAL PROJECT FUNDING

Section 1100.300 Special Projects

The Administrator may award funds for special projects.

a) Special projects must serve to implement an eligible service as defined in Section 8 of the Violent Crime Victims Assistance Act. Examples are the translation of educational materials from English to another language and regional or local training.

b) A special project shall not be an ongoing service.
c) A special project shall be of a specific duration and have a specific goal. When this goal is accomplished, the special project is completed.

Section 1100.310 Eligible Agencies

Any eligible agency, as defined in Section 1100.20, may apply for special project funding under this Section, either separately or in addition to funding for programs described in Subparts A and B.

Section 1100.320 Special Project Grant Application Requirements

a) Applicants must submit a grant application for a special project on a form prepared by the Administrator.

b) The special project grant application form shall include the following information:

1) The information required under the Illinois Grant Funds Recovery Act;
2) Details of the target population;
3) Descriptions of the services to be provided;
4) Descriptions of the materials to be produced or utilized;
5) Goals;
6) Proposed agendas;
7) Anticipated time frames;
8) Income documentation as required by Section 1100.200(a);
9) The agency's Charitable Trust number, or a statement that the agency is exempt;
10) If a not-for-profit agency, a copy of its most recent financial audit and management letter as required by Section 1100.220; and
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11) The signature of the authorized official of the agency.

c) The Administrator will verify an applicant's Charitable Trust number or exempt status.

Section 1100.330 Funding Priorities

The Administrator shall consider the following factors in determining which applicants shall receive funding:

a) Stated goals of applicants as contained in the grant application;

b) Commitment and ability to provide the services described;

c) Number of persons to be served;

d) Demonstrated need for the project;

e) The extent to which the project serves victims and witnesses directly.

Section 1100.340 Grant Agreements

a) The Grant Agreement serves as the formal statement of mutual expectations between the Administrator and the Grantee and shall be drafted by the Administrator.

b) The Grant Agreement shall contain the certification and information required by the Illinois Grant Funds Recovery Act.

c) The term of the agreement shall be specified, but will not span fiscal years.

d) Payment terms will be specified. Grant Agreements and payments are subject to the continued availability of appropriated funds.

e) Grant funds not expended or legally obligated by the end of the Grant Agreement are considered lapsed and must be returned within 45 days following the end of the Grant Agreement, as required by the Grant Funds Recovery Act. If the Grantee fails to timely return the lapsed funds, the Administrator shall institute proceedings to recover the funds in accordance with the Grant Funds Recovery Act.
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Act.

Section 1100.350  Fiscal and Monitoring

The fiscal and monitoring provisions set forth in Subpart C apply to grants for special projects, unless otherwise provided in the Grant Agreement.
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1) Heading of the Part: Government Contracts, Procurement and Property Management

2) Code Citation: 44 Ill. Adm. Code Part 500

3) Section Numbers: Proposed Action:
500.40 Amendment
500.60 Amendment
500.70 Amendment
500.230 Amendment
500.260 New
500.300 Amendment
500.310 Amendment
500.320 Amendment
500.330 Amendment
500.340 Amendment
500.350 Amendment
500.360 Amendment
500.370 Amendment
500.380 Amendment
500.390 Amendment
500.395 New
500.410 Amendment
500.420 Amendment
500.430 Amendment
500.600 Amendment
500.700 Amendment
500.800 Amendment
500.900 Amendment
500.910 Amendment
500.1010 Amendment
500.1015 New
500.1030 Amendment
500.1110 Amendment
500.1130 Amendment
500.1140 Amendment
500.1145 New
500.1148 New
500.1160 Amendment
500.1170 Amendment
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500.1180 Amendment
500.1190 Amendment
500.1195 New
500.1197 New
500.1199 New
500.1200 Amendment
500.1210 Amendment
500.1215 New
500.1217 New
500.1218 New
500.1220 Amendment
500.1235 New
500.1238 New
500.1240 Amendment
500.1250 Amendment
500.1265 New
500.1267 New
500.1275 New
500.1285 New
500.1300 Amendment
500.1320 Amendment
500.1330 Amendment
500.1500 Amendment
500.1540 Amendment

4) **Statutory Authority**: Implementing and authorized by Section 1-30(b) of the Illinois Procurement Code [30 ILCS 500/1-30(b)] and Section 2-12 of the Illinois State Auditing Act [30 ILCS 5/2-12]

5) **A Complete Description of the Subjects and Issues Involved**: The Auditor General's procurement rules need to be updated to address changes in the Illinois Procurement Code, including Public Acts 96-795, 96-920 and 96-1444. Significant changes include: requiring all contract awards to be posted on the Auditor General Procurement Bulletin; requiring hearings for extensions to emergency purchases and for sole source contracts; strengthening requirements for contractors and subcontractors; requiring report of procurement communications; and making changes in contractor and subcontractor conflict of interest disclosures, financial disclosures and certifications.
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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

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

11) Statement of Statewide Policy Objective: This rulemaking does not affect or create or expand a State mandate under the State Mandates Act.

12) Time, Place and Manner in which interested persons may comment on this proposal:

   Rebecca Patton
   Office of the Auditor General
   740 E. Ash St.
   Springfield IL  62703

   Telephone: 217/782-6698 or 888/261-2887 (TTY)

   All written comments filed within 45 days after the date of publication of this Notice will be considered.

13) Initial Regulatory Flexibility Analysis:

   A) Types of small businesses, small municipalities and not for profit corporations affected: Small businesses doing business with or seeking to do business with the Auditor General's Office would be affected.

   B) Reporting, bookkeeping or other procedures required for compliance: Small businesses having contracts with the Auditor General's Office are required to provide certain conflict of interest disclosures, financial interest disclosures and certifications.

   C) Types of professional skills necessary for compliance: None
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13) Regulatory Agenda in which this rulemaking was summarized: January 2010

The full text of the Proposed Amendments begins on the next page:
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NOTICE OF PROPOSED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER I: AUDITOR GENERAL

PART 500
PURCHASES AND CONTRACTS

SUBPART A: GENERAL

Section
500.10 Title
500.20 Policy
500.30 Application
500.40 Definition of Terms Used in This Part
500.50 Property Rights
500.60 Department of Central Management Services
500.70 Capital Development Board

SUBPART B: PROCUREMENT AUTHORITY

Section
500.100 Conduct of Procurements
500.110 Small Business Specialist

SUBPART C: PUBLICIZING PROCUREMENT ACTIONS

Section
500.200 Auditor General Volume of Illinois Procurement Bulletin
500.210 Publication of Auditor General Bulletin
500.220 Required Use of Auditor General Bulletin
500.230 Supplemental Notice
500.240 Error in Notice
500.250 Direct Solicitation
500.260 Retention of Bulletin Information

SUBPART D: SOURCE SELECTION AND CONTRACT FORMATION

Section
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500.300  General Provisions
500.310  Competitive Sealed Bidding
500.315  Multi-Step Sealed Bidding
500.320  Competitive Sealed Proposals
500.330  Small Purchases
500.340  Sole Economically Feasible Source Procurement
500.350  Emergency Procurements
500.360  Other Methods of Source Selection
500.370  Tie Bids and Proposals
500.380  Mistakes
500.390  Cancellation of Solicitations; Rejection of Offers

500.395  Public Procurement File

SUBPART E: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section
500.400  Suppliers
500.410  Vendor List/Required Use
500.420  Prequalification
500.430  Responsibility

SUBPART F: BID, PROPOSAL AND PERFORMANCE SECURITY

Section
500.500  Security Requirements

SUBPART G: SPECIFICATIONS

Section
500.600  Specifications

SUBPART H: CONTRACT TYPE

Section
500.700  Types of Contracts

SUBPART I: DURATION OF CONTRACTS

Section
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500.800 Duration of Contracts

SUBPART J: CONTRACT MATTERS

Section
500.900 Prevailing Wage
500.910 Filing with Comptroller
500.920 Equal Employment Opportunity; Affirmative Action

SUBPART K: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

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500.1000 Applicability
500.1010 Method of Source Selection
500.1015 Historic Area Preference
500.1020 Request for Information
500.1030 Lease Requirements
500.1040 Purchase Option
500.1050 Rent Without Occupancy
500.1060 Local Site Preferences

SUBPART L: PREFERENCES

Section
500.1110 Resident Vendor Preference
500.1120 Soybean Oil-based Ink
500.1130 Recycled Supplies
500.1140 Recyclable Supplies
500.1145 Environmentally Preferable Procurement
500.1148 Biobased Products
500.1150 Correctional Industries
500.1160 Qualified Not-for-Profit Agencies for Persons with Severe Disabilities
500.1170 Gas Mileage
500.1180 Small Business
500.1190 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities
500.1195 Illinois Agricultural Products
500.1197 Corn-based Plastics
NOTICE OF PROPOSED AMENDMENTS

SUBPART M: ETHICS

Section
500.1200 Bribery
500.1210 Felons
500.1215 Prohibited Bidders and Contractors
500.1217 Debt Delinquency
500.1218 Collection and Remittance of Illinois Use Tax
500.1220 Conflicts of Interest
500.1230 Negotiations for Future Employment
500.1235 Environmental Protection Act Violations
500.1238 Lead Poisoning Prevention Act Violations
500.1240 Revolving Door Prohibition
500.1250 Disclosure of Financial Interests and Potential Conflicts of Interest
500.1260 Reporting Anticompetitive Practices
500.1265 Disclosure of Business in Iran
500.1270 Confidentiality
500.1275 Procurement Communications Reporting Requirement
500.1280 Insider Information
500.1285 Continuing Disclosure; False Certification
500.1290 Other Violations

SUBPART N: PROTESTS AND REMEDIES

Section
500.1300 Suspension
500.1310 Resolution of Contract Controversies
500.1320 Violation of Law or Rule
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SUBPART O: GOVERNMENTAL JOINT PURCHASING

Section
500.1400 General
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SUBPART P: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section
500.1500 Severability
500.1510 Finality of Determinations
500.1520 Government Furnished Property
500.1530 Inspections
500.1540 Records and Audits
500.1550 No Waiver of Sovereign Immunity

AUTHORITY: Implementing and authorized by Section 1-30(b) of the Illinois Procurement Code [30 ILCS 500/1-30(b)] and Section 2-12 of the Illinois State Auditing Act [30 ILCS 5/2-12].


SUBPART A: GENERAL

Section 500.40 Definition of Terms Used in This Part

As used throughout this Part, each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

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

"Bidder" – The person or entity submitting a bid.

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

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

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

"Contract" – A contract may be in written or oral form. The term contract as used in this Part does not include supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission. The term contract includes, but is not limited to, purchase, installment purchase, lease and rental contracts, and includes renegotiated contracts, amendments to contracts and change orders.

"Contractor" or "Vendor" – The terms contractor and vendor are used interchangeably for purposes of this Part. When appropriate, the term "vendor" shall also include subcontractors.

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

"Invitation for Bids" or "IFB" – The process by which the OAG requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids.

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

"OAG" – The Office of the Auditor General.

"Offer" – A bid, proposal or response solicited by the OAG.

"Offeror" – The person or entity submitting a bid, proposal or response solicited by the OAG. A person or entity (other than an individual acting as a sole proprietor) may qualify as a bidder or offeror only if the person or entity is a legal entity authorized to do business in Illinois prior to submitting the bid, offer or
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"Proposal" – One or more OAG employees who serve at the direction of the Chief Procurement Officer of the OAG (CPO) and are responsible for conducting OAG procurement activity.

"Proposal" – The response to a Request for Proposals.

"Proposer" – The person or entity submitting a proposal.

"Qualified Products List" – An approved list of supplies described by model or catalog numbers that, prior to competitive solicitation, the OAG has determined will meet the applicable specification requirements.

"Request for Information" or "RFI" – The process by which the OAG requests information from offerors for OAG contracts for leases of real property or capital improvements.

"Request for Proposals" or "RFP" – The process by which the OAG requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals.

"Respondent" – The person or entity submitting a response to a Request for Information from the OAG.

"Response" – A response to a Request for Information.

"Responsible Offeror" – A person or entity that is capable in all respects of performing fully the contract requirements and has the integrity and reliability that will assure good faith performance. A responsible bidder or offeror shall not include a business or other entity that does not exist as a legal entity at the time a bid, proposal or offer is submitted for a State contract.

"Responsive Offeror" – A person or entity that has submitted an offer conforming in all material respects to the solicitation.

"Service" – The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance and the financing thereof.
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"Solicitation" – An Invitation for Bids, Request for Proposals or Request for Information.

"Specification" – Any description of the physical, functional, or performance characteristics, or of the nature of a supply, service or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

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

"Subcontract" – A contract between a person and another person who has or is seeking a State contract, pursuant to which the subcontractor provides to the contractor or another subcontractor some or all of the goods, services, property, remuneration or other forms of consideration that are the subject of the primary contract and includes, among other things, subleases from a lessee of a State agency.

"Subcontractor" – A person or entity that enters into a contractual agreement with another person or entity who has or is seeking a State contract pursuant to which the person or entity provides some or all of the goods, services, property, remuneration or other forms of consideration that are the subject of the primary State contract, including subleases from a lessee of a State contract.

"Supplies" – All personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 500.60 Department of Central Management Services

a) To the extent practicable and available, the OAG may obtain the following goods and services from or through CMS or another State agency with appropriate procurement authority without soliciting independent bids, proposals or responses:
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1) employee benefits authorized under the State Employees Group Insurance Act or other law;

2) financing of any procurement;

3) paper, stationery and envelopes, and any other goods or services available from the Paper and Printing Warehouse;

4) postage stamps;

5) property, casualty, liability and other insurance and bonds;

6) telecommunications equipment, services and software;

7) utilities;

8) vehicles and vehicle services, including fleet management and repairs;

9) electronic data processing services, including Central Computing Facility services;

10) leases of real estate and any capital improvements to leased real estate for OAG use; and

11) any other supplies and services, including those available through master, scheduled or open-ended contracts established by CMS or another State agency with appropriate procurement authority.

b) The CPO may submit purchase requests to CMS or another State agency with appropriate procurement authority in accordance with applicable CMS rules.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.70 Capital Development Board

Any construction or construction-related professional and artistic services in excess of the small purchase threshold for construction $30,000 necessary for the OAG will be procured by the CPO of the Capital Development Board or by any other appropriate State agency CPO of CMS. Any request for such services will be submitted to the appropriate CPOCPO-CDB or CPO-CMS in
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accordance with applicable CDB or CMS rules. In the event of an emergency, the CPO may arrange for such construction as is necessary to protect the property and records of the OAG pending the making of arrangements with the appropriate State agency CPO, CDB or CMS.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

SUBPART C: PUBLICIZING PROCUREMENT ACTIONS

Section 500.230  Supplemental Notice

The OAG may place advertisements in the Official State Newspaper selected by CMS or other publications to supplement notice in the Auditor General Bulletin. In the event the Auditor General Bulletin cannot be published, the Official State Newspaper may be used as a substitute for the Auditor General Bulletin.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 500.260  Retention of Bulletin Information

Information published in the Auditor General Bulletin shall be retained in electronic or paper form for a period of one year after first publication.

(Source: Added at 35 Ill. Reg. _____, effective ____________)

SUBPART D: SOURCE SELECTION AND CONTRACT FORMATION

Section 500.300  General Provisions

a) Late Offers, Late Withdrawals and Late Modifications

1) Definition. Any bid, proposal, modification or withdrawal offer received after the time and date for receipt, or at other than the specified location, is late. An offer that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered, but the OAG shall not be responsible for ensuring such subsequent delivery. Any withdrawal or modification of an offer received after the time and date set for opening of offers, or at other than the specified location, is late.
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2) Treatment. No late offer, late modification, or late withdrawal will be considered unless the CPO, and not a designee, determines it would have been timely but for the action or inaction of OAG personnel directly serving the procurement activity (e.g., providing the wrong address).

3) Records. Records shall be made and, in accordance with OAG policy, kept for each late offer, late modification, or late withdrawal.

4) Other Submissions. Any other submission that has a time or date deadline shall be treated in the same manner as a late offer.

b) Extension of Time

1) The Procurement Officer may, prior to the date or time for submitting or modifying an offer, extend the date or time for the convenience of the OAG.

2) After opening offers, the Procurement Officer may request offerors who submitted timely offers to extend the time during which the OAG may accept the offers, provided that, with regard to bids, no other change is permitted. This extension does not provide an opportunity for others to submit offers.

c) Electronic and Facsimile Submissions

1) The solicitation may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the solicitation.

2) Electronic submissions will be opened in accordance with OAG electronic security measures in effect at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in unsealed form.

3) Fax submissions will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.
d) Intent to Submit
The solicitation may require that vendors submit, by a certain time and date, a notice of their intent to submit an offer in response to the solicitation. Offers submitted without complying with the notice of intent requirement may be rejected.

e) Only One Offer Received
If only one offer is received, an award may be made to the single offeror if the Procurement Officer finds that the price submitted is fair and reasonable, and that either other prospective offerors had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise:

1) new offers may be solicited, including under sole source (Section 500.340) or emergency (Section 500.350) procedures; or

2) the procurement may be canceled.

f) Alternate or Multiple Offers

1) Alternate offers may be accepted if:
   A) permitted by the solicitation and in accordance with instructions in the solicitation; or
   B) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with Section 500.340 (Sole Economically Feasible Source Procurement) of this Part; or
   C) the low offeror, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications.

2) Multiple offers may be accepted if:
   A) permitted by the solicitation and submitted in accordance with instructions in the solicitation; or
   B) only one vendor responded, then, one or more of the submissions may be evaluated, provided that, in the case of bids, only the
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lowest cost bid meeting specifications may be considered.

g) Multiple Items
A solicitation may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of all items.

h) "All or None" Offers
All or none offers may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.

i) Conditioning Offers Upon Other Awards
Any offer that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall:

1) be rejected unless the vendor removes the condition; or

2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other solicitation provided the agency need not delay procurement actions to accommodate the vendor's all or none condition.

j) Unsolicited Offers

1) Processing of Unsolicited Offers. The Procurement Officer may consider unsolicited offers.

2) Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the OAG.

3) Award. An award may not be made based on an unsolicited offer in place of the notice and competition requirements of this Part except if that unsolicited offer meets the requirements for a small (Section 500.330), sole source (Section 500.340), or emergency (Section 500.350) procurement.

k) Clarification of Offers
The Procurement Officer may request that a vendor clarify its offer as a part of
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the evaluation process. A vendor shall not be allowed to materially change its offer in response to a request for clarification. A clarification is not an opportunity to make changes or for submission of best and finals as authorized elsewhere in this Part.

1) Supplementary Purchases

1) Supplementary purchases will be permitted under the following conditions:

   When the OAG issues an award after following the sealed bid or sealed proposal procedure, it may, at any time within 90 days thereafter, issue additional purchase orders or contracts to the same contractor or amendments to the original purchase order or contract for an additional quantity at the same unit price and on the same terms and conditions, if:

   A) The contractor indicates that the additional purchase orders or contracts will be accepted if issued.

   B) The market price of the commodities, services, or equipment in question has not gone down since the original purchase.

   C) The amount of the additional purchases is not of such magnitude as to constitute a substantial or material variation from the first purchase order or contract.

2) Notices of supplementary purchases in excess of the small purchase limits shall be published in the next available Auditor General Bulletin.

1m) Assignment, Novation or Change of Name

1) Assignment. No OAG contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer, provided, however, that a vendor may assign money receivable under a contract after due notice to the OAG. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the OAG.

2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a
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novation agreement in which the transferor and the transferee agree that:

A) the transferee assumes all of the transferor's obligations;

B) the transferee meets all requirements for contracting with the OAG;

C) the transferor waives all rights under the contract as against the OAG; and

D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the OAG, furnish a satisfactory performance bond.

3) Change of Name. A vendor may submit a written request to change the name in which it holds a contract with the OAG. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.

m) Use of Source Selection Method that is Not Required
If a method of source selection is used that it is not, by law, required (e.g., use of a competitive sealed bid for a small purchase), strict compliance with the rules governing the method of source selection used is not required.

o) Vendor Signature
An offer submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the Procurement Officer within the time specified by that officer.

p) Stringing
Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited.

q) Confidential Data
Vendors must clearly identify in writing any information that is exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] and must request special handling of that material.

q) Notice of Subcontractor
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Any contract entered into under this Part shall state whether the services of a subcontractor will be used. The contract shall include the names and addresses of all subcontractors and the expected amount of money each will receive under the contract. If, at any time during the term of a contract, a contractor adds or changes any subcontractors, the contractor shall promptly notify, in writing, the Procurement Officer of the names and addresses and the expected amount of money each new or replaced subcontractor will receive. The contractor shall provide the Procurement Officer with a copy of any subcontract with an annual value of more than $25,000 within 20 days after the execution of the State contract or after execution of the subcontract, whichever is later.

r) Reverse Auction

1) Use. The CPO, or his or her designee, may procure supplies or services through a competitive electronic auction bidding process if the CPO determines that the use of such a process will be in the best interest of the State.

2) Process. An invitation for bids shall be issued and shall include a procurement description, all material contractual terms, whenever practical, and conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner. Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction, a bidder's price shall be disclosed to other bidders. Bidders shall have the opportunity to reduce their bid prices during the auction.

3) Notice. Public notice of the electronic auction bidding process shall be published in the Auditor General Bulletin at least 14 days before the date set for the opening of bids. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.

4) Award. The contract shall be awarded within 60 days after the auction by written notice to the lowest responsible bidder, or all bids shall be rejected. Extension of the date for award may be made by mutual written consent of the Procurement Officer and the lowest responsible bidder.
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5) Prohibition. This subsection (r) does not apply to procurements of professional and artistic services, telecommunications services, communication services or information services, or contracts for construction projects.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 500.310 Competitive Sealed Bidding

a) Application

Competitive sealed bidding is the required method of source selection except as allowed by this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

b) The Invitation for Bids

1) Use. The Invitation for Bids (IFB) is used to initiate a competitive sealed bid procurement.

2) Content. The IFB shall include, at a minimum, the following:

   A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, and the maximum time for bid acceptance;

   B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and

   C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

3) Incorporation by Reference. The IFB may incorporate documents by reference provided that the IFB specifies where such documents can be obtained.

c) Bidding Time

Bidding time is the period of time between the date of notice or distribution of the
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IFB and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is authorized by this Part.

d) Bidder Submissions
Bid Form. The IFB may include a form or format for submitting bids. If a form or format is specified, vendor shall submit bids as instructed.

e) Public Notice

1) Publication. Every new procurement for supplies and services in excess of the small purchase amount that must be procured using an IFB shall be publicized in the Auditor General Bulletin at least 14 days before the date set for bid opening.

2) Public Availability. A copy of the IFB shall be made available for public inspection.

3) Distribution. IFBs or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall, at a minimum, indicate where the IFB may be obtained, generally describe what is needed, and indicate the due date for bids. Where appropriate, the Procurement Officer may require payment of a fee or a deposit for supplying the IFB.

f) Pre-Bid Conference
Pre-bid conferences may be conducted to enhance understanding of the procurement requirements. The pre-bid conference shall be announced as part of the IFB or, if the IFB has been issued, to all prospective bidders known to have received an IFB. The conference may be designated as attendance mandatory or attendance optional. The conference should be held long enough after the IFB has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparation of bids. Nothing stated at the pre-bid conference shall change the IFB unless a change is made by written amendment to the IFB. Minutes of the conference shall be supplied to all those prospective bidders known to have received an IFB, unless the conference is mandatory, in which case the minutes shall be supplied to attendees only.
g) Amendments to Invitations for Bids

1) Form. Amendments to IFBs shall be clearly identified and shall reference the portion of the IFB being amended.

2) Distribution. Amendments shall be made available to all prospective bidders known to have received an IFB or, if a conference was held and attendance was mandatory, only to those prospective bidders who attended.

3) Timeliness. Amendments shall be made available within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by e-mail, fax or telephone and confirmed in the amendment.

h) Pre-Opening Modification or Withdrawal of Bids

1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the IFB prior to the time and date set for bid opening.

2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

i) Receipt, Opening and Recording of Bids

1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.

2) Opening and Recording
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A) Bids and modifications shall be opened publicly at the time, date, and place designated in the IFB. Opening shall be witnessed by a State employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer shall be recorded and the name of each bidder read aloud or otherwise made available. The name of the witness shall also be recorded at the opening.

B) All bids, except as otherwise provided in subsection (i)(3) of this Section, and the bid record, shall be available for public inspection after award.

3) Confidential Data. The Procurement Officer shall examine the bids to determine the validity of any written requests for nondisclosure of trade secrets or other proprietary data. If the parties do not agree as to the disclosure of data or other information, the bid shall be rejected as nonresponsive.

j) Bid Evaluation and Award

1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB, except as permitted by this Part. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the IFB.

2) Responsibility. Responsibility of prospective vendors is covered by Section 500.430 (Responsibility) of this Part.

3) Responsiveness. A bid must conform in all material respects to the IFB.

A) Product or Service Acceptability. The IFB shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:
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i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;

ii) examination of such elements as appearance, finish, taste, or feel;

iii) other examinations to determine whether it conforms with any other purchase description requirements.

B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the IFB. Any bidder's offering that does not meet the acceptability requirements shall be rejected.

4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (j), bids will be evaluated to determine which bidder offers the lowest cost to the OAG in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, administrative cost, and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the OAG has available concerning future use and shall provide for the equitable treatment of all bids.

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

k) Documentation of Award
Following award, a record showing the successful bidder shall be made a part of the procurement file.

l) Award to Other Than Low Bidder

1) The Procurement Officer may award to other than the lowest responsible
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and responsive bidder upon a written determination that award to another bidder is in the State's best interest. A description of the agency's needs, a determination that the anticipated cost will be fair and reasonable, a listing of all responsible and responsive bidders, and the name of the bidder selected, pricing, and the reasons for selecting this bidder instead of the low bidder must be published in the Auditor General Bulletin.

2) This action may be appropriate when the difference in quality or speed of delivery is so great as compared to the difference in price, and considering the OAG's needs, that a best value award is justified. However, if the difference in price is significant, the Procurement Officer may not utilize this provision.

m) Publicizing Award

The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. Notice—In procurements over the small purchase limit set in Section 500.330 (Small Purchases) of this Part, notice of award shall be issued electronically to all offerors submitting responses to the solicitation and published in the Auditor General Bulletin no later than the next business day following award.

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 500.320 Competitive Sealed Proposals

a) The Competitive Sealed Proposal method of source selection shall be used to procure professional and artistic services, except as otherwise provided in subsection (b) of this Section. Other supplies and services may be procured through the Competitive Sealed Proposal method of source selection, on a case-by-case basis, when it is determined by the Procurement Officer that competitive sealed bidding is either not practicable or advantageous.

1) "Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability [30 ILCS 500/1-15.60].

2) "Practicable" Distinguished from "Advantageous". As used in this Section, "practicable" denotes what may be accomplished or put into
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practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest.

A) Factors to be considered in determining whether competitive sealed bidding is not practicable include:

i) whether the contract needs to be other than a fixed-price type;

ii) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;

iii) whether offerors may need to be afforded the opportunity to revise their proposals, including price;

iv) whether award may need to be based upon a comparative evaluation, as stated in the RFP, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal; and

v) whether the primary consideration in determining award may not be price.

B) Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

i) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and

ii) whether the factors listed in subsection (a)(2)(A) of this Section are desirable, in conducting a procurement, rather than necessary.
b) All new procurements of professional and artistic services shall be made using the procedures contained in this Section, except:

1) Procurements under Section 500.330 (Small Purchases);
2) Procurements under Section 500.340 (Sole Source Procurement);
3) Procurements under Section 500.350 (Emergency Procurements);
4) Procurements of contract audit services pursuant to subsection (c) of this Section; and
5) Procurements subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535].

c) Contract Audit Rotation

1) Auditor Retention Policy. Initial audits by a contractor involve audit hours to identify key records and personnel, become familiar with agency operations and the electronic data processing environment, determine what internal controls and procedures are in place, and develop agency specific audit programs. Retaining a contractor for successive audits of the same agency generally allows audits to be conducted more economically, efficiently and effectively, and minimizes audit effort by both the contractor and the agency under audit. Professional auditing standards generally recognize the importance of an auditor retention policy.

2) Rotation Policy. To maximize the efficiencies obtained by auditor retention, it is the OAG’s general policy, subject to the OAG’s sole discretion, to maintain the same contractor on an audit engagement for six successive fiscal years, subject to an examination of such factors including but not limited to performance review, the satisfactory negotiation of terms (including price) and the annual availability of an appropriation.

3) Emergency Purchases. The term of a contract for audit or examination services procured in compliance with the emergency purchase provisions of Section 500.350 shall not be limited to 90 days but shall be valid until the completion of the audit or examination to which the contract relates.
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d) Contents
The RFP shall be in the form specified by the Procurement Officer and shall contain at least the following information:

1) instructions and information to proposers concerning the proposal submission requirements, including the time and date set for receipt of proposals, and the address of the office to which proposals are to be delivered;

2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;

3) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:

   A) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

   B) the abilities, qualifications, and experience of key persons who would be assigned to provide the required services;

   C) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP;

   D) a plan, giving as much detail as is practical, explaining how the services will be performed; and

4) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package).

e) Prequalification
The Procurement Officer shall maintain a list of prequalified professional and artistic vendors in accordance with Section 500.420 of this Part. Persons may amend statements of qualifications at any time by filing a new statement. Failure of a professional and artistic vendor to prequalify shall not be cause for rejection.
of a proposal provided that the responsive offeror supplies with its proposal all information defined by the prequalification process.

f) Public Notice

1) Proposals shall be obtained by issuing an RFP. Notice of Intent to Issue an RFP may be made by the Procurement Officer.

2) Availability of the RFP shall be published in the Auditor General Bulletin at least 14 days before proposals are due.

3) The RFP shall also be distributed to prequalified persons expressing interest in performing the services required by the proposed contract.

g) Pre-Proposal Conference

A pre-proposal conference, if appropriate, shall be conducted in accordance with Section 500.310(f) (Pre-Bid Conference). Such a conference may be held anytime prior to the date established for submission of proposals.

h) Receipt and Registration of Proposals

Proposals shall not be opened publicly but shall be opened in the presence of at least one witness. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service offered. All proposals, except as otherwise provided in subsection (i) of this Section, and the Register of Proposals, shall be available for public inspection after award.

i) Confidential Data

The Procurement Officer shall examine the proposals to determine the validity of any written requests from the vendor for nondisclosure of trade secrets or other proprietary data. If the parties do not agree as to the disclosure of data or other information, the proposal shall be rejected as non-responsive.

j) Evaluation of Proposals

The requests for proposals shall state the relative importance of price and other evaluation factors. Proposals shall be submitted in 2 parts: the first, covering
items except price, and the second, covering price. The first part of all proposals shall be evaluated and ranked independently of the second part of all proposals. The evaluation shall be based on the evaluation factors set forth in the RFP. Factors not specified in the RFP shall not be considered. Numerical rating systems may be used but are not required.

k) Discussions

1) Discussions Permissible. The Procurement Officer may conduct discussions with any offeror to:

A) promote understanding of the OAG's requirements and the offerors' proposals;

B) determine in greater detail such offeror's qualifications;

C) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach; and

D) facilitate arriving at a contract that will be most advantageous to the OAG, taking into consideration price and the other evaluation factors set forth in the RFP.

The Procurement Officer may allow changes to the proposal based on those discussions.

2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and information contained in any proposals shall not be disclosed until after award of the proposed contract has been made.

3) Best and Final Offers. The Procurement Officer may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The Procurement Officer may conduct additional discussions or change the OAG's requirements and require another submission of best and final offers. The scope of the best and final and the number of offerors allowed to participate shall be defined by the Procurement Officer. If an
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offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediately previous offer will be construed as its best and final offer.

4) Nothing in this Section shall prohibit the Procurement Officer from making a selection that represents the best value, qualifications, price and other relevant factors established in the RFP being considered. The Procurement Officer may, in considering best value, determine the proposal from a fully qualified vendor that submitted the lowest price to be the best value without further evaluation.

l) Award
An award shall be made by the Procurement Officer pursuant to a written determination showing the basis on which the award was found to be most advantageous to the OAG, taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made. If the price of the most qualified vendor is not the lowest price, and if the price exceeds $25,000, the Procurement Officer must state in writing why a vendor other than the low priced vendor was selected and that determination must be published in the Auditor General Bulletin, based on the factors set forth in the RFP.

m) Publicizing Awards
The successful offeror shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. When the award exceeds the small purchase limit set in Section 500.330 of this Part, notice Notice of award shall be issued electronically to all offerors submitting responses to the solicitation and published in the Auditor General Bulletin no later than the next business day following award.

n) Notice of Subcontractor
Any contract for professional and artistic services entered into under this Section 500.320 shall state whether the services of a subcontractor will be used. The contract shall include the names and addresses of all subcontractors and the expected amount of money each will receive under the contract. If at any time during the term of a contract, a contractor adds or changes any subcontractors, the contractor shall promptly notify, in writing, the Procurement Officer of the names and addresses and the expected amount of money each new or replaced subcontractor will receive.
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Pre-solicitation Request for Information
When the Procurement Officer does not have sufficient information about available supplies or services to issue an RFP, the Procurement Officer may issue a Pre-solicitation request for information inviting vendors to submit non-price information about the availability of specified types of supplies or services. Public notice of the Pre-solicitation request for information shall be published in the Auditor General Bulletin at least 14 days before the date set for the receipt of information. The submission of information by a vendor in response to a Pre-solicitation request for information is not a prerequisite for that vendor to respond to a subsequent IFB or RFP for the types of supplies or services for which information was solicited, and the issuance of a Pre-solicitation request for information does not commit the OAG to make any procurement of supplies or services of any kind. Confidential information will not be accepted from a vendor in response to a Pre-solicitation request for information.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.330 Small Purchases

a) Application

1) Procurements of $33,500 or less for supplies or services, other than professional and artistic, of less than $20,000 for professional and artistic services, and of $40,100 or less for construction, may be made without advance notice, competition or use of any prescribed method of source selection.

2) Any change identified by the United States Department of Labor in the Consumer Price Index, as certified by CMS or another State agency with appropriate authority, for All Urban consumers for the period ending December 31, 1998, and for each year thereafter, shall be used to calculate the small purchase maximums that shall be applicable for the fiscal year beginning July 1, 1999. The small purchase maximums shall be likewise recalculated for each July 1 thereafter.

b) In determining whether a contract is under the limit, the stated value of the supplies or services, plus any optional supplies and services, determined in good faith, shall be utilized. Where the value is calculated month-to-month or in a
similar fashion, the amount shall be calculated for a twelve month period.

c) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not to exceed limit applicable to the type of procurement (see subsection (a) above).

d) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the Procurement Officer determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the Procurement Officer must follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract.

e) Notice of award shall be published in the Auditor General Bulletin no later than 10 business days after the contract is awarded.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.340 Sole Economically Feasible Source Procurement

a) Application
The provisions of this Section apply to procurement from a sole economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the limit set in Section 500.330 (Small Purchases) or unless emergency conditions exist as defined in Section 500.350 (Emergency Procurements) of this Part.

b) Conditions for Use of Sole Source Procurement
Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:

1) where the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
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2) where a sole supplier's items are needed for trial use or testing;

3) where a sole supplier's item is to be procured for commercial resale;

4) where public utility regulated services are to be procured;

5) where the item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;

6) the procurement of the media for advertising;

7) the procurement of art, educational (including training for continuing professional education) or entertainment services; and

8) changes to existing contracts (see subsection (c)).

c) Changes

1) Changes to an existing contract that are germane and reasonable in scope and cost in relation to the original contract or program, that are necessary or desirable to complete the contract or program, and that can be best accomplished by the contract holder may be procured under this Section when the Procurement Officer determines that the cost of delay or disruption to the contract or program, and the cost of a new solicitation, clearly indicate that the existing vendor is the sole economically feasible source.

2) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 500.330 of this Part, or that is an emergency as defined in Section 500.350 of this Part, may be made in accordance with procedures governing those Sections and need not comply with these sole source procedures.

3) The sole source exception may not be used as a basis for amending a contract for professional or artistic services if the amendment would result in an increase in the amount paid under the contract of more than 5% of the initial award, or would extend the contract term beyond the time reasonably needed for a competitive procurement, not to exceed 2 months.
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d) Procurement Officer to Determine
The Procurement Officer shall determine whether a procurement shall be made as a sole source. The determination and its basis shall be in writing.

e) Sole Source Process
Publication of Sole Source Notice

1) **Hearing:** A contract may not be awarded as a sole source procurement unless approved by the Procurement Officer following a public hearing at which the Procurement Officer presented written justification for the procurement method. The public may present testimony at the hearing.

2) **Publication:** Before entering into a sole source contract, a Procurement Officer must publish a written description of intent to enter into a sole source contract along with a description of the item to be procured and the intended sole source contractor. The notice shall include the sole source procurement justification, a description of the item to be procured, the intended sole source contractor, and the date, time and location of the public hearing. This notice must be posted in the Auditor General Bulletin before a sole source contract is awarded and at least 14 days before the sole source hearing. The Procurement Officer shall publish in the Auditor General Bulletin notice of intent to contract with that vendor at least 14 days prior to execution of the contract.

1) If no challenge to this determination is made by a vendor within the 14 day period, the OAG may execute a contract with that vendor.

32) **Challenge** is received, the Procurement Officer shall consider any information provided as a result of the public hearing and publication. The Procurement Officer shall commence a competitive procurement if the Procurement Officer determines that more than one economically feasible source may be available and the sole source designation is not appropriate, unless an emergency situation exists.

f) Negotiation in Sole Source Procurement
The Procurement Officer shall conduct negotiations, as appropriate, to reach contract terms, including price, and shall maintain a record of each sole source procurement showing:

1) the vendor's name;
2) the amount and type of the contract;

3) what was procured; and

4) the identification number of the contract file.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.350 Emergency Procurements

a) Application
The provisions of this Section apply to every procurement over the small purchase limit set in Section 500.330 (Small Purchases) of this Part and that is not a sole source procurement under Section 500.340 of this Part made under emergency, including quick purchase, conditions.

b) Definition of Emergency Conditions
Procurements may be made under this Section 500.350 in the following circumstances:

1) Traditional circumstances include but are not limited to:

   A) public health or safety, including the health or safety of any particular person, is threatened;

   B) immediate repairs are needed to OAG property to protect against further loss or damage to OAG property, or to prevent loss or damage to OAG property;

   C) immediate action is needed to prevent or minimize serious disruption in critical OAG services that affect health, safety or collection of substantial State revenues;

   D) action is needed to ensure the integrity of StateOAG records;

   E) equipment or services are necessary in the furtherance of covert activities (including the conduct of audits and investigations) lawfully conducted by the OAG. Any required disclosures may be
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postponed or shall be made so as not to jeopardize those covert activities;

F) immediate action is necessary to avoid lapsing or loss of federal or donated funds; or

G) the need for items to protect or further StateOAG interests is immediate and use of other competitive source selection procedures under this Part cannot be accomplished without significant risk of causing serious disadvantage to the StateOAG.

2) After Unsuccessful Competitive Sealed Bidding or Request for Proposals. When bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or non-competitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding or competitive sealed proposals, an emergency procurement may be made.

3) Extension to Allow Competition. Extending an existing contract for such period of time as is needed to conduct a competitive method of source selection where terminating or allowing the contract to terminate would not be advantageous to the OAG.

4) Quick Purchase

A) A supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason such that making a purchase immediately is more advantageous to the OAG than instituting a competitive procurement under the provisions of this Part for the supplies or services;

B) Items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a purchase immediately to take advantage of the availability and price;

C) availability of rare items, such as books of historical value;
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D) the procurement is for entertainment.

c) Scope and Duration of Emergency Conditions

Emergency procurements shall be limited to those supplies, services or construction items necessary to meet the emergency. Except as otherwise provided in Section 500.320(c)(3), the term of the emergency purchase shall be limited to the time reasonably needed for a competitive procurement, not to exceed 90 days. A contract may be extended beyond 90 days if the Procurement Officer determines additional time is necessary and the contract scope and duration are limited to the emergency. Prior to execution of the extension, the Procurement Officer must hold a public hearing and provide written justification for all emergency contracts. Members of the public may present testimony.

d) Source Selection Methods

Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations. The procedure used shall be selected to assure that the required items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.

e) Determination and Record of Emergency Procurement

1) Determination. The Procurement Officer shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determinations shall be kept in the contract file.

2) Record. An affidavit of each emergency procurement shall be filed with the Auditor General within 10 days after the procurement and shall include the following information:

A) the vendor's name;

B) the amount and type of the contract, provided that if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known;

C) a description of what the vendor will do or provide; and

D) the reasons for using the emergency method of source selection.
3) **Notice of the Emergency Procurement.** Notice of the emergency procurement shall be published in the Auditor General Bulletin no later than 3 business days after the contract is awarded and shall include a description of the procurement, the reasons for the emergency procurement and the total cost. When only an estimate of the total cost is known at the time of publication, the estimate shall be identified as an estimate and published. When the actual total cost is determined, it shall also be published in like manner before the 10th day of the next succeeding month.

4) **Notice of Extension.** Notice of intent to extend an emergency contract shall be published in the Auditor General Bulletin no later than five business days prior to a public hearing. Notice shall include at least a description of the need for the emergency purchase, the contractor and, if applicable, the date, time and location of the public hearing.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

**Section 500.360 Other Methods of Source Selection**

Other methods of source selection, as defined by an agency with statutory procurement authority in its adopted rules CMS in rules promulgated by it (44 Ill. Adm. Code 1) may be used by the OAG when, in the CPO's best judgment, such methods of source selection are in the State's best interests.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

**Section 500.370 Tie Bids and Proposals**

a) Tie bids or proposals are those from responsive and responsible vendors that are identical in price, and, in the case of proposals, identical in evaluation or evaluation and represent the low price.

b) Tie bids or proposals will be treated as follows:

1) If the tied bids or proposals vendors include only one Illinois resident vendor, the Illinois resident vendor shall be given the award in case of bids and may be given the award in the case of proposals. "Illinois resident
vendor" has the meaning given in Section 500.1110 (Resident Vendor Preference) of this Part. In all other situations, including if two or more Illinois resident bidders are tied, the decision shall be made in accordance with subsections (b)(2) through (5) of this Section.

2) In all other situations, the award shall be made by lot unless the Procurement Officer determines that:

A) awarding to one of the vendors is in the State's best interest because, for example, that vendor is likely to be more reliable or responsive to the State's needs, based on past performance; provides a better quality of the supply or service; or provides quicker delivery; or, in the case of proposals, because of a desire to take advantage of the lower price; or

B) splitting the award is in the State's best interest because of a need to ensure delivery of the supply or service, or is necessary or desirable to promote future competition, and provided the affected vendors agree to the split award. If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award will be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the OAG shall be given additional consideration in determining responsibility if the Procurement Officer determines that dealing with a vendor that has knowledge of OAG requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.

3) If there is no significant difference in responsibility, but there is a difference in the quality of the supplies or services offered, the vendor offering the best quality will be accepted.

4) If there is no significant difference in responsibility and no difference in quality of the supplies or services offered, the vendor offering the earliest delivery time will be accepted in any case in which the solicitation specified that the needs of the agency require delivery as early as possible.
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5) If the bids or proposals are equal in every respect, the award shall be made by lot unless the Procurement Officer determines that splitting the award among two or more of the tied vendors is in the best interest of the State. Awards may be split if all affected vendors agree, if splitting is feasible given the type of supplies or services requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

e) Record. Records shall be made of all procurements on which tie bids or proposals are received, showing at least the following information:

1) the identification number of the solicitation;

2) a description of what was procured; and

3) a listing of all the offerors and the prices submitted.

(Source: Amended at 35 Ill. Reg. ____ , effective ____________)

Section 500.380 Mistakes

a) General
Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other offerors.

b) Mistakes Discovered Before Opening
A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.

c) Confirmation of Mistake
When the Procurement Officer knows or has reason to conclude that a mistake has been made, such officer shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the offer may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.

d) Mistakes in Bids Discovered After Opening but Before Award
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This subsection (d) sets forth procedures to be applied in situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.

1) Minor Informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the solicitation IFB, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State. Examples of minor informalities as to form include the failure of a bidder to:

A) return the required number of signed copies of offers required by the IFB;

B) acknowledge receipt of an amendment to the solicitation IFB, but only if:
   i) it is clear from the bid or proposal that the offeror or bidder received the amendment and intended to be bound by its terms; or
   ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

2) Mistakes in Which Intended Correct Information is Evident. If the mistake and the intended correct information are clearly evident on the face of the bid or proposal document, the information shall be corrected and the bid or proposal to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid or proposal document are typographical errors, errors in extending unit prices, transpositional errors, and arithmetical errors.

3) Mistakes in Which Intended Correct Information is Not Evident. The low price bid or proposal may be withdrawn if:...
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A) a mistake is clearly evident on the face of the bid or proposal document but the intended correct bid or proposal is not similarly evident; or

B) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

e) During Discussions; Prior to Best and Final Offers

Mistakes in Proposals Discovered After Receipt, but Before Award

This subsection (e) sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award. 1) During Discussions; Prior to Best and Final Offers.

Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers, provided the correction would not be contrary to the fair and equal treatment of other offerors.

2) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under subsection (d).

3) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if: A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

4) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if: A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not; B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.

f) Mistakes Discovered After Award

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

g) Determinations Required

The Procurement Officer shall maintain in the procurement file documentation of actions regarding correction or withdrawal of bids or proposals based on mistakes. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The Procurement Officer shall prepare the determination.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.390 Cancellation of Solicitations; Rejection of Offers

a) Scope of this Section

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the OAG under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of offers in whole or in part.

b) Policy

Any solicitation may be canceled before or after opening when the Procurement Officer believes cancellation to be in the OAG's best interest. Nothing shall compel the award of a contract.

c) Cancellation of Solicitation; Rejection of All Offers Prior to Opening

1) As used in this Section, "opening" means the date set for opening of bids, proposals or responses or receipt of unpriced technical offers in multi-step sealed bidding. 2) Prior to opening, a solicitation may be canceled in whole or in part when the Procurement Officer determines in writing that such action is in the OAG's best interest for reasons including, but not limited to:

1) the OAG no longer requires the supplies, services or construction;

2) the OAG no longer can reasonably expect to fund the procurement; or

3) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
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4) ambiguous or otherwise inadequate specifications;

5) the solicitation did not provide for consideration of all factors of significance to the OAG;

6) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

7) all otherwise acceptable offers received are at clearly unreasonable prices; or

8) there is reason to question whether the offers may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

3) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses that responded to the solicitation.

4) The notice of cancellation shall:

A) identify the solicitation;

B) briefly explain the reason for cancellation; and

C) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services or construction.

d) Cancellation of Solicitation; Rejection of All Offers After Opening

1) After opening but prior to award, all offers may be rejected in whole or in part when the Procurement Officer determines in writing that such action is in the OAG’s best interest. Such reasons may include, but are not limited to:

A) the supply, service or construction being procured is no longer required;

B) ambiguous or otherwise inadequate specifications were part of the
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solicitation;

C) the solicitation did not provide for consideration of all factors of significance to the OAG;

D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

E) all otherwise acceptable offers received are at clearly unreasonable prices; or

F) there is reason to believe that the offers may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

2) When the solicitation is canceled or when all offers are rejected, all vendors who submitted offers shall be sent a notice upon request informing them of the reasons for the cancellation or rejection.

de) Documentation

The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

ef) Rejection of Individual Offers

1) General. This subsection (ef) applies to rejections of individual offers in whole or in part.

2) Notice in Solicitation. Each solicitation shall provide that any offer may be rejected in whole or in part when in the best interest of the OAG as provided in this Section.

3) Reasons for Rejection

Reasons for rejecting an offer may include, but are not limited to:

A) the business that submitted the offer is nonresponsible as determined under Section 500.430 (Responsibility) of this Part;
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B) the offer is not responsive, that is, it does not conform in all material respects to the solicitation;

C) the offer ultimately (that is, after any opportunity has passed for alteration or clarification) fails to meet the announced requirements of the OAG in some material respect;

D) the supply, service or construction item offered is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the solicitation; or

E) the proposed price is clearly unreasonable.

4) Notice of Rejection. Upon request, unsuccessful offerors shall be advised of the reasons for rejection.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.395 Public Procurement File

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids and proposals, all evaluation materials, score sheets and all other documentation related to or prepared in conjunction with evaluation, negotiation and the award process. The procurement file shall contain a written determination, signed by the Procurement Officer or designee, setting forth the reasoning for the contract award decision. The procurement file shall be open to public inspection within 7 business days following award of the contract.

(Source: Added at 35 Ill. Reg. ______, effective ____________)

SUBPART E: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 500.410 Vendor List/Required Use

a) The CPO may maintain a list of vendors interested in doing business with the OAG. The names and addresses of vendors on the list shall be available for public inspection.
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b) Inclusion on, or exclusion from, the list shall not be a factor in determining whether a vendor is a responsible vendor.

c) When vendors are directly solicited by the OAG, solicitations will be sent to vendors on the vendor list for the supplies or services in question, except in the following cases:

1) The vendor does not sell the particular commodity or equipment.

2) The number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list. The Procurement Officer may, if he/she determines that the best interest of the State would be served, rotate the selection from the list on any equitable basis.

3) The Procurement Officer determines that the best interest of the State will be served by limiting vendors to those in defined geographic areas (example: purchases of ready-mix concrete, perishables, and equipment requiring immediate service).

d) The CPO may alternately refer to vendor lists maintained by CMS or other statutory procurement agency.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.420 Prequalification

a) General

1) The CPO shall identify by publication in the Auditor General Bulletin the categories of supplies and services (including professional and artistic services) for which the OAG may prequalify vendors of those supplies and services. The OAG is not required to prequalify vendors but may do so when determination of a vendor's qualifications prior to procurement would be advantageous to the OAG.

2) An opportunity to prequalify shall be allowed at least one time each fiscal year. The opportunity to prequalify shall be announced in the Auditor General Bulletin. The notice shall alert vendors that failure to participate
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in the prequalification process may result in the vendor being ineligible to receive contracts.

3) When prequalifying a vendor, the Procurement Officer may limit prequalifications to determining whether a vendor has been and is likely to be "responsible" using the criteria set forth in Section 500.430 of this Part. The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility for a particular procurement.

4) When prequalifying a vendor, the Procurement Officer may consider factors tailored to a specific procurement or type of procurement, which shall be announced in the Auditor General Bulletin.

5) Except as provided in Section 500.320(e), prequalification shall not be used to bar or prevent any qualified business or person from bidding or responding to invitations for bid or requests for proposal. Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified. If eligibility for the procurement will be limited to prequalified vendors, the solicitation shall state that fact.

b) Professional and Artistic Services

Any prequalification of vendors of professional and artistic services:

1) shall include, at a minimum, a specified level of:

   A) education;

   B) training;

   C) experience; and

   D) technical ability; and

2) may require certification or licensure, or membership in professional associations.
e) Qualified Products List
Qualified products lists are treated in Section 500.600 (Specifications) of this Part.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 500.430 Responsibility

a) Application
Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the OAG's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.

b) Standards of Responsibility

1) Standards. Factors to be considered in determining whether the standard of responsibility has been met may include, but are not limited to, whether a prospective vendor:

A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements (the Procurement Officer may designate a level below which the vendor will be deemed "not responsible");

B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;

C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;

D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil
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actions that bear on the particular procurement or that create a reasonable inference or appearance of a lack of integrity on the part of the vendor may be declared not responsible for the particular procurement;

E) is a legal entity authorized to do business in Illinois prior to submitting the bid, offer or proposal and is qualified legally to contract with the State;

F) has supplied all necessary information in connection with the inquiry concerning responsibility;

G) has a current Public Contracts number from the Illinois Department of Human Rights, pursuant to 44 Ill. Adm. Code 750.210, if required. Proof of application prior to opening of bids or proposals will be sufficient for an initial determination;

H) pays prevailing wages, if required by law; and

I) is current in payment of all State of Illinois taxes, including the unemployment insurance tax.

2) Information Pertaining to Responsibility. The prospective vendor shall supply information requested by the Procurement Officer concerning the responsibility of such vendor. The OAG may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information, or may find the prospective vendor nonresponsible.

c) Written Determination of Nonresponsibility Required
If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Procurement Officer. The final determination shall be made part of the procurement file.

d) Bond for Responsibility
Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required of
such vendors.

e) Affiliated Companies
Vendors who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing vendor that has been determined not responsible will also be determined not to be responsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier determination of nonresponsibility.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

SUBPART G: SPECIFICATIONS

Section 500.600 Specifications

a) Responsibilities Regarding Specifications
The Procurement Officer is authorized to write specifications for procurements for the OAG.

b) Procedures for the Development of Specifications

1) All procurements shall be based on specifications that accurately reflect the OAG's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.

2) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate OAG needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.

3) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.

4) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the OAG's requirements.
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c) Brand Name or Equal Specification

1) Brand name or equal specifications may be used when the Procurement Officer determines in writing that:

A) no specification for a common or general use specification or qualified products list is available;

B) time does not permit the preparation of another form of specification, not including a brand name specification;

C) the nature of the product or the nature of the OAG's requirement makes use of a brand name or equal specification suitable for the procurement; or

D) use of a brand name or equal specification is in the OAG's best interest.

2) Brand name or equal specifications shall seek to designate more than one brand as "or equal," and shall further state that substantially equivalent products to those designated will be considered for award.

3) Unless the Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.

4) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the vendor.

d) Brand Name Only Specification
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1) Determination. A brand name only specification may be used only when the Procurement Officer makes a written determination that only the identified brand name item or items will satisfy the OAG's needs.

2) Use. Brand name alone may be specified in order to fill medical prescription needs, to stock State retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the Procurement Officer. The OAG may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.

3) Competition. The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 500.340 (Sole Economically Feasible Source Procurement) of this Part.

4) Small and Emergency Procurements. Brand name only specifications may be used when procuring items under the small (Section 500.330 of this Part) and emergency (Section 500.350 of this Part) provisions of this Part.

e) Qualified Products List

1) Use. A qualified products list may be developed by the Procurement Officer when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy OAG requirements.

2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.
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3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.

f) Proven Products
The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.

g) Product Demonstration
Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the OAG's discretion and will not entitle the vendor to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.

h) Prohibition on Incentives
A solicitation or specification for a contract, or a contract, may not require, stipulate, suggest or encourage a monetary or other financial contribution or donation, cash bonus or incentive, or economic investment as an explicit or implied term or condition for awarding or completing the contract.

i) Prohibited Bidders and Contractors

1) No person or business shall bid or enter into a contract with the OAG if the person or business:

   A) assisted the OAG in determining whether there is a need for a contract, except as part of a response to a publicly issued request for information; or

   B) assisted the OAG by reviewing, drafting or preparing any invitation for bids, a request for proposal, or request for information or provided similar assistance except as part of a publicly issued opportunity to review drafts of all or part of these documents.
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2) This subsection (i) does not prohibit a person or business from submitting a bid or proposal or entering into a contract if the person or business:

   A) initiates a communication to provide general information about products, services, or industry best practices and, if applicable, that communication is documented; or

   B) responds to a communication initiated by an employee of the OAG for the purposes of providing information to evaluate new products, trends, services or technologies. [30 ILCS 500/50-10.5 (e)]

   h) Specifications Prepared by Other Than OAG Personnel

      1) Specifications may be prepared by other than OAG personnel, including, but not limited to, other State personnel, consultants, architects, engineers, designers, and other drafters of specifications for public contracts when the Procurement Officer determines that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the OAG, and provided the Procurement Officer retains the authority to finally approve the specifications. Contracts for the preparation of specifications by other than OAG personnel shall require the specification writer to adhere to OAG requirements.

      2) The person who prepared the specifications shall not submit an offer to meet the procurement need unless the CPO, and not a designee, determines in writing that it would be in the best interest of the OAG to accept such an offer from that person. A notice to that effect shall be published in the Auditor General Bulletin.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART H: CONTRACT TYPE

Section 500.700 Types of Contracts

   a) Subject to the limitations of this Section and unless otherwise authorized by law, any type of contract that will promote the best interests of the State may be used.
b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting
The cost-plus-a-percentage-of-cost contract is prohibited. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.

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

2) A percentage mark-up from the price of a supply or service selected by the State or another vendor under contract to the State is not a cost-plus-a-percentage-of-cost contract.

c) A cost-reimbursement contract may be used only when a determination is made in writing that a cost-reimbursement contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the item required except under that type of contract.

de) Option Provisions
When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the OAG's option or by mutual agreement.

d) State Produced Supplies and Services
Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART I: DURATION OF CONTRACTS

Section 500.800 Duration of Contracts

a) General

1) A multi-term contract for a term up to 10 years, inclusive of proposed
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Contract renewals, is authorized when determined by the Procurement Officer to be in the best interest of the State.

2) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years.

b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to appropriation and availability of funds. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be canceled without penalty to, or further payment being required by, the State. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.

c) Conditions for Use of Multi-Term Contracts
A multi-term contract may be used when:

1) special production of definite quantities or the furnishing of long-term services is required to meet OAG needs; or

2) a multi-term contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in OAG procurement. The following factors are among those relevant to such a determination:

A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

C) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or
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D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

d) Multi-Term Contract Procedure
The solicitation shall state:

1) the proposed term;

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

3) the type of pricing requested (e.g., firm for term);

4) how award will be determined.

e) Renewals

1) Renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years, the terms and conditions do not change except as provided in the contract and the option is reserved solely to the OAG or is by mutual agreement.

2) Where a renewal will result in the total term, counting the initial term and any previous renewals, to exceed 10 years, the renewal must be procured using one of the methods of source selection authorized by this Part. This renewal will start a new term that shall not exceed 10 years.

3) Notice of renewal shall be published in the Auditor General Bulletin no later than 10 business days after the contract is awarded.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART J: CONTRACT MATTERS

Section 500.900 Prevailing Wage

a) In order to be considered responsible under Section 500.430, vendors of the following classifications of services must certify to the OAG that their employees are paid wages and benefits and are working under conditions prevalent in the
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location where the work is to be performed:

1) Printing;

2) Janitorial cleaning services, window cleaning services, building and grounds services, site technician services, natural resources services, food services, and security guard services of $2,000 or more or $200 or more per month having a monthly contract price of $200 or a yearly price of $2,000; and

3) Public works.

b) For purposes of this Section, "locality" or "location" shall have the meaning established in rules promulgated by CMS or other statutory procurement agency (see 44 Ill. Adm. Code 1.2560).

c) Prevailing wages, benefits and conditions will be determined by the Illinois Department of Labor.

d) This Section does not apply to services furnished under contracts for professional or artistic services or to vocational programs of training for persons with physical or mental disabilities or to qualified not-for-profit agencies for persons with severe disabilities.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.910  Filing with Comptroller

a) Filing with Comptroller
Whenever a contract liability, except for contracts paid from personal services or contracts between the OAG and its employees to defer compensation in accordance with Article 24 of the Illinois Pension Code, exceeding $10,000 is incurred by the OAG, a copy of the contract, purchase order, or lease shall be filed with the Comptroller within 15 days thereafter. Any cancellation or modification to any such contract liability shall be filed with the Comptroller within 15 days after its execution.

b) Late Filing Affidavit
When a contract, purchase order, or lease required to be filed by this Section has
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not been filed within 30 days after execution, the OAG must file with the Comptroller an affidavit, signed by the Auditor General or his or her designee, setting forth an explanation of why the contract liability was not filed within 30 days after execution. A copy of this affidavit shall be filed with the Auditor General.

c) Timely Execution of Professional and Artistic Services Contracts

No voucher shall be submitted to the Comptroller for a warrant to be drawn for the payment of money from the State treasury or from other funds held by the State Treasurer on account of any contract for services involving professional or artistic skills involving an expenditure of more than $5,000 for the same type of services at the same location during any fiscal year unless the contract is reduced to writing before the services are performed and filed, if so required under subsection (a), with the Comptroller. Vendors shall not be paid for any goods that were received or services that were rendered before the contract was reduced to writing and signed by all necessary parties. A Procurement Officer may request an exception to this requirement by submitting a written statement to the Comptroller and Treasurer setting forth the circumstances and reasons why the contract could not be reduced to writing before the supplies were received or services were performed. A waiver of this requirement must be approved by the Comptroller and Treasurer. The requirements of this subsection shall not apply to emergency purchases if notice of the emergency purchase is published in the Auditor General Bulletin as required by Section 500.350. When a contract for professional or artistic skills in excess of $5,000 was not reduced to writing before the services were performed, the Comptroller shall refuse to issue a warrant for payment for the services until the OAG files with the Comptroller:

1) a written contract covering the services; and

2) an affidavit, signed by the Auditor General or his or her designee, stating that the services for which payment is being made were agreed to before commencement of the services and setting forth an explanation of why the contract was not reduced to writing before the services commenced. A copy of this affidavit shall be filed with the Auditor General.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART K: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES
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Section 500.1010  Method of Source Selection

Leases shall be procured by a Request for Information (RFI) process except that the process need not be used in any of the following circumstances:

a) Property of less than 10,000 square feet with rent of less than $100,000 per year.

b) Rent of less than $100,000 per year.

c) Duration of less than one year that cannot be renewed.

d) Specialized space available at only one location.

e) Renewal or extension of leases after the effective date of this Part, provided that:

1) the CPO determines in writing that renewal or extension is in the best interest of the State; and

2) the CPO publishes notice of the renewal or extension in the Auditor General Bulletin; and

3) the length of the lease, including renewals, does not exceed 10 years.

e) Leases with governmental units when deemed by the CPO to be in the best interest of the State.

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 500.1015  Historic Area Preference

State agencies with responsibilities for leasing, acquiring or maintaining State facilities shall take all reasonable steps to minimize any regulations, policies and procedures that impede the goals of Section 17 of the Capital Development Board Act [20 ILCS 3105]. [30 ILCS 500/45-80]

(Source: Added at 35 Ill. Reg. _______, effective ____________)

Section 500.1030  Lease Requirements

a) Length of Leases
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1) Maximum Term. Except where a longer term is authorized by law, leases shall be for a term not to exceed 10 years inclusive of proposed contract renewals and shall include a termination option in favor of the OAG after 5 years.

2) Renewal Option. Leases may include a renewal option. An option to renew may be exercised only when the Procurement Officer determines in writing that renewal is in the best interest of the OAG and notice of the exercise of the option is published in the Auditor General Bulletin at least 60 days prior to the exercise of the option.

3) Holdover. No lease may continue on a month-to-month or other holdover basis for a total of more than 6 months.

b) Subject to Appropriation
All leases shall recite that they are subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation to make payments under the terms of the lease.

c) Lessor's Failure to Make Improvements
Each lease must provide for a penalty upon the lessor's failure to make improvements agreed upon in the lease. The penalty shall consist of a reduction in lease payments equal to the corresponding percentage of the improvement value to the lease value. The penalty shall continue until the lessor complies with the lease and the improvements are accepted by the leasing State agency.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART L: PREFERENCES

Section 500.1110 Resident Vendor Preference

a) When a contract is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a non-resident bidder from any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the non-resident bidder. Further, if only non-resident bidders are bidding, the purchasing agency is within its right to specify that Illinois labor and
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manufacturing locations be used as a part of the manufacturing process, if applicable. This specification may be negotiated as part of the solicitation process. [30 ILCS 500/45-10(a)]

b) "Illinois resident vendor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any bid for a public contract is first advertised or announced. A resident bidder includes a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State where it was actually transacting business on the date when any bid for a public contract is first advertised or announced.

e) In breaking a tie, an Illinois resident vendor shall be given the award.

d) This Section does not apply to any contract for any project as to which federal funds are available for expenditure when its provisions may be in conflict with federal law or federal regulation.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.1130 Recycled Supplies

When a public contract is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of products made of recycled materials may, on a pilot basis or in accordance with a pilot study, be given preference over other bidders unable to do so, provided that the cost included in the bid of supplies products made of recycled materials does not constitute an undue economic or practical hardship is not more than 10% greater than the cost of products not made of recycled materials. [30 ILCS 500/45-20]

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.1140 Recyclable Supplies

All supplies paper purchased for use by State agencies must be recyclable paper unless a recyclable substitute cannot be used to meet the requirements of the State agencies or would constitute an undue economic or practical hardship. State agencies shall determine their paper requirements to allow the use of recyclable paper whenever possible.
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including without limitation using plain paper rather than colored paper that is not recyclable. [30 ILCS 500/45-25]

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.1145 Environmentally Preferable Procurement

State agencies shall contract for supplies and services that are environmentally preferable, as that term is defined in 30 ILCS 500/45-26. If, however, contracting for an environmentally preferable supply or service would impose an undue economic or practical hardship on the contracting State agency, or if an environmentally preferable supply or service cannot be used to meet the requirements of the State agency, then the State agency need not contract for an environmentally preferable supply or service. Specifications for contracts, at the discretion of the contracting State agency, may include a price preference of up to 10% for environmentally preferable supplies or services. [30 ILCS 500/45-26]

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 500.1148 Biobased Products

When a State contract is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of biobased products may be given preference over other bidders unable to do so, provided that the cost included in the bid of biobased products is not more than 5% greater than the cost of products that are not biobased. [30 ILCS 500/45-75]

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 500.1160 Qualified Not-for-Profit Agencies for Persons with Severe Disabilities/Sheltered Workshops for the Disabled

a) Use of Sheltered Workshops

The Procurement Officer may determine to contract with a qualified not-for-profit agency for persons with severe disabilities/sheltered workshop on the list maintained by the State Use Committee/CPO for CMS, and may do so without notice or competition.

b) Pricing Approval

While notice and competition is not required prior to contracting with a qualified...
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not-for-profit agencies for persons with severe disabilities, sheltered workshops, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar supplies or services, the policy of the Code to promote procurements from qualified not-for-profit agencies for persons with severe disabilities, sheltered workshops, and other such relevant factors.

(Source: Amended at 35 Ill. Reg. ______, effective _____________)

Section 500.1170 Gas Mileage

a) Specifications for the purchase of new passenger automobiles shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code. As used in this Section, passenger automobile does not include station wagons, vans, four-wheel drive vehicles, emergency vehicles, or police or fire vehicles.

b) All gasoline-powered vehicles purchased from State funds must be flexible fuel vehicles or fuel efficient hybrid vehicles. Any vehicle purchased from State funds that is fueled by diesel fuel shall be certified by the manufacturer to run on 5% biodiesel (B5) fuel.

cb) The CPO may exempt a procurement from the requirements of subsections (a) and (b) subsection (a) when a demonstrated need has been presented to the CPO in writing and approved by that officer.

d) In awarding contracts requiring the procurement of vehicles, preference may also be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or biodiesel fuels produced from Illinois soybeans. [30 ILCS 500/45-60]

(Source: Amended at 35 Ill. Reg. ______, effective _____________)

Section 500.1180 Small Business

a) Set-Aside
The Procurement Officer may designate as small business set-asides a fair proportion of construction, supply and service contracts for award to small businesses in Illinois. Determine categories of supplies or service procurements that
will be set aside for small businesses located in Illinois. The set aside designation may be made for current and future procurements of a specific supply, service or construction, or for a class of like supplies, services or construction. A set aside designation may last indefinitely or for a stated period of time.

b) Small Business List
The Procurement Officer may develop its own list, or may use the list maintained by CMS or other appropriate State agency, of responsible vendors that meet the criteria of small business. Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information acceptable to the Procurement Officer verifying that the vendor qualifies as a small business under this Part. A business that fits the definition of small on the day of bid or proposal opening will be considered small for the duration of the contract.

c) Required Use
If a Procurement Officer wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.

d) Withdrawal of Set-Aside
If the Procurement Officer determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Procurement Officer shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Auditor General Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of this Part.

e) Criteria for Small Business
Unless the Procurement Officer provides a definition for a particular procurement that reflects industry characteristics, a small business is one:

1) That is an Illinois business, independently owned and operated.

2) Not dominant in its field of operation. This means the business does not exercise a controlling or major influence in a kind of business activity in
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which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

3) With annual sales for the most recently ended fiscal year no greater than:

A) $10,000,000 for wholesale business;

B) $10,000,000 for construction business; or

C) $6,000,000 for retail business.

4) With no more than 250 employees if a manufacturing business.

A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year.

B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.

5) If the business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the amounts shown in subsection (e)(3). For example, a business that is both a retailer and wholesaler may not have total sales exceeding $16,000,000 and the retail component may not exceed $6,000,000 and the wholesale component may not exceed $10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4).

6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates
shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 500.1190  Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

a) Upon direction of the CPO, the OAG may establish goals and other such preferences for contracting or subcontracting with businesses owned and controlled by minorities, females and persons with disabilities.

b) For purposes of this Section, the individuals claiming ownership and control must own at least 51% of the business.

c) The CPO may refer to the list of businesses that have been certified by CMS or other appropriate agency under the Business Enterprise Act for Minorities, Females and Persons with Disabilities [30 ILCS 575].

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 500.1195  Illinois Agricultural Products

In awarding contracts requiring the procurement of agricultural products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of agricultural products grown in Illinois. [30 ILCS 500/45-50]

(Source: Added at 35 Ill. Reg. _______, effective ____________)

Section 500.1197  Corn-based Plastics

In awarding contracts requiring the procurement of plastic products, preference may be given to
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An otherwise qualified bidder or offeror who will fulfill the contract through the use of plastic products made from Illinois corn by-products. [30 ILCS 500/45-55]

(Source: Added at 35 Ill. Reg. _____, effective ____________)

Section 500.1199 Disabled Veterans

It is the goal of the State to promote and encourage the continued economic development of businesses owned and controlled by qualified service disabled veterans and that qualified service disabled veteran-owned businesses (referred to as SDVOB) participate in the State’s procurement process as both prime and subcontractors. [30 ILCS 500/45-57] Upon direction of the CPO, the OAG may establish goals and other such preferences for contracting or subcontracting with SDVOB that are certified by the Department of Veterans' Affairs and the Department of Central Management Services.

(Source: Added at 35 Ill. Reg. _____, effective ____________)

SUBPART M: ETHICS

Section 500.1200 Bribery

a) Prohibition

No person or business shall be awarded a contract or subcontract under this Code who:

1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or

2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

b) Businesses

No business shall be barred from contracting with any unit of State or local government, or subcontracting under such a contract, as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and:

1) the business has been finally adjudicated not guilty; or
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2) the business demonstrates to the governmental entity with which it seeks to contract or which is a signatory to the contract to which the subcontract relates, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in Section 5-4(a)(2) of the Criminal Code of 1961.

c) Conduct on Behalf of Business
For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

d) Certification
Every bid submitted to and contract executed by the State and every subcontract shall contain a certification by the contractor or the subcontractor, respectively, that the contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the chief procurement officer may declare the related contract void if any certifications required by this Section are false. A contractor who makes a false statement, material to the certification, commits a Class 3 felony.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.1210 Felons

a) Unless otherwise provided, no person or business convicted of a felony shall do business with the State of Illinois or any State agency, or enter into a subcontract, from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. [30 ILCS 500/50-10]

b) Every bid submitted to and contract executed by the State and every subcontract subject to this Part shall contain a certification by the bidder or contractor or subcontractor, respectively, that the bidder, contractor or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the CPO may declare the related contract void if any of the
certifications required by this Section are false.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.1215 Prohibited Bidders and Contractors

a) Unless otherwise provided, no business shall bid or enter into a contract or subcontract if the business or any officer, director, partner, or other managerial agent of the business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 (PL 107-204) or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 [815 ILCS 5] for a period of 5 years from the date of conviction.

b) Every bid submitted to and contract executed by the State and every subcontract shall contain a certification by the bidder, contractor, or subcontractor, respectively, that the bidder, contractor, or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the chief procurement officer shall declare the related contract void if any of the certifications completed pursuant to this subsection (b) are false. [30 ILCS 500/50-10.5]

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 500.1217 Debt Delinquency

a) No person shall submit a bid for or enter into a contract or subcontract if that person knows or should know that he or she or any affiliate is delinquent in the payment of any debt to the State, unless the person or affiliate has entered into a deferred payment plan to pay off the debt. [30 ILCS 500/50-11 (a)] For purposes of this Section, terms shall be as defined in Section 50-11 of the Code.

b) Every bid submitted to and contract executed by the State and every subcontract shall contain a certification by the bidder, contractor, or subcontractor, respectively, that the contractor or the subcontractor and its affiliate is not barred from being awarded a contract or subcontract under this Section and acknowledges that the chief procurement officer may declare the related contract void if any of the certifications completed pursuant to this subsection (b) are false. [30 ILCS 500/50-11(b)]
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(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 500.1218 Collection and Remittance of Illinois Use Tax

a) No person shall enter into a contract with a State agency or enter into a subcontract unless the person and all affiliates of the person collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act [35 ILCS 105] regardless of whether the person or affiliate is a "retailer maintaining a place of business within this State" as defined in Section 2 of the Use Tax Act. [30 ILCS 500/50-12] For purposes of this Section, terms shall be as defined in Section 50-12 of the Code.

b) Every bid submitted and contract executed by the State and every subcontract shall contain a certification by the bidder, contractor, or subcontractor, respectively, that the bidder, contractor, or subcontractor is not barred from bidding for or entering into a contract under subsection (a) of this Section and acknowledges that the chief procurement officer may declare the related contract void if any of the certifications completed pursuant to this subsection (b) are false. [30 ILCS 500/50-12]

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 500.1220 Conflicts of Interest

a) Prohibition

It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority. [30 ILCS 500/50-13(a)]
b) Interests
It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive more than 7 1/2% of the total distributable income or an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.[30 ILCS 500/50-13(b)]

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

d) Securities
Nothing in this Section invalidates the provisions of any bond or other security previously offered or to be offered for sale or sold by or for the State of Illinois.[30 ILCS 500/50-13 (d)]

e) Prior Interests
This Section does not affect the validity of any contract made between the State and an officer or employee of the State or member of the General Assembly, his or her spouse, minor child, or other immediate family member living in his or her residence or any combination of those persons if that contract was in existence before his or her election or employment as an officer, member, or employee. The contract is voidable, however, if it cannot be completed within 365 days after the officer, member, or employee takes office or is employed. [30 ILCS 500/50-13 (e)]

f) Exceptions
1) Public aid payments. This Section does not apply to payments made for a public aid recipient.

2) Teaching. This Section does not apply to a contract for personal services as a teacher or school administrator between a member of the General Assembly or his or her spouse, or a State officer or employee or his or her spouse, and any school district, public community college district, the
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University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governor State University, or Northeastern Illinois University.

3) Ministerial duties. This Section does not apply to a contract for personal services of a wholly ministerial character, including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist, or telephone switchboard operator, made by a spouse or minor child of an elective or appointive State officer or employee or of a member of the General Assembly.

4) Child and family services. This Section does not apply to payments made to a member of the General Assembly, a State officer or employee, his or her spouse or minor child acting as a foster parent, homemaker, advocate, or volunteer for or in behalf of a child or family served by the Department of Children and Family Services.

5) Licensed professionals. Contracts with licensed professionals, provided they are competitively bid or part of a reimbursement program for specific, customary goods and services through the Department of Children and Family Services, the Department of Human Services, the Department of Healthcare and Family Services [30 ILCS 500/50-13(f)].

6) An individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise receives a direct financial benefit in conjunction with performance of a contract, including finder's fees and commission payments.

h) Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, that is distributed to those entitled to receive a share of such income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income the entitlement shall be determined at the end of the company's most recent fiscal year.

i) Exemptions
If the Procurement Officer finds a conflict of interest under this Section with the vendor selected for award or contract negotiations, the Procurement Officer shall
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forward to the CPO the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO may exempt named individuals from the prohibitions of this Section when, in his or her judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section. [30 ILCS 500/50-20] Notice of each exemption shall be published in the Auditor General Bulletin and a copy shall be filed with the Secretary of State and State Comptroller prior to the contract's execution.

(Source: Amended at 35 Ill. Reg. ____ , effective ____________)

Section 500.1235 Environmental Protection Act Violations

a) Unless otherwise provided, no person or business found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act [415 ILCS 5] shall do business with the State of Illinois or any State agency or enter into a subcontract from the date of the order containing the finding of violation until 5 years after that date, unless the person or business can show that no person involved in the violation continues to have any involvement with the business. [30 ILCS 500/50-14(a)]

b) A person or business otherwise barred from doing business with the State of Illinois or any State agency or subcontracting under the Code by subsection (a) may be allowed to do business with the State of Illinois or any State agency if it is shown that there is no practicable alternative to the State to contracting with that person or business. [30 ILCS 500/50-14(b)]

c) Every bid submitted to and contract executed by the State and every subcontract shall contain a certification by the bidder, contractor, or subcontractor, respectively, that the bidder, contractor, or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the contracting State agency may declare the related contract void if any of the certifications completed pursuant to this subsection (c) are false. [30 ILCS 500/50-14(c)]

(Source: Added at 35 Ill. Reg. _____ , effective ____________)

Section 500.1238 Lead Poisoning Prevention Act Violations
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Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act [410 ILCS 45] are prohibited from doing business with the State of Illinois or any State agency, or subcontracting, until the violation is mitigated. [30 ILCS 500/50-14.5]

(Source: Added at 35 Ill. Reg. _____, effective ____________)

Section 500.1240 Revolving Door Prohibition

Chief procurement officers, State purchasing officers, procurement compliance monitors, their designees whose principal duties are directly related to State procurement, and executive officers confirmed by the Senate are expressly prohibited for a period of 2 years after terminating an affected position from engaging in any procurement activity relating to the State agency most recently employing them in an affected position for a period of at least 6 months. The prohibition includes but is not limited to: lobbying the procurement process; specifying; bidding; proposing bid, proposal, or contract documents; on their own behalf or on behalf of any firm, partnership, association, or corporation. [30 ILCS 500/50-30] The CPO and any employees whose principal duties are directly related to OAG procurement are prohibited for a period of 2 years after terminating an affected position from engaging in any procurement activity relating to the OAG. This prohibition applies to persons who terminate an affected position on or after January 15, 1999. The CPO shall identify in writing those designees whose jobs, or whose position descriptions, are at least 51% directly related to OAG procurement. Activities directly related to OAG procurement include, but are not limited to; drafting specifications, preparing solicitations, evaluating offers, negotiating contracts, administering contracts and supervising any of the foregoing.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 500.1250 Disclosure of Financial Interests and Potential Conflicts of Interest

a) Requirement for Disclosure

1) All offers from responsive bidders or offerors with an annual value of more than $25,000 and all subcontracts with an annual value of more than $25,000 shall be accompanied by disclosure of the financial interests of the contractor, bidder, or proposer and each subcontractor to be used. The financial disclosure of each successful bidder or offeror and its subcontractors shall be incorporated as a material term of the contract and shall become part of the publicly available contract or procurement
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file maintained by the appropriate chief procurement officer. Each disclosure shall be signed and made under penalty of perjury by an authorized officer or employee on behalf of the bidder or offeror. [30 ILCS 500/50-35(a)]

2) Disclosure by the responsive bidders or offerors shall include any ownership or distributive income share that is in excess of 5%, or an amount greater than 60% of the annual salary of the Governor, of the disclosing bidding entity or its parent entity, whichever is less, unless the contractor, or bidder or subcontractor:

A) is a publicly traded entity subject to Federal 10K reporting, in which case it may submit its 10K disclosure in place of the prescribed disclosure; or

B) is a privately held entity that is exempt from Federal 10K reporting but has more than 400 shareholders, partners or members, in which case it may submit the information that Federal 10K reporting companies are required to report under 17 CFR 229.401 and list the names of any person or entity holding any ownership share that is in excess of 5% in place of the prescribed disclosure.

b) Definitions and General Provisions

1) An "offer from responsive bidders or offerors" means only those offers that are received using an Invitation for Bids or Request for Proposals under Section 500.310 or 500.320 of this Part. Disclosures are not required in sole source or emergency procurements.

2) A "parent entity" means a person who owns 100% of the bidding entity.

3) "Contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, that is by and between the State and the named individual.

4) "Distributable" or "distributive" income means the income of a company after payment of all expenses, including employee salaries and bonuses, and retained earnings, that is distributed to those entitled to receive a share of such income. In the case of a for-profit corporation, distributable
income means dividends. When calculating entitlement to distributable income, the entitlement shall be determined at the end of the company's most recent fiscal year.

5) “Personal services” shall be any contract for services subject to this Part, including, by way of example, professional and artistic services, repair services, cleaning and guard services, but excludes contracts with employees who are exempt from this Part under Section 500.30(a)(4) of this Part.

6) “Competitively bid” means a contract let pursuant to Section 500.310 or 500.320 of this Part.

7) “Subject to federal 10K reporting” means subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. “10K disclosure” means a report required under Section 13 or 15(d) of the Securities Exchange Act of 1934.

8) Contractors are under a continuing obligation to promptly supplement disclosures for accuracy throughout the contracting process and throughout the term of any resulting contract. Contractors with multi-year contracts must submit disclosures on an annual basis. Once a disclosure is made in relation to a particular contract, the disclosure need not be repeated if the contract is amended.

9) 10K Disclosures

A) Any vendor subject to federal 10K reporting requirements may submit its 10K to the OAG in satisfaction of this disclosure requirement provided the vendor also identifies the specific sections or parts in the 10K disclosure where the OAG may find information, if any, pertaining to those who have an ownership interest or an interest in the distributable income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the OAG is not in the 10K, but is in a document referenced in the 10K, or in a document that may be submitted to the SEC in conjunction with or in lieu of the 10K,
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then that additional documentation shall be provided as well.

B) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of the CPO shall be investigated.

C) In circumstances where a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements and for purposes of the Procurement Officer's duty to consider any conflict or potential conflict of interest that may exist, but that is not subject to specific disclosure requirements of this Part, and that is not personally known by the Procurement Officer, "publicly known or reasonably available to the public" shall consist of information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure.

c) Form of Disclosure

1) The form of disclosure shall be prescribed by the CPO and must include at least the names, and addresses, and dollar or proportionate share of ownership of each person identified in this Section, their instrument of ownership or beneficial relationship, and notice of any potential conflict of interest resulting from the current ownership or beneficial relationship of each person identified in this Section having in addition any of the following relationships:

A1) State employment, currently or in the previous 3 years, including contractual employment of services;

B2) State employment of spouse, father, mother, son, or daughter, including contractual employment for services in the previous 2 years;

C3) Elective status; the holding of elective office of the State of Illinois, the government of the United States, any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois currently or in the previous 3 years;
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D4) Relationship to anyone holding elective office currently or in the previous 2 years; spouse, father, mother, son, or daughter;

E5) Appointive office; the holding of any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that office currently or in the previous 3 years;

F6) Relationship to anyone holding appointive office currently or in the previous 2 years; spouse, father, mother, son, or daughter;

G7) Employment, currently or in the previous 3 years, as or by any registered lobbyist of the State government;

H8) Relationship to anyone who is or was a registered lobbyist in the previous 2 years; spouse, father, mother, son, or daughter;

I9) Compensated employment, currently or in the previous 3 years, by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections;

J40) Relationship to anyone; spouse, father, mother, son, or daughter; who is or was a compensated employee in the last 2 years of any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections.

2) The disclosure required under this Section must also include the name and address of each lobbyist required to register under the Lobbyist Registration Act [25 ILCS 170] and other agent of the bidder or offeror who is not identified under subsection (a) and who has communicated, is communicating, or may communicate with any State officer or employee concerning the bid or offer. The disclosure under this subsection (c)(2) is a continuing obligation and must be promptly supplemented for accuracy.
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throughout the process and throughout the term of the contract if the bid or offer is successful. [30 ILCS 500/50-35(b-1)]

3) The disclosure required under this Section must also include, for each of the persons identified in subsection (c)(1) or (2), each of the following that occurred within the previous 10 years: debarment from contracting with any governmental entity; professional licensure discipline; bankruptcies; adverse civil judgments and administrative findings; and criminal felony convictions. The disclosure under this subsection (c)(3) is a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the contract if the bid or offer is successful. [30 ILCS 500/50-35(b-2)]

d) Intent of Disclosure
The disclosure in subsection (c) is not intended to prohibit or prevent any contract. The disclosure is meant to fully and publicly disclose any potential conflict to the CPO, procurement officers, their designees, and executive officers so they may adequately discharge their duty to protect the State.

e) Determination by Procurement Officer
When a potential for a conflict of interest is identified, discovered, or reasonably suspected it shall be reviewed by the Procurement Officer or his or her designee, who must rule whether to void or allow the contract, subcontract, bid, offer, or proposal weighing the best interest of the State of Illinois. Any such written determination shall become a publicly available part of the contract, bid, or proposal file.

f) Requirements for Reasonable Care and Diligence
These thresholds and disclosure do not relieve the CPO, procurement officers, or their designees from reasonable care and diligence for any contract, bid, offer, or proposal. The CPO, procurement officers, or their designees shall be responsible for using any reasonably known and publicly available information to discover any undisclosed potential conflict of interest and act to protect the best interest of the State of Illinois.

g) Inadvertent or Accidental Failure to Fully Disclose
Inadvertent or accidental failure to fully disclose shall render the contract,
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| subcontract, bid, proposal, or relationship voidable by the CPO if he or she deems it in the best interest of the State of Illinois and, at his or her discretion, may be cause for barring from future contracts, subcontract, bids, proposals, or relationships with the OAG for a period of up to 2 years.

h) Intentional, Willful, or Material Failure to Disclose
Intentional, willful, or material failure to disclose shall render the contract, subcontract, bid, proposal, or relationship voidable by the CPO if he or she deems it in the best interest of the State of Illinois and shall result in debarment from future contracts, subcontract, bids, proposals, or relationships with the OAG for a period of not less than 2 years and not more than 10 years. Reinstatement after 2 years and before 10 years must be reviewed and commented upon by the CPO, who must rule in writing whether and when to reinstate.

i) Other Procurements
In addition, all disclosures shall note any other current or pending contracts, proposals, subcontract, leases, or other ongoing procurement relationships the bidding, proposing, or offering, or subcontracting entity has with any other unit of State government and shall clearly identify the unit and the contract, proposal, lease, or other relationship. [30 ILCS 500/50-35(h)]

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

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 500.1265 Disclosure of Business in Iran

a) Each bid, offer, or proposal submitted for a State contract, other than a small purchase shall include a disclosure of whether or not the bidder, offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran, or companies involved in consortiums or projects commissioned by the Government of Iran and:
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1) more than 10% of the company's revenues produced in or assets located in Iran involve oil-related activities or mineral extraction activities; less than 75% of the company's revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral-extraction products or services to the Government of Iran or a project or consortium created exclusively by that government; and the company has failed to take substantial action; or

2) the company has, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each that in the aggregate equals or exceeds $20 million in any 12-month period, that directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources of Iran. [30 ILCS 500/50-36]

b) A bid, offer or proposal that does not include the disclosure required by subsection (a) shall not be considered responsive. A procurement officer may consider the disclosure when evaluating the bid, offer or proposal or awarding the contract.

c) Each Chief Procurement Officer shall provide the State Comptroller with the name of each entity disclosed under subsection (a) as doing business or having done business in Iran. The State Comptroller shall post that information on his or her official website.

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 500.1267 Lobbying Restrictions

a) A person or business that is let or awarded a contract is not entitled to receive any payment, compensation, or other remuneration from the State to compensate the person or business for any expenses related to travel, lodging, or meals that are paid by the person or business to any officer, agent, employee, consultant, independent contractor, director, partner, manager, or shareholder. [30 ILCS 500/50-38 (a)]

b) Disclosure
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1) Any bidder or offeror on a State contract that hires a person required to register under the Lobbyist Registration Act to assist in obtaining a contract shall:

A) disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract;

B) not bill or otherwise cause the State of Illinois to pay for any of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration; and

C) sign a verification certifying that none of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration were billed to the State.

2) The information in subsection (b)(1)(A), along with all supporting documents, shall be filed with the agency awarding the contract and with the Secretary of State. The CPO shall post this information, together with the contract award notice, in the online Procurement Bulletin. [30 ILCS 500/50-38(b)]

c) No person or entity shall retain a person or entity required to register under the Lobbyist Registration Act to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. Any person who violates this subsection is guilty of a business offense and shall be fined not more than $10,000. [30 ILCS 500/50-38(c)]

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 500.1275 Procurement Communications Reporting Requirement

a) Reporting Requirement

1) Any written or oral communication received by a State employee that imparts or requests material information or makes a material argument regarding potential action concerning a procurement matter, including, but not limited to, an application, a contract, or a project, shall be reported to the CPO. These communications do not include the following:
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A) statements by a person publicly made in a public forum;

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

C) statements made by an OAG employee to the Auditor General or other employees of the OAG.

2) The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of a contract. [30 ILCS 500/50-39(a)]

b) The report required by subsection (a) shall be submitted monthly and include at least the following:

1) the date and time of each communication;

2) the identity of each person from whom the written or oral communication was received, the individual or entity represented by that person, and any action the person requested or recommended;

3) the identity and job title of the person to whom each communication was made;

4) if a response is made, the identity and job title of the person making each response;

5) a detailed summary of the points made by each person involved in the communication;

6) the duration of the communication;

7) the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication; and
NOTICE OF PROPOSED AMENDMENTS

8) any other pertinent information. [30 ILCS 500/50-39(b)]

c) Additionally, when an oral communication made by a person required to register under the Lobbyist Registration Act is received by a State employee that is covered under this Section, all individuals who initiate or participate in the oral communication shall submit a written report to that State employee that memorializes the communication and includes, but is not limited to, the items listed in subsection (b). [30 ILCS 500/50-39(c)]

d) The CPO shall make each report submitted pursuant to this Section available on the Auditor General Bulletin within 7 days after receipt of the report.

e) The reporting requirements shall also be conveyed through ethics training under the State Employees and Officials Ethics Act [5 ILCS 430]. An employee who knowingly and intentionally violates this Section shall be subject to suspension or discharge.

(Source: Added at 35 Ill. Reg. _____, effective ____________)

Section 500.1285 Continuing Disclosure; False Certification

Every person that has entered into a multi-year contract and every subcontractor with a multi-year subcontract shall certify, by July 1 of each fiscal year covered by the contract after the initial fiscal year, to the responsible chief procurement officer whether it continues to satisfy the requirements of Article 50 of the Code pertaining to eligibility for a contract award. If a contractor or subcontractor is not able to truthfully certify that it continues to meet all requirements, it shall provide with its certification a detailed explanation of the circumstances leading to the change in certification status. A contractor or subcontractor that makes a false statement material to any given certification required under Article 50 of the Code is, in addition to any other penalties or consequences prescribed by law, subject to liability under the Illinois False Claims Act [740 ILCS 175] for submission of a false claim. [30 ILCS 500/50-2]

(Source: Added at 35 Ill. Reg. _____, effective ____________)

SUBPART N: PROTESTS AND REMEDIES

Section 500.1300 Suspension

a) Application
NOTICE OF PROPOSED AMENDMENTS

This Section applies to all debarments or suspensions of contractors and subcontractors from consideration for award of contracts.

b) The CPO may suspend a contractor or subcontractor from doing business with the OAG, or from providing specific types of supplies or services. A suspension may be issued for cause for a period of up to 10 years upon a showing the contractor or subcontractor violated any law governing the procurement transaction or this Part, or failed to conform to specifications or terms of delivery.

c) When the CPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or subcontractor. Offers will not be solicited from the suspended contractor or subcontractor, and, if received, will not be considered during the period of suspension.

d) A contractor or subcontractor may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than 10 years. The suspension will be effective seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension would not become effective until the evaluation of the objection is completed.

e) The CPO may debar a contractor or subcontractor. Debarment is the permanent suspension of a contractor or subcontractor from doing business with the OAG. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Offers received from the debarred contractor or proposing the use of a debarred subcontractor will not be considered.

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

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.1320 Violation of Law or Rule
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a) Determination that Solicitation or Award Violates Law
If the CPO finds that the solicitation or proposed award is in violation of statute or rule, the CPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.

b) Determination that Contract Violates this Part

1) If any contract or amendment to a contract is entered into or purchase or expenditure of funds is made at any time in violation of this Part or any other law, the contract or amendment may be declared void by the CPO or may be ratified and affirmed, provided the CPO determines that ratification is in the best interests of the OAG. If the contract is ratified and affirmed, it shall be without prejudice to the State's rights to any appropriate damages.

2) If, during the term of a contract, the OAG determines that the contractor is delinquent in the payment of debt as set forth in Section 500.1217 of this Part, the OAG may declare the contract void if it determines that voiding the contract is in the best interests of the State.

3) If, during the term of a contract, the OAG determines that the contractor is in violation of Section 500.1215 of this Part, the OAG shall declare the contract void.

4) If, during the term of a contract, the OAG learns from an annual certification or otherwise determines that the contractor no longer qualifies to enter into State contracts by reason of Section 500.1200, 500.1210, 500.1218, 500.1235 or 500.1238 of this Part, the CPO may declare the contract void if it determines that voiding the contract is in the best interests of the State.

5) If, during the term of a contract, the CPO learns from an annual certification or otherwise determines that a subcontractor subject to this Part no longer qualifies to enter into State contracts by reason of Section 500.1200, 500.1210, 500.1215, 500.1217, 500.1218, 500.1235, or 500.1238 of this Part, the CPO may declare the related contract void if it determines that voiding the contract is in the best interests of the State.
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c) Effect of Declaring a Contract Null and Void
In all cases in which a contract is voided, the OAG shall endeavor to return those
supplies delivered under the contract that have not been used or distributed. No
further payments shall be made under the contract.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 500.1330 Protests

a) Protest Resolution by the Procurement Officer
An actual or prospective bidder, offeror, or vendor that may be aggrieved in
connection with a procurement may file a protest on any phase of solicitation or
award, including but not limited to specifications preparation, bid solicitation, or
award provided the aggrieved party has evidence of a violation of a procurement
statute, procurement rule, or the solicitation itself.

b) Complaints to the Procurement Officer
Complainants should seek resolution of their complaints initially with the
Procurement Officer conducting the solicitation. Such complaints may be made
verbally or in writing.

bcej Filing of Protest

1) Protests shall be made in writing to the CPO, and shall be filed by noon on
the seventh calendar day after the aggrieved party knew or should have
known within 7 calendar days after the protester knows or should have
known of the facts giving rise to the protest. A protest is considered filed
when physically received by the CPO. Protests filed after the 7 calendar
day period shall not be considered. With respect in regard to a protest
regarding specifications or other terms and conditions of the solicitation
document, the protest must be received within 7 calendar days after the
date the solicitation was posted in the Auditor General Bulletin, or issued
if not posted in the Auditor General Bulletin issued, and in any event must
be received by the OAG at the designated address before the date for
opening of offers.

2) To expedite handling of protests, the envelope should be labeled "Protest."
The written protest shall include at a minimum the following:
NOTICE OF PROPOSED AMENDMENTS

A) the name and address of the protester;

B) appropriate identification of the procurement and, if a contract has been awarded, its number;

C) a statement of reasons for the protest specifically identifying any alleged violation of a procurement statute, a procurement rule, or the solicitation itself, including the evaluation and award; and

D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

c) Requested Information; Time for Filing

Any additional information requested by the OAG shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the protesting party to comply expeditiously with a request for information by the CPO may result in resolution of the protest without consideration of that information.

de) Stay of Procurements During Protest

When a protest has been timely filed and before an award has been made, the Procurement Officer shall make no award of the contract until the protest has been resolved. If timely received but after award, the award shall be stayed without penalty to the State, or the award may be honored or revoked in whole or in part depending on the outcome of the protest review and no award made until the protest has been resolved. In either case the CPO may make the award or reinstate the award upon a determination that the needs of the State require an immediate award and performance under the contract.

ef) Decision by the CPO

A decision on a protest shall be made by the CPO as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.

eg) Effect of Judicial or Administrative Proceedings

If an action concerning the protest has commenced in court, the CPO shall not act
NOTICE OF PROPOSED AMENDMENTS

on the protest, but shall refer the protest to the Attorney General. This subsection shall not apply when a court requests, expects, or otherwise expresses interest in the decision of the CPO.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

SUBPART P: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section 500.1500  Severability

If any provision of this Part or any application of it to any person or circumstance thereof is held invalid, that invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provision or application, and to this end the provisions of this Part are declared to be severable.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 500.1540  Records and Audits

a) Retention of Books and Records

1) Books and records that relate to performance of a State contract, including subcontracts, and that support amounts charged to the State, shall be maintained:

   A) by a contractor/vendor, for a period of three years from the later of the date of final payment under the prime contract or completion of the contract;

   B) by a subcontractor, for a period of at least three years from the later of the date of final payment under the subcontract or completion of the subcontract; and

   C) by a contractor/vendor and subcontractor for such longer period of time as is necessary to complete ongoing or announced audits. The three year period shall be extended for the duration of any audit in progress at the time of that period's expiration.

2) Failure to maintain the books and records required by this Section shall
establish a presumption in favor of the State for the recovery of any funds paid by the State for which required books and records are not available.

b) Contract Audit

1) Types of Contracts Audited. The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be appropriate to assure satisfactory performance, such as a time and material contract.

2) Situations in which an audit may be warranted include but are not limited to when a question arises in connection with:

A) the financial condition, integrity, and reliability of the contractor or subcontractor;

B) any prior audit experience;

C) the adequacy of the contractor's or subcontractor's accounting system;

D) the number or nature of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;

E) the use of federal assistance funds;

F) the fluctuation of market prices affecting the contract; or

G) any other situation when the Procurement Officer finds that such an audit is necessary for the protection of the State's best interest.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
ILLINOIS REGISTER 18104

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

1) **Heading of the Part:** Skilled Nursing and Intermediate Care Facilities Code

2) **Code Citation:** 77 Ill. Adm. Code 300

3) **Section Numbers:**

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<thead>
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<tbody>
<tr>
<td>300.120</td>
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<td>300.165</td>
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<td>300.4020</td>
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<tr>
<td>300.6020</td>
<td>Amend</td>
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4) **Statutory Authority:** Nursing Home Care Act [210 ILCS 45]

5) **A Complete Description of the Subjects and Issues Involved:** Part 300 regulates skilled nursing and intermediate care facilities, including licensure, violations, and resident care and safety.
DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

In 2010, the General Assembly passed Public Act 96-1372, a comprehensive overhaul of all aspects of licensure, violations, resident care, and safety. PA 96-1372 added new definitions or amended existing ones for identified offenders and the levels of violations, updated the screening and rescreening requirements for mentally ill residents, updated the requirements for screening and treating identified offenders, doubled license fees, established minimum requirements for comprehensive resident care plans, increased fines and revamped the levels of violations, added statutory protections for "whistleblowers," and required the Department to draft rules for the care and treatment of sexual assault victims.

This rulemaking implements PA 96-1372, amending 22 Sections, repealing two Sections, and adding two Sections.

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

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

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

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

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

9) Does this rulemaking contain incorporations by reference? No

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

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11) Statement of Statewide Policy Objective: This rulemaking may create a state mandate.
DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

12) **Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:**

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

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

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

13) **Initial Regulatory Flexibility Analysis:**

A) **Type of small businesses, small municipalities and not-for-profit corporations affected:** nursing homes

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

C) **Types of professional skills necessary for compliance:** nursing

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

The full text of the Proposed Amendments begins on the next page:
DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

**SUBPART A: GENERAL PROVISIONS**

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300.3490 Recreational and Activities Services (Repealed)
300.3500 Individual Treatment Plan (Repealed)
300.3510 Health Services (Repealed)
300.3520 Medical Services (Repealed)
300.3530 Dental Services (Repealed)
300.3540 Optometric Services (Repealed)
300.3550 Audiometric Services (Repealed)
300.3560 Podiatric Services (Repealed)
300.3570 Occupational Therapy Services (Repealed)
300.3580 Nursing and Personal Care (Repealed)
300.3590 Resident Care Services (Repealed)
300.3600 Record Keeping (Repealed)
300.3610 Food Service (Repealed)
300.3620 Furnishings, Equipment and Supplies (New and Existing Facilities) (Repealed)
300.3630 Design and Construction Standards (New and Existing Facilities) (Repealed)

SUBPART R: DAYCARE PROGRAMS

Section
300.3710 Day Care in Long-Term Care Facilities

SUBPART S: PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section
300.4000 Applicability of Subpart S
300.4010 Comprehensive Assessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
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300.4020 Reassessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
300.4030 Individualized Treatment Plan for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
300.4040 General Requirements for Facilities Subject to Subpart S
300.4050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart S
300.4060 Discharge Plans for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
300.4070 Work Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
300.4080 Community-Based Rehabilitation Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
300.4090 Personnel for Providing Services to Persons with Serious Mental Illness for Facilities Subject to Subpart S

SUBPART T: FACILITIES PARTICIPATING IN ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES' PUBLIC AID'S DEMONSTRATION PROGRAM FOR PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section
300.6000 Applicability of Subpart T
300.6005 Quality Assessment and Improvement for Facilities Subject to Subpart T
300.6010 Comprehensive Assessments for Residents of Facilities Subject to Subpart T
300.6020 Reassessments for Residents of Facilities Subject to Subpart T
300.6030 Individualized Treatment Plan for Residents of Facilities Subject to Subpart T
300.6040 General Requirements for Facilities Subject to Subpart T
300.6045 Serious Incidents and Accidents in Facilities Subject to Subpart T
300.6047 Medical Care Policies for Facilities Subject to Subpart T
300.6049 Emergency Use of Restraints for Facilities Subject to Subpart T
300.6050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart T
300.6060 Discharge Plans for Residents of Facilities Subject to Subpart T
300.6070 Work Programs for Residents of Facilities Subject to Subpart T
300.6080 Community-Based Rehabilitation Programs for Residents of Facilities Subject to Subpart T
300.6090 Personnel for Providing Services to Residents of Facilities Subject to Subpart T
300.6095 Training and Continuing Education for Facilities Subject to Subpart T

SUBPART U: ALZHEIMER'S SPECIAL CARE UNIT OR CENTER PROVIDING
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CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR OTHER DEMENTIA

Section
300.7000 Applicability
300.7010 Admission Criteria
300.7020 Assessment and Care Planning
300.7030 Ability-Centered Care
300.7040 Activities
300.7050 Staffing
300.7060 Environment
300.7070 Quality Assessment and Improvement
300.7080 Variances to Enhance Residents' Quality of Life

300.APPENDIX A Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities (Repealed)
300.APPENDIX B Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)
300.APPENDIX C Federal Requirements Regarding Patients'/Residents' Rights (Repealed)
300.APPENDIX D Forms for Day Care in Long-Term Care Facilities
300.APPENDIX E Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)
300.APPENDIX F Guidelines for the Use of Various Drugs
300.APPENDIX G Facility Report
300.TABLE A Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities
300.TABLE B Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities
300.TABLE C Construction Types and Sprinkler Requirements for Existing Skilled Nursing Facilities/Intermediate Care Facilities
300.TABLE D Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

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SUBPART A: GENERAL PROVISIONS

Section 300.120 Application for License

a) Any person acting individually or jointly with other persons who proposes to build, own, establish, or operate an intermediate care facility or skilled nursing facility shall submit application information on forms provided by the Department. The Department shall provide a written description of the proposed program to be provided, and other such information as the Department may require in order to determine the appropriate level of care for which the facility should be licensed. Application forms and other required information shall be submitted and approved prior to surveys of the physical plant or review of building plans and specifications.

b) An application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act [20 ILCS 3960].

c) Application for a license to establish or operate an intermediate care facility or skilled nursing facility shall be made in writing and submitted to the Department, with other such information as the Department may require, on forms furnished by the Department. (Section 3-103(1) of the Act)

d) All license applications shall be accompanied with an application fee of $1,990. The fee for a 2-year license shall be double the fee for the annual license.
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(Section 3-103(2) of the Act)

e) The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:

1) The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;

2) The name and location of the facility for which a license is sought;

3) The name of the person or persons under whose management or supervision the facility will be conducted;

4) The number and type of residents for which maintenance, personal care, or nursing is to be provided; and

5) Such information relating to the number, experience, and training of the employees of the facility, any management agreements for the operation of the facility, and of the moral character of the applicant and employees as the Department may deem necessary. (Section 3-103(2) of the Act)

f) Ownership Change or Discontinuation

1) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold or leased; when operation is discontinued; when operation is moved to a new location; when the licensee (if an individual) dies; when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.

2) A license issued to a corporation shall become null, void and of no further effect upon the dissolution of the corporation. The license shall not be revived if the corporation is subsequently reinstated. A new license shall must be obtained in such cases.
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g) Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act. After the application is approved, the applicant shall advise the Department every six months of any changes in the information originally provided in the application. (Section 3-103(3) of the Act)

h) The Department may issue licenses or renewals for periods of not less than six months nor more than 18 months for facilities with annual licenses and not less than 18 months nor more than 30 months for facilities with 2-year licenses in order to distribute the expiration dates of such licenses throughout the calendar year. The fees for such licenses shall be pro-rated on the basis of the portion of the year for which they are issued. (Section 3-110 of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.165 Criteria for Adverse Licensure Actions

a) Adverse licensure actions are determinations to deny the issuance of an initial license, to deny the issuance of a renewal of a license, or to revoke the current license of a facility.

b) A determination by the Director or his or her designee to take adverse licensure action against a facility shall be based on a finding that one or more of the following criteria are met:

1) A substantial failure to comply with the Act or this Part. The facility has substantially failed to meet any of the minimum standards set forth in the act or this Part. For purposes of this provision, substantial failure is a failure to meet the requirements of this Part that results only in unimportant omissions or defects given the particular circumstances involved. A substantial failure by a facility shall include, but not limited to, any of the following:
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A) termination of Medicare or Medicaid certification by the Centers for Medicare and Medicaid Services; or

B) a failure by the facility to pay any fine assessed under the Act after the Department has sent to the facility at least 2 notices of assessment that include a schedule of payments as determined by the Department, taking into account extenuating circumstances and financial hardships of the facility. (Section 3-119(a)(1) of the Act)

2) Conviction of the licensee, or of the person designated to manage or supervise the facility, of (Sections 3-117(1) and 3-119(a)(1) of the Act)
   The licensee or applicant, or the person designated to manage or supervise the facility has been convicted of any of the following crimes during the previous five years. Such convictions shall be verified by a certified copy of the record of the court of conviction.

A) A felony; or

B) Two or more misdemeanors involving moral turpitude. (Sections 3-117(2) and 3-119(a)(2) of the Act)

3) The moral character of the licensee, administrator, manager, or supervisor of the facility is not reputable. Evidence to be considered will include verifiable statements by residents of a facility, law enforcement officials, or other persons with knowledge of the individual's character. In addition, the definition afforded to the terms "reputable," "unreputable," and "irreputable" by the circuit courts of the State of Illinois shall apply when appropriate to the given situation. For purposes of this Section, a manager or supervisor of the facility is an individual with responsibility for the overall management, direction, coordination, or supervision of the facility or the facility staff. (Section 3-117(2) and 3-119(a)(2) of the Act)

4) The facility is operating (or, for an initial applicant, intends to operate) with personnel who are insufficient in number or unqualified by training or experience to properly care for the number and type of residents in the facility. Standards in this Part these rules concerning
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personnel, including Sections 300.810, 300.820, 300.830, 300.1220, 300.1230 and 300.1240, will be considered in making this determination. (Sections 3-117(3) and 3-119(a)(3) of the Act)

5) Financial or other resources are insufficient to operate the facility in accordance with the Act and this Part. Financial information and changes in financial information provided by the facility under Section 300.120(f) and under Section 3-208 of the Act will be considered in making this determination (Section 3-119(a)(4)-208 of the Act)

6) The facility is not under the direct supervision of a full-time administrator as required by Section 300.510. (Sections 3-117(6) and 3-119(a)(5) of the Act)

7) The facility has committed two Type "AA" violations within a two-year period. (Section 3-119(a)(6) of the Act)

8) The facility has violated the rights of residents of the facility by any of the following actions:

A) A pervasive pattern of cruelty or indifference to residents has occurred in the facility.

B) The facility has appropriated or converted for its use the property of a resident or has converted a resident's property for the facility's use without the resident's written consent or the consent of his or her legal guardian.

C) The facility has secured property, or a bequest of property, from a resident by undue influence.

9) The facility knowingly submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the facility.

10) The facility has refused to allow an inspection or survey of the facility by agents of the Department to occur.
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c) The Director or his or her designee shall consider all available evidence at the time of the determination, including the history of the facility and the applicant in complying with the Act and this Part, notices of violations that have been issued to the facility and the applicant, findings of surveys and inspections, and any other evidence provided by the facility, residents, law enforcement officials and other interested individuals.

(Source: Amended at 35 Ill. Reg. _______, effective _____________)

Section 300.170 Denial of Initial License

a) A determination by the Director or his or her designee to deny the issuance of an initial license shall be based on a finding that one or more of the criteria outlined in Section 300.165 or the following criteria are met:

1) Conviction of the applicant, or if the applicant is a firm, partnership or association, or any of its members or if a corporation, the conviction of the corporation or any of its officers and stockholders, or of the person designated to manage or supervise the facility. The applicant, any member of the firm, partnership, or association which is the applicant, any officer or stockholder of the corporation which is the applicant, or the person designated to manage or supervise the facility has been convicted of any of the following crimes during the previous five years. Such convictions shall be verified by a certified copy of the record of the court of conviction.

A) A felony; or

B) Two or more misdemeanors involving moral turpitude. (Section 3-117(2) of the Act)

2) Prior license revocation. Both of the following conditions shall be met:

A) Revocation of a facility license during the previous 5 years, if such prior license was issued to the individual applicant, a controlling owner or controlling combination of owners of the applicant; or any affiliate of the individual applicant or controlling owner of the applicant or affiliate of the applicant was a controlling owner of
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The license of a facility under this Act has been revoked during the past five years, which was owned or operated by the applicant, by a controlling owner of the applicant, by a controlling combination of owners of the applicant, or by an affiliate who is a controlling owner of the applicant. Operation for the purposes of this provision shall include individuals with responsibility for the overall management, direction, or supervision of the facility.

B) The denial of an application for a license pursuant to this subsection (a)(2) must be supported by evidence that such prior revocation renders the applicant unqualified or incapable of meeting or maintaining a facility in accordance with the Act and this Part. Such prior revocation renders the applicant unqualified or incapable of maintaining a facility in accordance with the minimum standards set forth in the Act or in this Part. This determination will be based on the applicant's qualifications and ability to meet the criteria outlined in Section 300.165(b) as evidenced by the application and the applicant's prior history. (Section 3-117(5) of the Act)

3) Personnel insufficient in number or unqualified by training or experience to properly care for the proposed number and type of residents. (Section 3-117(3) of the Act)

4) Insufficient financial or other resources to operate and conduct the facility in accordance with this Part and with contractual obligations assumed by a recipient of a grant under the Equity in Long-term Care Quality Act and the plan (if applicable) submitted by a grantee for continuing and increasing adherence to best practices in providing high-quality nursing home care. (Section 3-117(4) of the Act)

5) That the facility is not under the direct supervision of a full-time administrator, as defined by this Part, who is licensed, if required, under the Nursing Home Administrators Licensing and Disciplinary Act. (Section 3-117(6) of the Act)

6) That the facility is in receivership and the proposed licensee has not submitted a specific detailed plan to bring the facility into compliance.
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with the requirements of the Act and this Part, and with federal certification requirements, if the facility is certified, and to keep the facility in such compliance. (Section 3-117(7) of the Act)

b) The Department shall notify an applicant immediately upon denial of any application. Such notice shall be in writing and shall include:

1) A clear and concise statement of the basis of the denial. The statement shall include a citation to the provisions of Section 3-117 of the Act and the provisions of this Part under which the application is being denied.

2) A notice of the opportunity for a hearing under Section 3-103 of the Act. If the applicant desires to contest the denial of a license, it shall provide written notice to the Department of a request for a hearing within 10 days after receipt of the notice of denial. The notice shall describe the right of the applicant to appeal the denial of the application and the right to a hearing. (Section 3-118 of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.175 Denial of Renewal of License

a) Application for renewal of a license of a facility shall be denied and the license of the facility shall be allowed to expire when the Director or his or her designee finds that a condition, occurrence, or situation in the facility meets any of the criteria specified in Section 300.165(b) and in Section 3-119(a) of the Act. Pursuant to Section 10-65 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1010-65) [5 ILCS 100/10-65], licensees who are individuals are subject to denial of renewal of licensure if the individual is more than 30 days delinquent in complying with a child support order.

b) When the Director or his or her designee determines that an application for renewal of a license of a facility is to be denied, the Department shall notify the facility. The notice to the facility shall be in writing and shall include:

1) A clear and concise statement of the basis of the denial. The statement shall include a citation to the provisions of the Act and this Part on which the application for renewal is being denied.
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2) A statement of the date on which the current license of the facility will expire as provided in subsection (c) of this Section and Section 3-119(d) of the Act.

3) A description of the right of the applicant to appeal the denial of the application for renewal and the right to a hearing. (Section 3-119(b) of the Act)

c) The effective date of the nonrenewal of a license shall be as provided in Section 3-119(d) of the Act.

d) The current license of the facility shall be extended by the Department when it finds that such extension is necessary to permit orderly removal and relocation of residents. (Section 3-119(d)(3) of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective __________)

Section 300.180 Revocation of License

a) The license of a facility shall be revoked when the Director or his or her designee finds that a condition, occurrence or situation in the facility meets any of the criteria specified in Section 300.165(b) and in Section 3-119(a) of the Act. In addition, the license of a facility will be revoked when the facility fails to abate or eliminate a level A violation as provided in Section 300.282(b) or when the facility has committed 2 Type "AA" violations within a 2-year period. (Section 3-119(a)(6) of the Act) Pursuant to Section 10-65 of the Illinois Administrative Procedure Act, licensees who are individuals are subject to revocation of licensure if the individual is more than 30 days delinquent in complying with a child support order.

b) When the Director or his or her designee determines that the license of a facility is to be revoked, the Department shall notify the facility. The notice to the facility shall be in writing and shall include:

1) A clear and concise statement of the basis of the revocation. The statement shall include a citation to the provisions of the Act and this Part on which the license is being revoked.

2) A statement of the date on which the revocation will take effect as
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provided in subsection (c) of this Section and Section 3-119(d) of the Act.

3) Notice of the opportunity for a hearing under Section 3-703 of the Act. A description of the right of the facility to appeal the revocation of the license and the right to a hearing. (Section 3-119(b) of the Act)

c) The effective date of the revocation of a license shall be as provided in Section 3-119(d) of the Act.

d) The Department may extend the effective date of license revocation. The effective date of the revocation shall be extended by the Department when it finds that such extension is necessary to permit orderly removal and relocation of residents. (Section 3-119(d)(3) of the Act)

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 300.220 Information to Be Made Available to the Public By the Department

a) The Department shall respect the confidentiality of a resident's record and shall not divulge or disclose the contents of a record in a manner which identifies a resident, except upon a resident's death to a relative or guardian, or under judicial proceedings. Section 2-206 of the Act. This Section shall not be construed to limit the right of a resident or a resident's representative to inspect or copy the resident's records. (Section 2-206(a) of the Act)

b) Confidential medical, social, personal or financial information identifying a resident shall not be available for public inspection in a manner which identifies a resident. (Section 2-206(b) of the Act)

c) The following information is subject to disclosure to the public from the Department or the Department of Healthcare and Family Services Public Aid:

1) Information submitted under Sections 3-103 and 3-207 of the Act, except information concerning the remuneration of personnel licensed, registered, or certified by the Department of Financial and Professional Regulation and monthly charges for an individual private resident;

2) Records of license and certification inspections, surveys, and evaluations
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of facilities, other reports of inspections, surveys, and evaluations of resident care, whether a facility has been designated a distressed facility, and the basis for the designation, and reports concerning a facility prepared pursuant to Titles XVIII and XIX of the Social Security Act (42 U.S.C.A. 1395 et seq. and 1396 et seq.) subject to the provisions of the Social Security Act; (42 U.S.C.A. 301 et seq.)

3) Cost and reimbursement reports submitted by a facility under Section 3-208 of the Act, reports of audits of facilities, and other public records concerning the cost incurred by, revenues received by, and reimbursement of facilities; and

4) Complaints filed against a facility and complaint investigation reports, except that a complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a facility under Section 3-702 of the Act, and, further, except that a complainant or resident's name shall not be disclosed except under Section 3-702 of the Act.

d) The Department shall disclose information under this Section in accordance with provisions for inspection and copying of public records required by the Freedom of Information Act (Ill. Rev. Stat. 1987, ch. 116, par. 201 et seq.). (Section 2-205 of the Act)

e) However, the disclosure of information described in subsection (c)(1) shall not be restricted by any provision of the Freedom of Information Act. (Section 2-205 of the Act)

f) Copies of reports available to the public may be obtained by making a written request to the Department in accordance with the Department's rules titled Access to Records of the Department of Public Health (2 Ill. Adm. Code 1127) Freedom of Information Rules—2 Ill. Adm. Code 1126. However, access to cost reports shall be governed by Department of Public Aid rule "Access to Cost Reports" (89 Ill. Adm. Code 140.544). The Department may, at its discretion, waive reproduction fees if the party requesting the material is involved in legal action with the Department.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
Section 300.274  Determination of the Level of a Violation

a) After determining that issuance of a notice of violation is warranted and prior to issuance of the notice, the Director or his or her designee will review the findings that are the basis of the violation, and any comments and documentation provided by the facility, to determine the level of the violation. Each violation shall be determined to be either a level AA, a level A, a level B, or a level C violation based on the criteria outlined in this Section.

b) The following definitions of levels of violations shall be used in determining the level of each violation:

1) A "level AA violation" or a "Type AA violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death. (Section 1-128.5 of the Act)

2) A "level A violation" or a "Type A violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that presents a substantial probability that the risk of death or serious mental or physical harm will result therefrom or has resulted in actual physical or mental harm to a resident. (Section 1-129 of the Act)

3) A "level B violation" or a "Type B violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to a resident. (Section 1-130 of the Act)

4) A "level C violation" or a "Type C violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom. (Section 1-132 of the Act)

c) In determining the level of a violation, the Director or his or her designee shall consider the following criteria:
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1) The specific requirements of this Part which have been violated and the designated level of violation for those provisions:

A) The designated level of violation is indicated by the letter or letters in parentheses following specific provisions. The presence of more than one letter following a specific provision indicates that the provision may be applicable to different levels of violation. The absence of any letter following a specific provision indicates that no designated level of violation applicable to that provision has been determined.

B) The designated level of violation will be considered in conjunction with the other criteria contained in subsections (c)(2) and (c)(3) of this Section which may increase or decrease the level of violation cited for a specific violation, except that no violation will be cited as a level B violation unless there is a direct threat to the health, safety or welfare of a resident, or as a level A violation unless there is a substantial probability of the death of a resident or serious mental or physical harm to a resident.

1)(2) The degree of danger to the resident or residents which is posed by the condition or occurrence in the facility. The following factors will be considered in assessing the degree of danger:

A) Whether the resident or residents of the facility are able to recognize conditions or occurrences which may be harmful and are able to take measures for self-preservation and self-protection. The extent of nursing care required by the residents as indicated by review of patient needs will be considered in relation to this determination.

B) Whether the resident or residents have access to the area of the facility in which the condition or occurrence exists and the extent of such access. A facility's use of barriers, warning notices, instructions to staff and other means of restricting resident access to hazardous areas will be considered.

C) Whether the condition or occurrence was the result of inherently
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hazardous activities or negligence by the facility.

D) Whether the resident or residents of the facility were notified of the condition or occurrence and the promptness of such notice. Failure of the facility to notify residents of potentially harmful conditions or occurrences will be considered. The adequacy of the method of such notification and the extent to which such notification reduced the potential danger to the residents will also be considered.

| 2) 3) | The directness and imminence of the danger to the resident or residents by the condition or occurrence in the facility. In assessing the directness and imminence of the danger, the following factors will be considered:

A) Whether actual harm, including death, physical injury or illness, mental injury or illness, distress, or pain, to a resident or residents resulted from the condition or occurrence and the extent of such harm.

B) Whether available statistics and records from similar facilities indicate that direct and imminent danger to the resident or residents has resulted from similar conditions or occurrences and the frequency of such danger.

C) Whether professional opinions and findings indicate that direct and imminent danger to the resident or residents will result from the condition or occurrence.

D) Whether the condition or occurrence was limited to a specific area of the facility or was widespread throughout the facility. Efforts taken by the facility to limit or reduce the scope of the area affected by the condition or occurrence will be considered.

E) Whether the physical, mental, or emotional state of the resident or residents, who are subject to the danger, would facilitate or hinder harm actually resulting from the condition or occurrence.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.277 Administrative Warning
If the Department finds a situation, condition, or practice which violates the Act or this Part that does not constitute a Type "AA", Type "A", Type "B", or Type "C" violation, the Department shall issue an administrative warning. (Section 3-303.2(a) of the Act)

Each administrative warning shall be in writing and shall include the following information:

1) A description of the nature of the violation.

2) A citation of the specific statutory provision or rule which the Department alleges has been violated.

3) A statement that the facility shall be responsible for correcting the situation, condition, or practice. (Section 3-303.2(a) of the Act)

Each administrative warning shall be sent to the facility and the licensee or served personally at the facility within 10 days after the Director or his or her designee determines that issuance of an administrative warning is warranted under Section 300.272.

The facility is not required to submit a plan of correction in response to an administrative warning.

If the Department finds, during the next on-site inspection which occurs no earlier than 90 days from the issuance of the administrative warning, that the facility has not corrected the situation, condition, or practice which resulted in the issuance of the administrative warning, the Department shall notify the facility of the finding. The facility must then submit a written plan of correction as provided in Section 300.278. The Department will consider the plan of correction and take any necessary action in accordance with Section 302.278. (Section 3-303.2(b) of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.278 Plans of Correction
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a) The situation, condition, or practice constituting a Type "AA" violation or a Type "A" violation shall be abated or eliminated immediately unless a fixed period of time, not exceeding 15 days, as determined by the Department and specified in the notice of violation, is required for correction. (Section 3-303(a) of the Act)

b) The facility shall have ten days after receipt of notice of violation for a Type B violation, or after receipt of a notice under Section 300.277(d) of failure to correct a situation, condition, or practice that resulted in the issuance of an administrative warning, to prepare and submit a plan of correction to the Department. (Section 3-303(b) of the Act)

c) Within the ten-day period, a facility may request additional time for submission of the plan of correction. The Department will extend the period for submission of the plan of correction for an additional 30 days, when it finds that corrective action by a facility to abate or eliminate the violation will require substantial capital improvement. The Department will consider the extent and complexity of necessary physical plant repairs and improvements and any impact on the health, safety, or welfare of the residents of the facility in determining whether to grant a requested extension. (Section 3-303(b) of the Act)

d) Each plan of correction shall be based on an assessment by the facility of the conditions or occurrences that are the basis of the violation and an evaluation of the practices, policies, and procedures that have caused or contributed to the conditions or occurrences. Evidence of such assessment and evaluation shall be maintained by the facility. Each plan of correction shall include:

1) A description of the specific corrective action the facility is taking, or plans to take, to abate, eliminate, or correct the violation cited in the notice.

2) A description of the steps that will be taken to avoid future occurrences of the same and similar violations.

3) A specific date by which the corrective action will be completed.

e) Submission of a plan of correction shall not be considered an admission by the facility that the violation has occurred.
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(f) The Department will review each plan of correction to insure that it provides for the abatement, elimination, or correction of the violation. The Department will reject a submitted plan only if it finds any of the following deficiencies:

1) The plan does not appear to address the conditions or occurrences that are the basis of the violation and an evaluation of the practices, policies, and procedures that have caused or contributed to the conditions or occurrences.

2) The plan is not specific enough to indicate the actual actions the facility will be taking to abate, eliminate, or correct the violation.

3) The plan does not provide for measures that will abate or eliminate, or correct the violation.

4) The plan does not provide steps that will avoid future occurrences of the same and similar violations.

5) The plan does not provide for timely completion of the corrective action, considering the seriousness of the violation, any possible harm to the residents, and the extent and complexity of the corrective action.

(g) When the Department rejects a submitted plan of correction, it will notify the facility. The notice of rejection shall be in writing and shall specify the reason for the rejection. The facility shall have 10 days after receipt of the notice of rejection in which to submit a modified plan. (Section 3-303(b) of the Act)

(h) If a facility fails to submit a plan or modified plan meeting the criteria in subsection (d)(e) of this Section within the prescribed time periods in subsection (b)(a) or (c)(b) of this Section, or anytime the Department issues a Type AA, a Type A or repeat B violation, the Department will impose an approved plan of correction will be imposed by the Department.

(i) The Department will verify the completion of the corrective action required by the plan of correction within the specified time period during subsequent investigations, surveys and evaluations of the facility.

(Source: Amended at 35 Ill. Reg. _______, effective ____________ )
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Section 300.282 Conditions for Assessment of Penalties

The Department will consider the assessment of a monetary penalty against a facility under the following conditions:

a) A licensee who commits a Type "AA" violation as defined in Section 1-128.5 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine up to $25,000 per violation. (Section 3-305(1) of the Act)

b) A licensee who commits a Type "A" violation as defined in Section 1-129 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to $12,500 per violation. (Section 3-305(1.5) of the Act)

c) A licensee who commits a Type "AA" or Type "A" violation as defined in Section 1-128.5 or 1-129 of the Act which continues beyond the time specified in Section 3-303(a) of the Act, which is cited as a repeat violation, shall have its license revoked and shall be assessed a fine of 3 times the fine computed per resident per day under subsection (a) or (b) of this Section. (Section 3-305(3) of the Act)

d) A licensee who commits a Type "B" violation as defined in Section 1-130 of the Act shall be assessed a fine of up to $1,100 per violation. (Section 3-305(2) of the Act)

e) A licensee who fails to satisfactorily comply with an accepted plan of correction for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or pursuant to this Part shall be automatically issued a conditional license for a period of not less than 6 months. A second or subsequent acceptable plan of correction shall be filed. A fine shall be assessed in accordance with subsection (d) of this Section when cited for the repeat violation. This fine shall be computed for all days of the violation, including the duration of the first plan of correction compliance time. (Section 3-305(4) of the Act)

f) A licensee who commits 10 or more Type "C" violations, as defined in Section 1-132 of the Act, in a single survey shall be assessed a fine of up to $250 per violation. A licensee who commits one or more Type "C" violations with a high
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*risk designation shall be assessed a fine of up to $500 per violation.*  (Section 3-305(2.5) of the Act)

**g)**  *If an occurrence results in more than one type of violation as defined in the Act (that is, a Type "AA", Type "A", Type "B", or Type "C" violation), the maximum fine that may be assessed for that occurrence is the maximum fine that may be assessed for the most serious type of violation charged. For purposes of the preceding sentence, a Type "AA" violation is the most serious type of violation that may be charged, followed by a Type "A", Type "B", or Type "C" violation, in that order.*  (Section 3-305(7.5) of the Act)

**h)**  *The minimum and maximum fines that may be assessed pursuant to Section 3-305 of the Act and this Section 300.282 shall be twice those otherwise specified for any facility that willfully makes a misstatement of fact to the Department, or willfully fails to make a required notification to the Department, if that misstatement or failure delays the start of a surveyor or impedes a survey.*  (Section 3-305(8) of the Act)

**i)**  *High risk designation. If the Department finds that a facility has violated a provision of this Part that has a high risk designation, or that a facility has violated the same provision of this Part 3 or more times in the previous 12 months, the Department may assess a fine of up to 2 times the maximum fine otherwise allowed.*  (Section 3-305(9) of the Act)

**j)**  *For the purposes of calculating certain penalties pursuant to this Section, violations of the following requirements shall have the status of "high risk designation".*

1)  Section 300.615(b)

2)  Section 300.615(e)

3)  Section 300.615(f)

4)  Section 300.615(g)

5)  Section 300.625(a)

6)  Section 300.625(b)
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7) Section 300.625(c)
8) Section 300.625(f)
9) Section 300.625(j)
10) Section 300.625(k)
11) Section 300.625(l)
12) Section 300.625(n)
13) Section 300.625(o)
14) Section 300.627(c)
15) Section 300.627(d)
16) Section 300.627(e)
17) Section 300.661
18) Section 300.690
19) Section 300.695(b)
20) Section 300.1210(b)
21) Section 300.1210(d)(5)
22) Section 300.1210(d)(6)
23) Section 300.1230
24) Section 300.1240
25) Section 300.2900(d)(2)
26) Section 300.3100(d)(2)

27) Section 300.3240(a)

28) Section 300.3240(d)

29) Section 300.3240(e)

k) *If a licensee has paid a civil monetary penalty imposed pursuant to the Medicare and Medicaid Certification Program for the equivalent federal violation giving rise to a fine under Section 3-305 of the Act and this Section 300.282, the Department shall offset the fine by the amount of the civil monetary penalty. The offset may not reduce the fine by more than 75% of the original fine, however.* (Section 3-305(10) of the Act)

l) *When the Department finds that a provision of Article II have been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or $100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of Article II has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the violation in question.* (Section 3-305(6) of the Act)

a) When a notice of violation for a level A violation is issued.

1) The penalty to be assessed for this violation shall be the greater of the following:

A) An amount *not less than* $5000 as determined by the Director or his designee considering the factors outlined in Section 300.286(a), or

B) The total of the following:

   i) $5 per resident in the facility, plus

   ii) $.20 per resident for each day of the violation, commencing on the day on which the notice of violation is served under
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Section 3-301 of the Act and ending on the date the violation is corrected, or

C) When death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than $10,000 as determined by the Director or his designee considering the factors outlined in Section 300.286(a). (Section 3-305(1) of the Act)

2) The facility shall also be issued a conditional license for a period of six months as provided in Section 300.260.

b) When a facility fails to abate or eliminate a level A violation immediately or within the period set by the Department in the notice of violation pursuant to Section 300.276(a)(4)(A).

1) The facility shall be cited for a repeat violation.

2) The penalty to be assessed shall be three times the penalty computed under subsection (a)(1) of this Section.

3) The license of the facility shall be revoked as provided in Section 300.180.

c) When a notice of violation for a level B violation is issued.

1) The penalty to be assessed for this violation shall be the greater of the following:

   A) An amount not less than $500 as determined by the Director or his designee considering the factors outlined in Section 300.286(a), or

   B) The total of the following:

      i) $3 per resident in the facility, plus

      ii) $0.15 per resident for each day of the violation, commencing on the date a notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected. (Section 3-305(2) of the Act)
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2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.

d) When a facility fails to correct a level B violation within the time period specified in the plan of correction approved by the Department.

1) The facility shall be cited for a repeat violation.

2) The penalty to be assessed shall be computed in accordance with subsection (c)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.

3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 300.260.

e) When a notice of violation is issued for a violation of Article II of the Act with regard to the rights of a particular resident of the facility, the Department shall order the facility to reimburse the residents for any injuries incurred or if the amount of the injuries is less than $100, the Department shall order the facility to pay $100 to the resident. (Section 3-305(7) of the Act)

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

Section 300.284 Calculation of Penalties (Repealed)

a) For the purpose of calculating penalties as provided in Section 300.282, each day on which a violation continues to exist after the day on which notice of the violation is received by the facility shall be considered a separate violation. The Department shall not be required to send additional notices of violation to the facility for such continuing violations. (Section 3-302 of the Act)

b) For purposes of calculating penalties as provided in Section 300.282, the number of residents in the facility and the number of residents on each day shall be calculated as the average number of residents in the facility during the 30 days immediately preceding the day on which the findings were made in the facility and the conditions or occurrences determined to be a violation were discovered. The number of residents in the facility on the day on which the findings were
made in the facility will be considered to be the same as the average number of residents in the facility during the preceding 30 days, unless evidence is provided by the facility substantiating that the average number of residents for that period was different. Changes in the number of residents in the facility subsequent to the day on which the findings were made shall not be considered in the calculation. (Section 3-305(5) of the Act)

(Source: Repealed at 35 Ill. Reg. ______, effective ____________)

Section 300.286 Determination to Assess Penalties

a) The Director or his or her designee shall consider the following factors in determining whether or not to assess penalties for violations under the conditions outlined in Section 300.282.

1) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the Act or this Part were violated. The severity of harm, including death or serious physical or mental harm, which has resulted to a resident and the extent to which residents have been subject to potential serious harm. A penalty will be assessed when the Director or his designee finds that death or serious physical or mental harm to a resident has occurred or that the facility has knowingly subjected residents to potential serious harm.

2) The reasonable diligence exercised by the licensee and efforts to correct violations. The gravity of the violation and the extent to which the provisions of the Act or this Part were violated. The Director or his or her designee will assess a monetary penalty if he or she finds that the violation recurred or continued, is widespread throughout the facility or evidences flagrant violation or the Act or this Part.

3) Any previous violations committed by the licensee. The extent and seriousness of any previous violations committed by the facility and the extent of diligence exercised by the facility to correct such violations. The Director or his or her designee will assess a penalty when he or she finds that the facility has been cited for similar violations and has failed to correct such violations as promptly as practicable or has failed to exercise
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diligence in taking necessary corrective action. The Director or his or her designate will also consider any evidence that the violations constitute a pattern of deliberate action by the facility. The extent of any change in the ownership and management of the facility will be considered in relation to the seriousness of previous violations.

4) The financial benefit to the facility of committing or continuing the violation. Any possible financial benefit the facility could gain as a result of committing or continuing the violation. Such benefits include, but are not limited to, diversion of costs associated with physical plant repairs, staff salaries, consultant fees, or direct patient care services. (Section 3-306 of the Act)

b) If the Director or his or her designate determines that a penalty is to be assessed, a written notice of penalty assessment shall be sent to the facility. Each notice of penalty assessment shall include:

1) The amount of the penalty being assessed as provided in Section 300.282.

2) The amount of any reduction or whether the penalty has been waived pursuant to Section 300.288.

3) A description of the violation, including a reference to the notices of violation and plans of correction that are the basis of the assessment.

4) A citation to the provision of the statute or the rule that the facility has violated.

5) A description of the right of the facility to appeal the assessment and of the right to a hearing under Section 3-703 of the Act. (Section 3-307 of the Act)

6) For violations which are continuing at the time the notice of assessment, the amount of additional penalties per day which will be assessed. (Section 3-307 of the Act)

c) A facility may contest an assessment of a penalty by sending a written request to the Department for hearing under Section 3-703 of the Act. Upon receipt of the request the Department shall hold a hearing as provided under Section 3-703 of
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Instead of requesting a hearing pursuant to Section 3-703 of the Act, a facility may, within 10 business days after receipt of the notice of violation and fine assessment, transmit to the Department:

1) 65% of the amount assessed for each violation specified in the penalty assessment; or

2) in the case of a fine subject to offset under Section 300.282(j) and Section 3-305 of the Act, up to 75% of the amount assessed. (Section 3-309 of the Act)

d(e) The facility shall pay penalties to the Department within the time periods provided in Section 3-310 of the Act.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.330 Definitions

The terms defined in this Section are terms that are used in one or more of the sets of licensing standards established by the Department to license various levels of long-term care. They are defined as follows:

Abuse — any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility. (Section 1-103 of the Act)

Abuse means:

Physical abuse refers to the infliction of injury on a resident that occurs other than by accidental means and that requires (whether or not actually given) medical attention.

Mental injury arises from the following types of conduct:

Verbal abuse refers to the use by a licensee, employee or agent of oral, written or gestured language that includes disparaging and derogatory terms to residents or within their hearing or seeing distance, regardless of their age, ability to comprehend or disability.
Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation, or offensive physical contact by a licensee, employee or agent.

Sexual harassment or sexual coercion perpetrated by a licensee, employee or agent.

Sexual assault.

Access – the right to:

Enter any facility;

Communicate privately and without restriction with any resident who consents to the communication;

Seek consent to communicate privately and without restriction with any resident;

Inspect the clinical and other records of a resident with the express written consent of the resident;

Observe all areas of the facility except the living area of any resident who protests the observation. (Section 1-104 of the Act)

Act – as used in this Part, the Nursing Home Care Act [210 ILCS 45].

Activity Program – a specific planned program of varied group and individual activities geared to the individual resident's needs and available for a reasonable number of hours each day.

Adaptive Behavior – the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.

Adaptive Equipment – a physical or mechanical device, material or equipment attached or adjacent to the resident's body that may restrict freedom of movement or normal access to one's body, the purpose of which is to permit or encourage movement, or to provide opportunities for increased functioning, or to prevent
contractures or deformities. Adaptive equipment is not a physical restraint. No matter the purpose, adaptive equipment does not include any device, material or method described in Section 300.680 of this Part as a physical restraint.

Addition – any construction attached to the original building that increases the area or cubic content of the building.

Adequate – enough in either quantity or quality, as determined by a reasonable person familiar with the professional standards of the subject under review, to meet the needs of the residents of a facility under the particular set of circumstances in existence at the time of review.

Administrative Warning – a notice to a facility issued by the Department under Section 300.277 of this Part and Section 3-303.2 of the Act, which indicates that a situation, condition, or practice in the facility violates the Act or the Department's rules, but is not a Type AA, Type A, Type B, or Type C violation.

Administrator – the person who is directly responsible for the operation and administration of the facility, irrespective of the assigned title. (See Licensed Nursing Home Administrator.)

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

Affiliate – means:

- With respect to a partnership, each partner thereof.

- With respect to a corporation, each officer, director and stockholder thereof.

- With respect to a natural person: any person related in the first degree of kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder. (Section 1-106 of the Act)
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Aide or Orderly — any person providing direct personal care, training or habilitation services to residents.

Alteration — any construction change or modification of an existing building that does not increase the area or cubic content of the building.

Ambulatory Resident — a person who is physically and mentally capable of walking without assistance, or is physically able with guidance to do so, including the ascent and descent of stairs.

Applicant — any person making application for a license. (Section 1-107 of the Act)

Appropriate — term used to indicate that a requirement is to be applied according to the needs of a particular individual or situation.

Assessment — the use of an objective system with which to evaluate the physical, social, developmental, behavioral, and psychosocial aspects of an individual.

Audiologist — a person who is licensed as an audiologist under the Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Autism — a syndrome described as consisting of withdrawal, very inadequate social relationships, exceptional object relationships, language disturbances and monotonously repetitive motor behavior; many children with autism will also be seriously impaired in general intellectual functioning; mental illness observed in young children characterized by severe withdrawal and inappropriate response to external stimulation.

Autoclave — an apparatus for sterilizing by superheated steam under pressure.

Auxiliary Personnel — all nursing personnel in intermediate care facilities and skilled nursing facilities other than licensed personnel.

Basement — when used in this Part, means any story or floor level below the main or street floor. Where due to grade difference, there are two levels each qualifying as a street floor, a basement is any floor below the level of the two street floors. Basements shall not be counted in determining the height of a building in stories.
Behavior Modification – treatment to be used to establish or change behavior patterns.

Cerebral Palsy – a disorder dating from birth or early infancy, nonprogressive, characterized by examples of aberrations of motor function (paralysis, weakness, incoordination) and often other manifestations of organic brain damage such as sensory disorders, seizures, mental retardation, learning difficulty and behavior disorders.

Certification for Title XVIII and XIX – the issuance of a document by the Department to the Department of Health and Human Services or the Department of Healthcare and Family Services verifying compliance with applicable statutory or regulatory requirements for the purposes of participation as a provider of care and service in a specific Federal or State health program.

Charge Nurse – a registered professional nurse or a licensed practical nurse in charge of the nursing activities for a specific unit or floor during a tour of duty.

Chemical Restraint – any drug that is used for discipline or convenience and is not required to treat medical symptoms or behavior manifestations of mental illness. (Section 2-106 of the Act)

Child Care/Habilitation Aide – any person who provides nursing, personal or rehabilitative care to residents of licensed Long-Term Care Facilities for Persons Under 22 Years of Age, regardless of title, and who is not otherwise licensed, certified or registered by the Department of Financial and Professional Regulation to render such care. Child Care/Habilitation aides must function under the supervision of a licensed nurse.

Community Alternatives – service programs in the community provided as an alternative to institutionalization.

Continuing Care Contract – a contract through which a facility agrees to supplement all forms of financial support for a resident throughout the remainder of the resident's life.

Contract – a binding agreement between a resident or the resident's guardian (or, if the resident is a minor, the resident's parent) and the facility or its agent.
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Convenience – the use of any restraint by the facility to control resident behavior or maintain a resident, which is not in the resident's best interest, and with less use of the facility's effort and resources than would otherwise be required by the facility. This definition is limited to the definition of chemical restraint and Section 300.680 of this Part.

Corporal Punishment – painful stimuli inflicted directly upon the body.

Cruelty and Indifference to Welfare of the Resident – failure to provide a resident with the care and supervision he or she requires, or, the infliction of mental or physical abuse.

Dentist – any person licensed to practice dentistry, including persons holding a Temporary Certificate of Registration, as provided in the Illinois Dental Practice Act [225 ILCS 25].

Department – as used in this Part means the Illinois Department of Public Health.

Developmental Disabilities (DD) Aide – any person who provides nursing, personal or habilitative care to residents of Intermediate Care Facilities for the Developmentally Disabled, regardless of title, and who is not otherwise licensed, certified or registered to render medical care. Other titles often used to refer to DD Aides include, but are not limited to, Program Aides, Program Technicians and Habilitation Aides. DD Aides must function under the supervision of a licensed nurse or a Qualified Mental Retardation Professional (QMRP).

Developmental Disability – means a severe, chronic disability of a person which:

- is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, epilepsy, autism;

- is manifested before the person attains age 22;

- is likely to continue indefinitely;

- results in substantial functional limitations in 3 or more of the following areas of major life activity:
self-care,

receptive and expressive language,

learning,

mobility,

self-direction,

capacity for independent living, and

economic self-sufficiency; and

reflects the person's need for combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. (Section 3-801.1 of the Act)

Dietetic Service Supervisor – a person who:

is a dietitian; or

is a graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association; or

is a graduate, prior to July 1, 1990, of a Department-approved course that provided 90 or more hours of classroom instruction in food service supervision and has had experience as a supervisor in a health care institution which included consultation from a dietitian; or

has successfully completed a Dietary Manager's Association approved dietary managers course; or

is certified as a dietary manager by the Dietary Manager's Association; or

has training and experience in food service supervision and management
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in a military service equivalent in content to the programs in the second, third or fourth paragraph of this definition.

Dietitian − a person who is a licensed dietitian as provided in the Dietetic and Nutrition Services Practice Act [225 ILCS 30].

Direct Supervision − work performed under the guidance and direction of a supervisor who is responsible for the work, who plans work and methods, who is available on short notice to answer questions and deal with problems that are not strictly routine, who regularly reviews the work performed, and who is accountable for the results.

Director − the Director of the Department of Public Health or designee. (Section 1-110 of the Act)

Director of Nursing Service − the full-time Professional Registered Nurse who is directly responsible for the immediate supervision of the nursing services.

Discharge − the full release of any resident from a facility. (Section 1-111 of the Act)

Discipline − any action taken by the facility for the purpose of punishing or penalizing residents.

Distinct Part − an entire, physically identifiable unit consisting of all of the beds within that unit and having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for a distinct part are established as set forth in the respective regulations governing the levels of services approved for the distinct part.

Emergency − a situation, physical condition or one or more practices, methods or operations which present imminent danger of death or serious physical or mental harm to residents of a facility. (Section 1-112 of the Act)

Epilepsy − a chronic symptom of cerebral dysfunction, characterized by recurrent attacks, involving changes in the state of consciousness, sudden in onset, and of brief duration. Many attacks are accompanied by a seizure in which the person falls involuntarily.
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Existing Long-Term Care Facility — any facility initially licensed as a health care facility or approved for construction by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, prior to March 1, 1980. Existing long-term care facilities shall meet the design and construction standards for existing facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Facility, Intermediate Care — a facility that provides basic nursing care and other restorative services under periodic medical direction. Many of these services may require skill in administration. Such facilities are for residents who have long-term illnesses or disabilities that may have reached a relatively stable plateau.

Facility, Intermediate Care for the Developmentally Disabled — when used in this Part, is a facility of three or more persons, or distinct part thereof, serving residents of which more than 50 percent are developmentally disabled.

Facility or Long-Term Care Facility — a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22 of the Counties Code [55 ILCS 5], or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons, not related to the applicant or owner by blood or marriage. It includes skilled nursing facilities and intermediate care facilities as those terms are defined in Title XVIII and Title XIX of the Federal Social Security Act (42 USCA 1395 et seq. and 1936 et seq.). It also includes homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans' Affairs. A "facility" may consist of more than one building as long as the buildings are on the same tract, or adjacent tracts of land. However, there shall be no more than one "facility" in any one building. "Facility" does not include the following:

A home, institution, or other place operated by the federal government or agency thereof, or by the State of Illinois other than homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans' Affairs;

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

Any "facility for child care" as defined in the Child Care Act of 1969 [225 ILCS 10];

Any "community living facility" as defined in the Community Living Facilities Licensing Act [210 ILCS 35];

Any "community residential alternative" as defined in the Community Residential Alternatives Licensing Act [210 ILCS 140];

Any nursing home or sanatorium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any well-recognized church or religious denomination. However, such nursing home or sanatorium shall comply with all local laws and rules relating to sanitation and safety;

Any facility licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135];

Any supportive residence licensed under the Supportive Residences Licensing Act [210 ILCS 65];

Any supportive living facility in good standing with the demonstration project established under Section 5-5.01a of the Illinois Public Aid Code [305 ILCS 5/5-5.01a];

Any assisted living or shared housing establishment licensed under the Assisted Living and Shared Housing Act [210 ILCS 9];

An Alzheimer's disease management center alternative health care model licensed under the Alternative Health Care Delivery Act [210 ILCS 3]; or,

A facility licensed under the MR/DD Community Care Act.

(Section 1-113 of the Act)
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Facility, Long-Term Care, for Residents Under 22 Years of Age — when used in this Part is synonymous with a long-term care facility for residents under 22 years of age, which facility provides total habilitative health care to residents who require specialized treatment, training, and continuous nursing care because of medical or developmental disabilities.

Facility, Sheltered Care — when used in this Part is synonymous with a sheltered care facility, which facility provides maintenance and personal care.

Facility, Skilled Nursing — when used in this Part is synonymous with a skilled nursing facility. A skilled nursing facility provides skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with frequent medical supervision. Such facilities are provided for patients who need the type of care and treatment required during the post-acute phase of illness or during recurrences of symptoms in long-term illness.

Financial Responsibility — having sufficient assets to provide adequate services such as: staff, heat, laundry, foods, supplies, and utilities for at least a two-month period of time.

Full-time — means on duty a minimum of 36 hours, four days per week.

Goal — an expected result or condition that involves a relatively long period of time to achieve, that is specified in behavioral terms in a statement of relatively broad scope, and that provides guidance in establishing specific, short-term objectives directed toward its attainment.

Governing Body — the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

Guardian — a person appointed as a guardian of the person or guardian of the estate, or both, of a resident under the Probate Act of 1975 [755 ILCS 5]. (Section 1-114 of the Act)

Habilitation — an effort directed toward the alleviation of a disability or toward increasing a person's level of physical, mental, social or economic functioning.
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Habilitation may include, but is not limited to, diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training, education, sheltered employment, protective services, counseling and other services.

Health Information Management Consultant – a person who is certified as a Registered Health Information Administrator (RHIA) or a Registered Health Information Technician (RHIT) by the American Health Information Management Association; or is a graduate of a school of health information management that is accredited jointly by the American Medical Association and the American Health Information Management Association.

Health Services Supervisor (Director of Nursing Service) – the full-time Registered Nurse who is directly responsible for the immediate supervision of the health services in an Intermediate Care Facility.

High Risk Designation – a violation of a provision of the Illinois Administrative Code that has been identified by the Department through rulemaking to be inherently necessary to protect the health, safety, and welfare of a resident. (Section 1-114.005 of the Act)

Home for the Aged – any facility that is operated: by a not-for-profit corporation incorporated under, or qualified as a foreign corporation under, the General Not For Profit Corporation Act of 1986 [805 ILCS 105]; or by a county pursuant to Division 5-22 of the Counties Code [55 ILCS 5]; or pursuant to a trust or endowment established for nonprofit, charitable purposes; and that provides maintenance, personal care, nursing or sheltered care to three or more residents, 90 percent of whom are 60 or more years of age.

Hospitalization – the care and treatment of a person in a hospital as an inpatient.

Identified Offender – a person who:

Has been convicted of, found guilty of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any felony offense listed in Section 25 of the Health Care Worker Background Check Act, except for the following: a felony offense described in Section 10-5 of the Nurse Practice Act; a felony offense described in Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and
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Debit Card Act; a felony offense described in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis Control Act; a felony offense described in Section 401, 401.1, 404, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act; and a felony offense described in the Methamphetamine Control and Community Protection Act; or

Has been convicted of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any sex offense as defined in subsection (c) of Section 10 of the Sex Offender Management Board Act; or is a registered sex offender, or is serving a term of parole, mandatory supervised release, or probation for a felony offense.

Any other resident as determined by the Department of State Police.
(Section 1-114.01 of the Act)

Individual Education Program or (IEP) – a written statement for each resident that provides for specific education and related services. The Individual Education Program may be incorporated into the Individual Habilitation Plan (IHP).

Individual Habilitation Plan or (IHP) – a total plan of care that is developed by the interdisciplinary team for each resident, and that is developed on the basis of all assessment results.

Interdisciplinary Team – a group of persons that represents those professions, disciplines, or service areas that are relevant to identifying an individual's strengths and needs, and designs a program to meet those needs. This team shall include at least a physician, a social worker and other professionals. In Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) at least one member of the team shall be a Qualified Mental Retardation Professional. The Interdisciplinary Team includes the resident, the resident's guardian, the resident's primary service providers, including staff most familiar with the resident; and other appropriate professionals and caregivers as determined by the resident's needs. The resident or his or her guardian may also invite other individuals to meet with the Interdisciplinary Team and participate in the process of identifying the resident's strengths and needs.

Licensed Nursing Home Administrator – a person who is charged with the general administration and supervision of a facility and licensed under the Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70].
Licensed Practical Nurse – a person with a valid Illinois license to practice as a practical nurse.

Licensee – *the person or entity licensed to operate the facility as provided under the Act.* (Section 1-115 of the Act)

Life Care Contract – a contract through which a facility agrees to provide maintenance and care for a resident throughout the remainder of the resident's life.

Maintenance – *food, shelter, and laundry services.* (Section 1-116 of the Act)

Maladaptive Behavior – impairment in adaptive behavior as determined by a clinical psychologist or by a physician. Impaired adaptive behavior may be reflected in delayed maturation, reduced learning ability or inadequate social adjustment.

Mentally Retarded and Mental Retardation – subaverage general intellectual functioning originating during the developmental period and associated with maladaptive behavior.

Misappropriation of Property – using a resident's cash, clothing, or other possessions without authorization by the resident or the resident's authorized representative; failure to return valuables after a resident's discharge; or failure to refund money after death or discharge when there is an unused balance in the resident's personal account.

Mobile Nonambulatory – unable to walk independently or without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair, or a wheeled platform.

Mobile Resident – any resident who is able to move about either independently or with the aid of an assistive device such as a walker, crutches, a wheelchair, or a wheeled platform.

Monitor – a qualified person placed in a facility by the Department to observe operations of the facility, assist the facility by advising it on how to comply with the State regulations, and who reports periodically to the Department on the operations of the facility.
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_Neglect_ — a facility's failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a resident. Neglect — a failure in a facility to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. (Section 1-117 of the Act) Neglect means the failure to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. This shall include any allegation in which

the alleged failure causing injury or deterioration is ongoing or repetitious; or

a resident required medical treatment as a result of the alleged failure; or

the failure is alleged to have caused a noticeable negative impact on a resident's health, behavior or activities for more than 24 hours.

New Long-Term Care Facility — any facility initially licensed as a health care facility by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, on or after March 1, 1980. New long-term care facilities shall meet the design and construction standards for new facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Normalization — the principle of helping individuals to obtain an existence as close to normal as possible, by making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

_Nurse_ — a registered nurse or a licensed practical nurse as defined in the Nurse Nursing and Advanced Practice Nursing Act [225 ILCS 65]. (Section 1-118 of the Act)

Nursing Assistant — any person who provides nursing care or personal care to residents of licensed long-term care facilities, regardless of title, and who is not
otherwise licensed, certified or registered by the Department of Financial and Professional Regulation to render medical care. Other titles often used to refer to nursing assistants include, but are not limited to, nurse's aide, orderly and nurse technician. Nursing assistants shall function under the supervision of a licensed nurse.

Nursing Care — a complex of activities that carries out the diagnostic, therapeutic, and rehabilitative plan as prescribed by the physician; care for the resident's environment; observing symptoms and reactions and taking necessary measures to carry out nursing procedures involving understanding of cause and effect in order to safeguard life and health.

Nursing Unit — a physically identifiable designated area of a facility consisting of all the beds within the designated area, but having no more than 75 beds, none of which are more than 120 feet from the nurse's station.

Objective — an expected result or condition that involves a relatively short period of time to achieve, that is specified in behavioral terms, and that is related to the achievement of a goal.

Occupational Therapist, Registered or (OTR) — a person who is registered as an occupational therapist under the Illinois Occupational Therapy Practice Act [225 ILCS 75].

Occupational Therapy Assistant — a person who is registered as a certified occupational therapy assistant under the Illinois Occupational Therapy Practice Act.

Operator — the person responsible for the control, maintenance and governance of the facility, its personnel and physical plant.

Other Resident Injury — occurs where a resident is alleged to have suffered physical or mental harm and the allegation does not fall within the definition of abuse or neglect.

Oversight — general watchfulness and appropriate reaction to meet the total needs of the residents, exclusive of nursing or personal care. Oversight shall include, but is not limited to, social, recreational and employment opportunities for residents who, by reason of mental disability, or in the opinion of a licensed
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physician, are in need of residential care.

Owner — the individual, partnership, corporation, association or other person who owns a facility. In the event a facility is operated by a person who leases the physical plant, which is owned by another person, "owner" means the person who operates the facility, except that if the person who owns the physical plant is an affiliate of the person who operates the facility and has significant control over the day-to-day operations of the facility, the person who owns the physical plant shall incur jointly and severally with the owner all liabilities imposed on an owner under the Act. (Section 1-119 of the Act)

Person — any individual, partnership, corporation, association, municipality, political subdivision, trust, estate or other legal entity whatsoever.

Personal Care — assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of maintaining a private, independent residence or who is incapable of managing his person, whether or not a guardian has been appointed for such individual. (Section 1-120 of the Act)

Pharmacist, Registered — a person who holds a certificate of registration as a registered pharmacist, a local registered pharmacist or a registered assistant pharmacist under the Pharmacy Practice Act of 1987 [225 ILCS 85].

Physical Restraint — any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily and which restricts freedom of movement or normal access to one's body. (Section 2-106 of the Act)

Physical Therapist Assistant — a person who has graduated from a two year college level program approved by the American Physical Therapy Association.

Physical Therapist — a person who is registered as a physical therapist under the Illinois Physical Therapy Act [225 ILCS 90].

Physician — any person licensed to practice medicine in all its branches as provided in the Medical Practice Act of 1987 [225 ILCS 60].
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Probationary License – an initial license issued for a period of 120 days during which time the Department will determine the qualifications of the applicant.

Provisional Admission Period – the time between the admission of an identified offender as defined in Section 1-114.01 of the Act and this Section, and 3 days following the admitting facility's receipt of an Identified Offender Report and Recommendation in accordance with Section 2-201.6 of the Act. (Section 1-120.3 of the Act)

Psychiatric Services Rehabilitation Aide – an individual employed by a long-term care facility to provide, for mentally ill residents, at a minimum, crisis intervention, rehabilitation, and assistance with activities of daily living. (Section 1-120.7 of the Act)

Psychiatrist – a physician who has had at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

Psychologist – a person who is licensed to practice clinical psychology under the Clinical Psychologist Licensing Act [225 ILCS 15].

Qualified Mental Retardation Professional – a person who has at least one year of experience working directly with individuals with developmental disabilities and meets at least one of the following additional qualifications:

- Be a physician as defined in this Section.
- Be a registered nurse as defined in this Section.
- Hold at least a bachelor's degree in one of the following fields: occupational therapy, physical therapy, psychology, social work, speech or language pathology, recreation (or a recreational specialty area such as art, dance, music, or physical education), dietary services or dietetics, or a human services field (such as sociology, special education, or rehabilitation counseling).

Qualified Professional – a person who meets the educational, technical and ethical criteria of a health care profession, as evidenced by eligibility for membership in an organization established by the profession for the purpose of recognizing those persons who meet such criteria; and who is licensed, registered, or certified by the
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State of Illinois, if required.

*Reasonable Visiting Hours* — any time between the hours of 10 a.m. and 8 p.m. daily. (Section 1-121 of the Act)

Registered Nurse — a person with a valid license to practice as a registered professional nurse under the [Nurse Nursing and Advanced Practice Nursing Act](#).

*Repeat Violation* — for purposes of assessing fines under Section 3-305 of the Act, a violation that has been cited during one inspection of the facility for which a subsequent inspection indicates that an *accepted plan of correction was not complied with*, within a period of not more than 12 months from the issuance of the initial violation. A repeat violation shall not be a new citation of the same rule, unless the licensee is not substantially addressing the issue routinely throughout the facility. (Section 3-305(7) of the Act)

Reputable Moral Character — having no history of a conviction of the applicant, or if the applicant is a firm, partnership, or association, of any of its members, or of a corporation, of any of its officers, or directors, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude, as shown by a certified copy of the record of the court of conviction, or in the case of the conviction of a misdemeanor by a court not of record, as shown by other evidence; or other satisfactory evidence that the moral character of the applicant, or manager, or supervisor of the facility is not reputable.

*Resident* — person residing in and receiving personal or medical care, including but not limited to mental health treatment, psychiatric rehabilitation, physical rehabilitation, and assistance with activities of daily living care from a facility. (Section 1-122 of the Act)

Resident Services Director — the full-time administrator, or an individual on the professional staff in the facility, who is directly responsible for the coordination and monitoring of the residents' overall plans of care in an intermediate care facility.

*Resident's Representative* — a person other than the owner, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his or her representative, or the resident's guardian, or the parent
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of a minor resident for whom no guardian has been appointed. (Section 1-123 of the Act)

Restorative Care – a health care process designed to assist residents to attain and maintain the highest degree of function of which they are capable (physical, mental, and social).

Room – a part of the inside of a facility that is partitioned continuously from floor to ceiling with openings closed with glass or hinged doors.

Sanitization – the reduction of pathogenic organisms on a utensil surface to a safe level, which is accomplished through the use of steam, hot water, or chemicals.

Satisfactory – same as adequate.

Seclusion – the retention of a resident alone in a room with a door that the resident cannot open.

Self Preservation – the ability to follow directions and recognize impending danger or emergency situations and react by avoiding or leaving the unsafe area.

Sheltered Care – maintenance and personal care. (Section 1-124 of the Act)

Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

State Fire Marshal – the Fire Marshal of the Office of the State Fire Marshal, Division of Fire Prevention.

Sterilization – the act or process of destroying completely all forms of microbial life, including viruses.

Stockholder of a Corporation – any person who, directly or indirectly, beneficially owns, holds or has the power to vote, at least five percent of any class of securities issued by the corporation. (Section 1-125 of the Act)

Story – when used in this Part, means that portion of a building between the upper surface of any floor and the upper surface of the floor above except that the
topmost story shall be the portion of a building between the upper surface of the
topmost floor and the upper surface of the roof above.

Student Intern – means any person whose total term of employment in any facility
during any 12-month period is equal to or less than 90 continuous days, and
whose term of employment is either:

   an academic credit requirement in a high school or undergraduate
   institution; or

   immediately succeeds a full quarter, semester or trimester of academic
   enrollment in either a high school or undergraduate institution, provided
   that such person is registered for another full quarter, semester or
   trimester of academic enrollment in either a high school or undergraduate
   institution which quarter, semester or trimester will commence
   immediately following the term of employment. (Section 1-125.1 of the
   Act)

Substantial Compliance – meeting requirements except for variance from the
strict and literal performance that results in unimportant omissions or defects
given the particular circumstances involved. This definition is limited to the
phrase as used in Sections 300.140(a)(3) and 300.150(a)(3).

Substantial Failure – the failure to meet requirements other than a variance from
the strict and literal performance that results in unimportant omissions or defects
given the particular circumstances involved. This definition is limited to the
phrase as used in Section 300.165(b)(1).

Sufficient – same as adequate.

Supervision – authoritative procedural guidance by a qualified person for the
accomplishment of a function or activity within his sphere of competence, with
initial direction and periodic inspection of the actual act of accomplishing the
function or activity.

Therapeutic Recreation Specialist – a person who is certified by the National
Council for Therapeutic Recreation Certification and who meets the minimum
standards it has established for classification as a Therapeutic Recreation
Specialist.
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Time Out – removing an individual from a situation that results in undesirable behavior. It is a behavior modification procedure which is developed and implemented under the supervision of a qualified professional.

*Title XVIII* – *Title XVIII of the Federal Social Security Act as now or hereafter amended.* (Section 1-126 of the Act)

*Title XIX* – *Title XIX of the Federal Social Security Act as now or hereafter amended.* (Section 1-127 of the Act)

Transfer – a change in status of a resident's living arrangements from one facility to another facility. (Section 1-128 of the Act)

*Type AA Violation* – a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death. (Section 1-128.5 of the Act)

*Type A Violation* – a violation of the Act or this Part that of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that the risk of death or serious mental or physical harm to a resident will result therefrom or has resulted in actual physical or mental harm to a resident. (Section 1-129 of the Act)

*Type B Violation* – a violation of the Act or this Part that of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to a resident. (Section 1-130 of the Act)

*Type C Violation* – a violation of the Act or this Part that creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom. (Section 1-132 of the Act)

Unit – an entire physically identifiable residence area having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for each distinct resident area are established as set forth in the respective rules
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governing the approved levels of service.

Universal Progress Notes – a common record with periodic narrative documentation by all persons involved in resident care.

Valid License – a license which is unsuspended, unrevoked and unexpired.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.340 Incorporated and Referenced Materials

a) The following regulations and standards are incorporated in this Part:

1) Private and professional association standards:

A) ANSI/ASME Standard No. A17.1-2000, Safety Code for Elevators and Escalators, which may be obtained from the American Society of Mechanical Engineers (ASME) International, 22 Law Drive, Box 2900, Fairfield, New Jersey 07007-2900.

B) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals (2001), and Handbook of Applications (1999), which may be obtained from the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.


E) For existing facilities (see Subpart O), National Fire Protection Association (NFPA) Standard No. 101: Life Safety Code,
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Appendix B (1981) and the following additional standards, which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169:

i) No. 10 (1978): Standards for Portable Extinguishers


iii) No. 56F (1977): Standards for Non-Flammable Medical Gas Systems


viii) No. 253 (1978): Flooring Radiant Heat Energy Test

ix) No. 255 (1972): Test of Surface Burning Characteristics of Building Materials

x) Appendix C (1981): Fire Safety Evaluation System for Health Occupancies

F) For new facilities (see Subpart N), the following standards of the National Fire Protection Association (NFPA), which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169:

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vi) NFPA 70B, Recommended Practice for Electrical Equipment Maintenance – 2002 Edition


x) NFPA 105, Recommended Practice for the Installation of Smoke-Control Door Assemblies – 1999 Edition


H) The following standards, which may be obtained from Underwriters Laboratories (UL), Inc., 333 Pfingsten Rd., Northbrook, Illinois 60062:


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which may be obtained from the American Psychiatric Association, 1000 Wilson Blvd., Suite 1825, Arlington, Virginia, 22209-3901.

2) Federal guidelines:
The following guidelines of the Center for Infectious Diseases, Centers for Disease Control and Prevention, United States Public Health Service, Department of Health and Human Services, which may be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

B) Guideline for Hand Hygiene in Health-Care Settings (October 2002)
D) Guideline for Prevention of Surgical Site Infection (1999)
E) Guideline for Prevention of Nosocomial Pneumonia (February 1994)
F) Guideline for Isolation Precautions in Hospitals (February 18, 1997)

3) Federal regulations:

A) 21 CFR 1306, Prescriptions (April 1, 2002)
B) 42 CFR 483.151-156, Requirements for States and Long-Term Care Facilities (October 1, 2002)

b) All incorporations by reference of federal regulations and the standards of nationally recognized organizations refer to the regulations and standards on the
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date specified and do not include any amendments or editions subsequent to the date specified.

c) The following statutes and State regulations are referenced in this Part:

1) Federal statutes:

A) Civil Rights Act of 1964 (42 USC 2000e et seq.)

B) Social Security Act (42 USC 301 et seq., 1395 et seq. and 1396 et seq.)

C) Controlled Substances Act (21 USC 802)

2) State of Illinois statutes:

A) Illinois Alcoholism and Other Drug Dependency Act [20 ILCS 305]

B) Boiler and Pressure Vessel Safety Act [430 ILCS 75]

C) Child Care Act of 1969 [225 ILCS 10]

D) Court of Claims Act [705 ILCS 505]

E) Illinois Dental Practice Act [225 ILCS 25]

F) Election Code [10 ILCS 5]

G) Freedom of Information Act [5 ILCS 140]

H) General Not For Profit Corporation Act of 1986 [805 ILCS 105]

I) Hospital Licensing Act [210 ILCS 85]

J) Illinois Controlled Substances Act [720 ILCS 570]

K) Illinois Health Facilities Planning Act [20 ILCS 3906]
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M) Nurse-Nursing and Advanced Practice Nursing Act [225 ILCS 65]

N) Illinois Occupational Therapy Practice Act [225 ILCS 75]

O) Illinois Physical Therapy Act [225 ILCS 90]

P) Life Care Facilities Act [210 ILCS 40]

Q) Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10]

R) Medical Practice Act of 1987 [225 ILCS 60]

S) Mental Health and Developmental Disabilities Code [405 ILCS 5]

T) Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70]

U) Nursing Home Care Act [210 ILCS 45]

V) Pharmacy Practice Act of 1987 [225 ILCS 85]

W) Private Sewage Disposal Licensing Act [225 ILCS 225]

X) Probate Act of 1975 [775 ILCS 5]

Y) Illinois Public Aid Code [305 ILCS 5]

Z) Safety Glazing Materials Act [430 ILCS 60]

AA) Illinois Administrative Procedure Act [5 ILCS 100]

BB) Clinical Psychologist Licensing Act [225 ILCS 15]

CC) Dietetic and Nutrition Services Practice Act [225 ILCS 30]

DD) Health Care Worker Background Check Act [225 ILCS 46]
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FF) Living Will Act [755 ILCS 35]

GG) Powers of Attorney for Health Care Law [755 ILCS 45/Art. IV]

HH) Health Care Surrogate Act [755 ILCS 45]

II) Right of Conscience Act [745 ILCS 70]

JJ) Abused and Neglected Long-Term Care Facility Residents Reporting Act [210 ILCS 30]

KK) Supportive Residences Licensing Act [210 ILCS 65]

LL) Community Residential Alternatives Licensing Act [210 ILCS 40]

MM) Community Living Facilities Licensing Act [210 ILCS 35]

NN) Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135]

OO) Counties Code [55 ILCS 5]

PP) Professional Counselor and Clinical Professional Counselor Licensing Act [225 ILCS 107]

QQ) Podiatric Medical Practice Act of 1987 [225 ILCS 100]

RR) Illinois Optometric Practice Act of 1987 [225 ILCS 80]

SS) Physician Assistant Practice Act of 1987 [225 ILCS 95]

TT) Alzheimer's Special Care Disclosure Act [210 ILCS 4]

UU) Illinois Act on the Aging [20 ILCS 105]
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VV) Alternative Health Care Delivery Act [210 ILCS 3]

WW) Assisted Living and Shared Housing Act [210 ILCS 9]

XX) Language Assistance Services Act [210 ILCS 87]

YY) Equity in Long-term Care Quality Act [30 ILCS 772]

ZZ) MR/DD Community Care Act [210 ILCS 47]

AAA) Methamphetamine Control and Community Protection Act [720 ILCS 646]

BBB) Sex Offender Management Board Act [20 ILCS 4026]

CCC) Uniform Conviction Information Act [20 ILCS 2635]

DDD) Unified Code of Corrections [730 ILCS 5]

EEE) Court of Claims Act [705 ILCS 505]

3) State of Illinois rules:

A) Office of the State Fire Marshal, Boiler and Pressure Vessel Safety (41 Ill. Adm. Code 120)


C) Department of Public Health:
   
   i) Control of Communicable Diseases Code (77 Ill. Adm. Code 690)

   ii) Control of Sexually Transmissible Diseases Code (77 Ill. Adm. Code 693)

   iii) Food Service Sanitation Code (77 Ill. Adm. Code 750)
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v) Private Sewage Disposal Code (77 Ill. Adm. Code 905)


x) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)

xi) Sheltered Care Facilities Code (77 Ill. Adm. Code 330)

xii) Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)

xiii) Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390)

xiv) Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395)

xv) Control of Tuberculosis Code (77 Ill. Adm. Code 696)

xvi) Health Care Worker Background Check Code (77 Ill. Adm. Code 955)

xvii) Language Assistance Services Code (77 Ill. Adm. Code 940)

D) Department of Financial and Professional Regulation:

i) Controlled Substances Act (68 Ill. Adm. Code 3100)
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E) Department of Human Services, Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 Ill. Adm. Code 2060)

F) Department of Natural Resources, Regulation of Construction within Flood Plains (17 Ill. Adm. Code 2706)

G) Department of Public Aid, Medical Payment (89 Ill. Adm. Code 140)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART C: POLICIES

Section 300.615 Determination of Need Screening and Request for Resident Criminal History Record Information

a) For the purpose of this Section only, a nursing facility is any bed licensed as a skilled nursing or intermediate care facility bed, or a location certified to participate in the Medicare program under Title XVIII of the Social Security Act or Medicaid program under Title XIX of the Social Security Act.

b) All persons seeking admission to a nursing facility must be screened to determine the need for nursing facility services prior to being admitted, regardless of income, assets, or funding source. (Section 2-201.5(a) of the Act) A screening assessment is not required provided one of the conditions in Section 140.642(c) of the rules of the Department of Healthcare and Family Services titled Medical Payment (89 Ill. Adm. Code 140.642(c)) is met.

c) Any person who seeks to become eligible for medical assistance from the Medical Assistance program under the Illinois Public Aid Code to pay for long-term care services while residing in a facility shall be screened in accordance with 89 Ill. Adm. Code 140.642(b)(4). (Section 2-201.5(a) of the Act)

d) Screening shall be administered through procedures established by administrative rule by the agency responsible for screening. (Section 2-201.5(a) of the Act) The Illinois Department on Aging is responsible for the screening required in
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subsection (b) of this Section for individuals 60 years of age or older who are not developmentally disabled or do not have a severe mental illness. The Illinois Department of Human Services is responsible for the screening required in subsection (b) of this Section for all individuals 18 through 59 years of age and for individuals 60 years of age or older who are developmentally disabled or have a severe mental illness. The Illinois Department of Healthcare and Family Services or its designee is responsible for the screening required in subsection (c) of this Section.

e) In addition to the screening required by Section 2-201.5(a) of the Act and this Section, a facility shall, within 24 hours after admission of a resident, request a criminal history background check pursuant to the Uniform Conviction Information Act [20 ILCS 2635] for all persons 18 or older seeking admission to the facility, unless a background check was initiated by a hospital pursuant to the Hospital Licensing Act. Background checks shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. (Section 2-201.5(b) of the Act)

f) The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender.

g) If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check.

h) A waiver issued pursuant to Section 2-201.5(b) of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. (Section 2-201.5(b) of the Act)
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i) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident’s dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5(b) of the Act.

j) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history to the Department pursuant to the requirements of Section 2-201.6 of the Act and Section 300.625 of this Part. (Section 2-201.5(c) of the Act)

j) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.624 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)

a) The facility shall, by July 9, 2006, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who were residents of the facility on May 10, 2006. (Section 2-201.5(b) of the Act)

b) If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.

c) The facility shall be responsible for taking all steps necessary to ensure the safety of all residents while the results of the name-based background check are pending.

(Source: Repealed at 35 Ill. Reg. ______, effective ____________)
Section 300.625 Identified Offenders

a) The facility shall review the results of the criminal history background checks immediately upon receipt of these checks. If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check unless the fingerprint-based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check.

b) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist.

e) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.

d) If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5(b) of the Act.

b) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based check are pending; while the results of a request for a waiver of a fingerprint-based check are pending; and/or while the Identified Offender Report and Recommendation Criminal History Analysis Report is pending.
If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall do the following: immediately fax the resident's name and criminal history information to the Department. (Section 2-201.5(c) of the Act)

1) Immediately notify the Department of State Police, in the form and manner required by the Department of State Police, that the resident is an identified offender.

2) Within 72 hours, arrange for a fingerprint-based criminal history record inquiry to be requested on the identified offender resident. The inquiry shall be based on the subject's name, sex, race, date of birth, fingerprint images, and other identifiers required by the Department of State Police. The inquiry shall be processed through the files of the Department of State Police and the Federal Bureau of Investigation to locate any criminal history record information that may exist regarding the subject. The Federal Bureau of Investigation shall furnish to the Department of State Police, pursuant to an inquiry under this subsection (c)(2), any criminal history record information contained in its files.

d) The facility shall comply with all applicable provisions contained in the Uniform Conviction Information Act.

e) All name-based and fingerprint-based criminal history record inquiries shall be submitted to the Department of State Police electronically in the form and manner prescribed by the Department of State Police. The Department of State Police may charge the facility a fee for processing name-based and fingerprint-based criminal history record inquiries. The fee shall be deposited into the State Police Services Fund. The fee shall not exceed the actual cost of processing the inquiry. (Section 2-201.5(c) of the Act)

f) If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:

1) The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. If a resident of a licensed facility is an identified offender, any federal, State,
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or local law enforcement officer or county probation officer shall be permitted reasonable access to the individual resident to verify compliance with the requirements of the Sex Offender Registration Act, to verify compliance with the requirements of Public Act 94-163 and Public Act 94-752, or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110(a-5) of the Act) Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.

2) The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 300.695 of this Part.

3) Every licensed facility shall provide to every prospective and current resident and resident's guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian, or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility.

   A) The notice shall also be prominently posted within every licensed facility.

   B) The notice shall include a statement that information regarding registered sex offenders may be obtained from the Illinois State Police website, www.isp.state.il.us, and that information regarding persons serving terms of parole or mandatory supervised release may be obtained from the Illinois Department of Corrections website, www.idoc.state.il.us. (Section 2-216 of the Act)

4) If the identified offender is on probation, parole, or mandatory supervised release, the facility shall contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.
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Facilities shall maintain written documentation of compliance with Section 300.615 of this Part.

Facilities shall annually complete all of the steps required in subsection (f)(g) of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.

For current residents who are identified offenders, the facility shall review the security measures listed in the Identified Offender Report and Recommendation Criminal History Analysis Report provided by the Department of the State Police.

Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, shall specifically address the resident's needs in an individualized plan of care.

The facility shall incorporate the Identified Offender Report and Recommendation Criminal History Analysis Report into the identified offender's care plan. (Section 2-201.6(f) of the Act)

If the identified offender is a convicted (see 730 ILCS 150/2) or registered (see 730 ILCS 150/3) sex offender or if the Identified Offender Report and Recommendation Criminal History Analysis conducted pursuant to Section 2-201.6(a) of the Act reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility subject to the rights of married residents under Section 2-108(e) of the Act. (Section 2-201.6(d) of the Act)

The facility's reliance on the Identified Offender Report and Recommendation Criminal History Analysis Report prepared pursuant to Section 2-201.6(ade) of the Act shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to the identified offender or other facility residents.

The facility shall evaluate care plans at least quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and shall document such review. The facility shall modify the care plan if
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necessary in response to this evaluation. The facility remains responsible for continuously evaluating the identified offender and for making any changes in the care plan that are necessary to ensure the safety of residents.

Incident reports shall be submitted to the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 300.690 of this Part. The facility shall review its placement determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility shall identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 300.3300 of this Part.

The facility shall notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.

The facility shall develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 300.626 Discharge Planning for Identified Offenders

a) If, based on the security measures listed in the Identified Offender Report and Recommendation Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 300.3300 of this Part. (Section 2-201.6(g) of the Act)

b) All discharges and transfers shall be pursuant to accordance with Section 300.3300 of this Part.
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c) When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.

d) A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:

1) The facility's inability to meet the needs of the resident, based on Section 300.625 of this Part and subsection (a) of this Section;

2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or

3) The physical safety of the resident, other residents, the facility staff, or facility visitors.

e) Discharge planning shall be included as part of the plan of care developed pursuant to Section 300.625(j)(k).

(Source: Amended at 35 Ill. Reg. , effective )

Section 300.627 Transfer of an Identified Offender

a) If, based on the security measures listed in the Identified Offender Report and Recommendation/Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 300.3300 of this Part. (Section 2-201.6(g) of the Act)

b) All discharges and transfers shall be pursuant to Section 300.3300 of this Part.

c) When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility shall notify the Department and the receiving facility that the individual is an identified offender before making the transfer.
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d) This notification shall include all of the documentation required under Section 300.625 of this Part and subsection (a) of this Section, and the transferring facility shall provide this information to the receiving facility to complete the discharge planning.

e) If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:

1) The mittimus and any pre-sentence investigation reports;

2) The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];

3) Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];

4) Reports of disciplinary infractions and dispositions;

5) Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and

6) The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)

f) The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender shall not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.
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(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 300.651 Whistleblower Protection

a) For the purposes of this Section, "retaliatory action" means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms and conditions of employment of any employee of a facility that is taken in retaliation for the employee's involvement in a protected activity as set forth in Section 3-810 of the Act and this Section 300.651. (Section 3-810(a) of the Act)

b) A facility shall not take any retaliatory action against an employee of the facility, including a nursing home administrator, because the employee does any of the following:

1) Discloses or threatens to disclose to a supervisor or to a public body an activity, inaction, policy, or practice implemented by a facility that the employee reasonably believes is in violation of a law, rule, or regulation.

2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by a nursing home administrator.

3) Assists or participates in a proceeding to enforce the provisions of the Act and this Part. (Section 3-810(b) of the Act)

c) A violation of the Act and this Section may be established only upon a finding that the employee of the facility engaged in conduct described in subsection (b) of Section 3-810 of the Act and this Section 300.651 and this conduct was a contributing factor in the retaliatory action alleged by the employee. There is no violation of this Section, however, if the facility demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct. (Section 3-810(c) of the Act)

d) The employee of the facility may be awarded all remedies necessary to make the employee whole and to prevent future violations of this Section. Remedies imposed by the court may include, but are not limited to, all of the following:

1) Reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position;
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2) Two times the amount of back pay;

3) Interest on the back pay;

4) Reinstatement of full fringe benefits and seniority rights; and

5) Payment of reasonable costs and attorney’s fees. (Section 3-810(d) of the Act)

(Source: Added at 35 Ill. Reg. _____, effective _____________)

SUBPART D: PERSONNEL

Section 300.840 Personnel Policies

The personnel policies required in Section 300.650, Section 300.651, and other personnel policies established by the facility, shall be followed in the operation of the facility.

(Source: Amended at 35 Ill. Reg. _____, effective _____________)

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section 300.1040 Care and Treatment of Sexual Assault Survivors Behavior Emergencies (Repealed)

a) For the purposes of this Section, the following definitions shall apply:

1) Ambulance Provider – an individual or entity that owns and operates a business or service using ambulances or emergency medical services vehicles to transport emergency patients.

2) Sexual Assault – an act of nonconsensual sexual conduct or sexual penetration, as defined in Section 12-12 of the Criminal Code of 1961, including, without limitation, acts prohibited under Sections 12-13 through 12-16 of the Criminal Code of 1961.
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b) The facility shall adhere to the following protocol for the care and treatment of residents who are suspected of having been sexually assaulted in a long term care facility or elsewhere (Section 3-808 of the Act):

1) Notify local law enforcement pursuant to the requirements of Section 300.695;

2) Call an ambulance provider;

3) Move the survivor, as quickly as reasonably possible, to a closed environment to ensure privacy while waiting for emergency and law enforcement personnel to arrive. The facility shall ensure the welfare and privacy of the survivor, including the use of code to avoid embarrassment; and

4) Offer to call a friend or family member and a sexual assault crisis advocate, when available, to accompany the survivor.

c) The facility shall take all reasonable steps to preserve evidence of the alleged sexual assault, including encouraging the survivor not to change clothes or bathe, if he or she has not done so since the sexual assault.

d) The facility shall notify the Department and draft a descriptive summary of the alleged sexual assault pursuant to the requirements of Section 300.690.

(Source: Old Section repealed at 20 Ill. Reg. 12160, effective September 10, 1996; new Section added at 35 Ill. Reg. _____, effective ____________)

SUBPART F: NURSING AND PERSONAL CARE

Section 300.1210 General Requirements for Nursing and Personal Care

a) Comprehensive Resident Care Plan. A facility, with the participation of the resident and the resident’s guardian or representative, as applicable, must develop and implement a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident’s medical, nursing, and mental and psychosocial needs that are identified in the resident’s comprehensive assessment, which allow the resident to attain or maintain the highest practicable level of independent functioning, and provide for discharge planning to the least
restrictive setting based on the resident's care needs. The assessment shall be
developed with the active participation of the resident and the resident's guardian
or representative, as applicable. (Section 3-202.2a of the Act)

b) The facility shall provide the necessary care and services to attain or
maintain the highest practicable physical, mental, and psychological well-being of
the resident, in accordance with each resident's comprehensive resident care
assessment and plan of care. Adequate and properly supervised nursing care
and personal care shall be provided to each resident to meet the total nursing and
personal care needs of the resident. Restorative measures shall include, at a
minimum, the following procedures:

1) The licensed nurse in charge of the restorative/rehabilitative nursing
program shall have successfully completed a course or other training
program that includes at least 60 hours of classroom/lab training in
restorative/rehabilitative nursing as evidenced by a transcript, certificate,
diploma, or other written documentation from an accredited school or
recognized accrediting agency such as a State or National organization of
nurses or a State licensing authority. Such training shall address each of
the measures outlined in subsections (b)(2) through (5) of this Section.
This person may be the Director of Nursing, Assistant Director of Nursing
or another nurse designated by the Director of Nursing to be in charge of
the restorative/rehabilitative nursing program.

2) All nursing personnel shall assist and encourage residents so that a
resident who enters the facility without a limited range of motion does not
experience reduction in range of motion unless the resident's clinical
condition demonstrates that a reduction in range of motion is unavoidable.
All nursing personnel shall assist and encourage residents so that a
resident with a limited range of motion receives appropriate treatment and
services to increase range of motion and/or to prevent further decrease in
range of motion.

3) All nursing personnel shall assist and encourage residents so that a
resident who is incontinent of bowel and/or bladder receives the
appropriate treatment and services to prevent urinary tract infections and
to restore as much normal bladder function as possible. All nursing
personnel shall assist residents so that a resident who enters the facility
without an indwelling catheter is not catheterized unless the resident's
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clinical condition demonstrates that catheterization was necessary.

4) All nursing personnel shall assist and encourage residents so that a resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's abilities to bathe, dress, and groom; transfer and ambulate; toilet; eat; and use speech, language, or other functional communication systems. A resident who is unable to carry out activities of daily living shall receive the services necessary to maintain good nutrition, grooming, and personal hygiene.

5) All nursing personnel shall assist and encourage residents with ambulation and safe transfer activities as often as necessary in an effort to help them retain or maintain their highest practicable level of functioning.

c) Each direct care-giving staff shall review and be knowledgeable about his or her residents' respective resident care plan.

d) Pursuant to subsection (a), general nursing care shall include, at a minimum, the following and shall be practiced on a 24-hour, seven-day-a-week basis:

1) Medications, including oral, rectal, hypodermic, intravenous and intramuscular, shall be properly administered.

2) All treatments and procedures shall be administered as ordered by the physician.

3) Objective observations of changes in a resident's condition, including mental and emotional changes, as a means for analyzing and determining care required and the need for further medical evaluation and treatment shall be made by nursing staff and recorded in the resident's medical record.

4) Personal care shall be provided on a 24-hour, seven-day-a-week basis. This shall include, but not be limited to, the following:

A) Each resident shall have proper daily personal attention, including skin, nails, hair, and oral hygiene, in addition to treatment ordered
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by the physician.

B) Each resident shall have at least one complete bath and hair wash weekly and as many additional baths and hair washes as necessary for satisfactory personal hygiene.

C) Each resident shall have clean, suitable clothing in order to be comfortable, sanitary, free of odors, and decent in appearance. Unless otherwise indicated by his/her physician, this should be street clothes and shoes.

D) Each resident shall have clean bed linens at least once weekly and more often if necessary.

5) A regular program to prevent and treat pressure sores, heat rashes or other skin breakdown shall be practiced on a 24-hour, seven-day-a-week basis so that a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that the pressure sores were unavoidable. A resident having pressure sores shall receive treatment and services to promote healing, prevent infection, and prevent new pressure sores from developing.

6) All necessary precautions shall be taken to assure that the residents' environment remains as free of accident hazards as possible. All nursing personnel shall evaluate residents to see that each resident receives adequate supervision and assistance to prevent accidents.

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

SUBPART P: RESIDENT'S RIGHTS

Section 300.3300 Transfer or Discharge

a) A resident may be voluntarily discharged from a facility after he or she gives the administrator, a physician, or a nurse of the facility written notice of his or her desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his or her guardian or if the resident is a minor, his or her parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is
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relieved from any responsibility for the resident's care, safety or well-being. (Section 2-111 of the Act)

b) Each resident's rights regarding involuntary transfer or discharge from a facility shall be as described in subsections (c) through (y) of this Section.

c) Reasons for Transfer or Discharge

1) A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:

   A) for medical reasons.

   B) for the resident's physical safety.

   C) for the physical safety of other residents, the facility staff or facility visitors.

   D) for either late payment or nonpayment for the resident's stay, except as prohibited by Titles XVIII and XIX of the Federal Social Security Act. For purposes of this Section, "late payment" means non-receipt of payment after submission of a bill. If payment is not received within 45 days after submission of a bill, the facility may send a notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of the Act and subsection (e) of this Section, that the responsible party has the right to pay the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings. This subsection does not apply to those residents whose care is provided under the Illinois Public Aid Code. (B) (Section 3-401 of the Act)

2) Prohibition of Discrimination
A facility participating in the Medical Assistance Program is prohibited from failing or refusing to retain as a resident any person because the resident is a recipient of or an applicant for the Medical Assistance Program under Article V of the Illinois Public Aid Codemedical assistance program. (Section 3-401.1(a) of the Act) For the purposes of Section 3-401.1 of the Actthis Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling 10 ten days or less following a hospital admission. (Section 3-401.1(a-10) of the Act) The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the 10ten -day period. (Section 3-401.1(a) of the Act)

A facility which violates subsection (c)(2)(A) of this Section subsection (c)(2)(B) of this Section shall be guilty of a business offense and fined not less than $500 nor more than $1,000 for the first offense and not less than $1,000 nor more than $5,000 for each subsequent offense. (Section 3-401.1(b) of the Act)

d) Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under subsection (j) of this Sectionsubsection (j) of this Section and by a minimum written notice of 21 days, except in one of the following instances. The 21-day requirement shall not apply in any of the following instances:

1) When an emergency transfer or discharge is ordered by the resident's attending physician because of the resident's health care needs mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician; (Section 3-402(a) of the Act)

2) When the transfer or discharge is mandated by the physical safety of other residents, the facility staff, or facility visitors, as documented in the clinical record. The Department shall be notified prior to any such involuntary transfer or discharge. The Department will immediately offer transfer, or discharge and relocation assistance to residents transferred or discharged under this subsection (d), and the Department may place
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relocation teams as provided in Section 3-419 of the Act; or (Section 3-402(b) of the Act)

3) When an identified offender is within the provisional admission period defined in Section 1-120.3 of the Act and Section 300.330 of this Part. If the Identified Offender Report and Recommendation prepared under Section 2-201.6 of the Act shows that the identified offender poses a serious threat or danger to the physical safety of other residents, the facility staff, or facility visitors in the admitting facility, and the facility determines that it is unable to provide a safe environment for the other residents, the facility staff, or facility visitors, the facility shall transfer or discharge the identified offender within 3 days after its receipt of the Identified Offender Report and Recommendation. (Section 3-402(c) of the Act)

e) For transfer or discharge made under subsection (d), the notice of transfer or discharge shall be made as soon as practicable before the transfer or discharge. The notice required by subsection (d) of this Section shall be on a form prescribed by the Department and shall contain all of the following:

1) The stated reason for the proposed transfer or discharge; (Section 3-403(a) of the Act)

2) The effective date of the proposed transfer or discharge; (Section 3-403(b) of the Act)

3) A statement in not less than 12-point type, which reads:

"You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within 10 days after receiving this notice. If you request a hearing, it will be held not later than 10 days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions, call the Department of Public Health at the telephone number listed
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below "below". (Section 3-403(c) of the Act)

4) A hearing request form, together with a postage paid, preaddressed envelope to the Department; and (Section 3-403(d) of the Act)

5) The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge. (Section 3-403(e) of the Act)

f) A request for a hearing made under subsection (e) of this Section shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-404 of the Act)

g) A copy of the notice required by subsection (d)(1) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Healthcare and Family Services. (Section 3-405 of the Act)

h) When the basis for an involuntary transfer or discharge is the result of an action by the Department of Healthcare and Family Services with respect to a recipient of Title XIX and a hearing request is filed with the Department of Healthcare and Family Services, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Healthcare and Family Services or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility. (Section 3-406 of the Act)

i) When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (Section 3-407 of the Act)

j) The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the resident's placement, maintenance, and care in the facility. The explanation and
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discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's clinical record. (Section 3-408 of the Act)

k) The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)

l) A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his or her parent shall have the opportunity to file a request for a hearing with the Department within 10 days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)

m) The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Healthcare and Family Services Public Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than 10 days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request. (Section 3-411 of the Act)

n) The hearing before the Department provided under subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 through 3-712 of the Act. In determining whether a transfer or discharge is authorized, the burden of proof in this hearing rests on the person requesting the transfer or discharge. (Section 3-412 of the Act)

o) If the Department determines that a transfer or discharge is authorized under subsection (c) of this Section, the resident shall not be required to leave the facility before the 34th day following receipt of the notice required under subsection (d) of this Section, or the 10th day following receipt of the Department's decision, whichever is later, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-413 of the Act)
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**p)** The Department of *Healthcare and Family Services* [*Public Aid* shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by subsection (c) of this Section. (Section 3-414 of the Act)

**q)** The Department may transfer or discharge any resident from any facility required to be licensed under the *Act and this Part* when any of the following conditions exist:

1) **Such facility is operating without a license;** (Section 3-415(a) of the Act)

2) **The Department has suspended, revoked or refused to renew the license of the facility as provided under Section 3-119 of the Act.** (Section 3-415(b) of the Act)

3) **The facility has requested the aid of the Department in the transfer or discharge of the resident and the Department finds that the resident consents to transfer or discharge;** (Section 3-415(c) of the Act)

4) **The facility is closing or intends to close and adequate arrangement for relocation of the resident has not been made at least 30 days prior to closure; or** (Section 3-415(d) of the Act)

5) **The Department determines that an emergency exists which requires immediate transfer or discharge of the resident.** (Section 3-415(e) of the Act)

**r)** In deciding to transfer or discharge a resident from a facility under subsection (q) of this Section, the Department shall consider the likelihood of serious harm which may result if the resident remains in the facility. (Section 3-416 of the Act)

**s)** The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under subsections (c) through (q) of this Section including information on available alternative placements. Residents shall be involved in planning the transfer or discharge and shall choose among the available alternative placements, except that where an emergency makes prior resident involvement impossible, the Department may make a temporary placement until a final
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Placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement. Where the Department makes or participates in making the relocation decision, consideration shall be given to proximity to the resident's relatives and friends. The resident shall be allowed three visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate transfer or discharge requires reduction in the number of visits. (Section 3-417 of the Act)

t) The Department shall prepare resident transfer or discharge plans to assure safe and orderly removals and protect residents' health, safety, welfare and rights. In nonemergencies and where possible in emergencies, the Department shall design and implement such plans in advance of transfer or discharge. (Section 3-418 of the Act)

u) The Department may place relocation teams in any facility from which residents are being discharged or transferred for any reason, for the purpose of implementing transfer or discharge plans. (Section 3-419 of the Act)

v) In any transfer or discharge conducted under subsections (q) through (t) of this Section the Department shall:

1) Provide written notice to the facility prior to the transfer or discharge. The notice shall state the basis for the order of transfer or discharge and shall inform the facility of its right to an informal conference prior to transfer or discharge under this Section, and its right to a subsequent hearing under subsection (x) of this Section. If a facility desires to contest a nonemergency transfer or discharge, prior to transfer or discharge it shall, within four working days after receipt of the notice, send a written request for an informal conference to the Department. The Department shall, within four working days from the receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference, the Department may affirm, modify or overrule its previous decision. Except in an emergency, transfer or discharge may not begin until the period for requesting a conference has passed or, if a conference is requested, until after a conference has been held; and (Section 3-420(a) of the Act)
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2) Provide written notice to any resident to be removed, to the resident's representative, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the reason for which transfer or discharge is ordered and shall inform the resident of the resident's right to challenge the transfer or discharge under subsection (x) of this Section. The Department shall hold an informal conference with the resident or the resident's representative prior to transfer or discharge at which the resident or the representative may present any objections to the proposed transfer or discharge plan or alternative placement. (Section 3-420(b) of the Act)

w) In any transfer or discharge conducted under subsection (q)(5) of this Section, the Department shall notify the facility and any resident to be removed that an emergency has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the Department shall provide written notice to the facility, to the resident, to the resident's representative, if any, and to a member of the resident's family, where practicable, of the basis for the finding that an emergency existed and of the right to challenge removal under subsection (x) of this Section. (Section 3-421 of the Act)

x) Within ten days following transfer or discharge, the facility or any resident transferred or discharged may send a written request to the Department for a hearing under Section 3-703 of the Act to challenge the transfer or discharge. The Department shall hold the hearing within 30 days after receipt of the request. The hearing shall be held at the facility from which the resident is being transferred or discharged, unless the resident or resident's representative requests an alternative hearing site. Where a challenge is by a resident, the hearing shall be held at a location convenient to the resident. If the facility prevails, it may file a claim against the State under the Court of Claims Act for payments less expenses saved as a result of the transfer or discharge. No resident transferred or discharged may be held liable for the charge for care which would have been made had the resident remained in the facility. If a resident prevails, the resident may file a claim against the State under the Court of Claims Act (Ill. Rev. Stat. 1987, ch. 37, pars. 439.1 et seq.) for any excess expenses directly caused by the order to transfer or discharge. The Department shall assist the resident in returning to the facility if assistance is requested. (Section 3-422 of the Act)
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y) Any owner of a facility licensed under the Act shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than 10% of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility as provided under subsection (u) of this Section. (A, B) (Section 3-423 of the Act)

(Source: Amended at 35 Ill. Reg. _______, effective ____________)

SUBPART S: PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section 300.4020 Reassessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S

a) At least every three months, the PRSC shall document review of the resident's progress, assessments and treatment plans. If needed, the PRSC shall inform the appropriate IDT members of the change in resident's condition. The appropriate IDT member will reassess the individual and update the resident's assessment, assuring the continued accuracy of the assessment.

b) All persons admitted to a nursing home facility with a diagnosis of serious mental illness who remain in the facility for a period of 90 days shall be re-screened by the Department of Human Services or its designee at the end of the 90-day period, at 6 months, and annually thereafter to assess their continued need for nursing facility care and shall be advised of all other available care options. (Section 2-104.3 of the Act) Complete comprehensive reassessments shall be conducted as needed but at least every 12 months in the following areas:

1) Psychiatric evaluation;
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2) Psychosocial assessment update (including significant events, e.g., death of a significant other since the last reassessment);

3) Skills assessment update, including an assessment of resident levels of functioning and reassessment of rehabilitation potential (an evaluation of the individual's strengths, potentials, environmental opportunities and ability to achieve or likelihood of achieving maximum functioning); and a narrative statement of the individual's strengths and potential as they directly relate to the individual's functional limitations with recommendations for treatment and/or services, and the potential of the individual to function more independently. A complete reassessment shall be required if changes in the resident's functional level make the current assessment inapplicable. If a complete reassessment is not required, the update must include a narrative summary of the reevaluated assessment;

4) Recreation and leisure activities updates, including the resident's participation, perceived enjoyment, frequency of self-initiated involvement versus staff coaxing or refusal, and recommended interventions;

5) Physical examination update, including, but not limited to:
   A) Medical history and medication history updates, including any illness and changes in medical diagnosis and medication prescription or indication of administration compliance that have occurred since the last assessment;
   B) Oral screening update completed by a dentist or registered nurse;
   C) Nutritional update completed by a dietitian or the food service supervisor under the direction of the dietitian;

6) Other assessments needed, as determined by the interdisciplinary team.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

SUBPART T: FACILITIES PARTICIPATING IN ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES' PUBLIC AIDS
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DEMONSTRATION PROGRAM FOR PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section 300.6020 Reassessments for Residents of Facilities Subject to Subpart T

a) At least every three months, the PRSC shall document review of the resident's progress, assessments and treatment plans. If needed, the PRSC shall inform the appropriate IDT members of the change in resident's condition. The appropriate IDT member shall reassess the resident and update the resident's assessment, assuring the continued accuracy of the assessment.

b) All persons admitted to a nursing home facility with a diagnosis of serious mental illness who remain in the facility for a period of 90 days shall be re-screened by the Department of Human Services or its designee at the end of the 90-day period, at 6 months, and annually thereafter to assess their continued need for nursing facility care and shall be advised of all other available care options. (Section 2-104.3 of the Act) Complete comprehensive reassessments shall be conducted as needed, but at least every 12 months, in the following areas:

1) Psychiatric evaluation;

2) Psychosocial assessment update (including significant events, e.g., death of a significant other since the last reassessment);

3) Skills assessment update, including an assessment of resident levels of functioning and reassessment or rehabilitation potential (an evaluation of the individual's strengths, potentials, environmental opportunities and ability/likelihood of achieving maximum functioning); and a narrative statement of the individual's strengths and potentials as they directly relate to the individual's functional limitations with recommendations for treatment and/or services, and the potential of the individual to function more independently. A complete reassessment shall be required if changes in the resident's functional level make the current assessment inapplicable. If a complete reassessment is not required, the update must include a narrative summary of the reevaluated assessment;

4) Recreational and leisure activities updates, including the resident's participation, perceived enjoyment, frequency of self-initiated involvement versus staff coaxing or refusal, and recommended
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interventions;

5) Physical examination update, including, but not limited to:
   
   A) Medical history and medication history updates, including any illness, and changes in medical diagnosis and medication prescription or indication of administration compliance that has occurred since the last assessment;

   B) Oral screening updates completed by a dentist or registered nurse;

   C) Nutritional update completed by a dietitian or the food service supervisor under the direction of the dietitian; and

6) Other assessments needed, as determined by the interdisciplinary team.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
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1) **Heading of the Part:** Sheltered Care Facilities Code

2) **Code Citation:** 77 Ill. Adm. Code 330

3) **Section Numbers:**

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4) **Statutory Authority:** Nursing Home Care Act [210 ILCS 45]

5) **A Complete Description of the Subjects and Issues Involved:** Part 330 regulates sheltered care facilities, including licensure, violations, and resident care and safety.

In 2010, the General Assembly passed Public Act 96-1372, a comprehensive overhaul of all aspects of licensure, violations, resident care, and safety. PA 96-1372 added new definitions or amended existing ones for identified offenders and the levels of violations, updated the requirements for screening and treating identified offenders, doubled license fees, established minimum requirements for comprehensive resident care plans, increased
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fines and revamped the levels of violations, added statutory protections for "whistleblowers," and required the Department to draft rules for the care and treatment of sexual assault victims.

This rulemaking implements PA 96-1372, amending 18 Sections, repealing two Sections, and adding one more Section.

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

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

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

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

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

9) Does this rulemaking contain incorporations by reference? No

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

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<td>330.770</td>
<td>Amend</td>
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11) Statement of Statewide Policy Objective: This rulemaking may create a State Mandate.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

    Susan Meister
    Division of Legal Services
DEPARTMENT OF PUBLIC HEALTH

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Illinois Department of Public Health
535 West Jefferson St., 5th Floor
Springfield, Illinois 62761

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

13) Initial Regulatory Flexibility Analysis:

A) Type of small businesses, small municipalities and not-for-profit corporations affected: sheltered care facilities

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

C) Types of professional skills necessary for compliance: nursing

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

The full text of the Proposed Amendments begins on the next page:
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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 330
SHELTERED CARE FACILITIES CODE

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330.110 General Requirements
330.120 Application for License
330.130 Licensee
330.140 Issuance of an Initial License For a New Facility
330.150 Issuance of an Initial License Due to a Change of Ownership
330.160 Issuance of a Renewal License
330.163 Alzheimer's Special Care Disclosure
330.165 Criteria for Adverse Licensure Actions
330.170 Denial of Initial License
330.175 Denial of Renewal of License
330.180 Revocation of License
330.190 Experimental Program Conflicting With Requirements
330.200 Inspections, Surveys, Evaluations and Consultation
330.210 Filing an Annual Attested Financial Statement
330.220 Information to be Made Available to the Public By the Department
330.230 Information to be Made Available to the Public By the Licensee
330.240 Municipal Licensing
330.250 Ownership Disclosure
330.260 Issuance of Conditional Licenses
330.270 Monitoring and Receivership
330.271 Presentation of Findings
330.272 Determination to Issue a Notice of Violation or Administrative Warning
330.274 Determination of the Level of a Violation
330.276 Notice of Violation
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330.282 Conditions for Assessment of Penalties
330.284 Calculation of Penalties (Repealed)
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330.286 Determination to Assess Penalties
330.288 Reduction or Waiver of Penalties
330.290 Quarterly List of Violators (Repealed)
330.300 Alcoholism Treatment Programs In Long-Term Care Facilities
330.310 Department May Survey Facilities Formerly Licensed
330.315 Supported Congregate Living Arrangement Demonstration
330.320 Waivers
330.330 Definitions
330.340 Incorporated and Referenced Materials

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330.715 Request for Resident Criminal History Record Information
330.720 Admission and Discharge Policies
330.724 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
330.725 Identified Offenders
330.726 Discharge Planning for Identified Offenders
330.727 Transfer of an Identified Offender
330.730 Contract Between Resident and Facility
330.740 Residents' Advisory Council
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330.761 Whistleblower Protection
330.765 Initial Health Evaluation for Employees
330.770 Disaster Preparedness
330.780 Incidents and Accidents
330.785 Contacting Local Law Enforcement
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330.795 Language Assistance Services

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330.911 Health Care Worker Background Check
330.913 Nursing and Personal Care Assistants (Repealed)
330.916 Student Interns (Repealed)
330.920 Consultation Services
330.930 Personnel Policies

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330.1120 Personal Care
330.1125 Life Sustaining Treatments
330.1130 Communicable Disease Policies
330.1135 Tuberculin Skin Test Procedures
330.1140 Care and Treatment of Sexual Assault Survivors, Behavior Emergencies
(Repealed)
330.1145 Restraints
330.1150 Emergency Use of Physical Restraints
330.1155 Unnecessary, Psychotropic, and Antipsychotic Drugs
330.1160 Vaccinations

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330.1970 Scheduling of Meals
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330.2220 Housekeeping
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SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

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SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW SHELTERED CARE FACILITIES

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330.2820 Applicability of These Standards
330.2830 Submission of a Program Narrative
330.2840 New Constructions, Additions, Conversions, and Alterations
330.2850 Preparation and Submission of Drawings and Specifications
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330.3000 Mechanical Drawings
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330.3150 Housekeeping, Service, and Storage
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330.3320 Applicability of These Standards
330.3330 Fire Protection
330.3340 Fire Department Service and Water Supply
330.3350 General Building Requirements
330.3360 Exit Facilities and Subdivision of Floor Areas
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330.3380 Corridors
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330.3400 Hazardous Areas and Combustible Storage
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EXISTING SHELTERED CARE FACILITIES

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330.3920 Fire Department Service and Water Supply
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330.3940 Exit Facilities and Subdivision of Floor Areas
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330.3970 Hazardous Areas and Combustible Storage
330.3980 Fire Alarm and Detection System
330.3990 Fire Extinguishers, Electric Wiring, and Miscellaneous
330.4000 Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

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330.4220 Medical and Personal Care Program
330.4230 Restraints (Repealed)
330.4240 Abuse and Neglect
330.4250 Communication and Visitation
330.4260 Resident's Funds
330.4270 Residents' Advisory Council
330.4280 Contract With Facility
330.4290 Private Right of Action
330.4300 Transfer or Discharge
330.4310 Complaint Procedures
330.4320 Confidentiality
330.4330 Facility Implementation

SUBPART R: DAY CARE PROGRAMS

Section
330.4510 Day Care in Long-Term Care Facilities

330.APPENDIX A Interpretation, Components, and Illustrative Services for Sheltered Care Facilities (Repealed)
330.APPENDIX B Classification of Distinct Part of a Facility For Different Levels of Service
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(Repealed)

330.APPENDIX C  Forms for Day Care in Long-Term Care Facilities
330.APPENDIX D  Criteria for Activity Directors Who Need Only Minimal Consultation
(Repealed)
330.APPENDIX E  Guidelines for the Use of Various Drugs
330.TABLE A  Heat Index Table/Apparent Temperature

AUTHORITY:  Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

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SUBPART A: GENERAL PROVISIONS

Section 330.120 Application for License

a) Any person acting individually or jointly with other persons who proposes to build, own, establish, or operate a sheltered care facility shall submit application information on forms provided by the Department. The applicant shall provide a written description of the proposed program to be provided, and other such information as the Department may require in order to determine the appropriate level of care for which the facility should be licensed. The application form and other required information shall be submitted and approved prior to surveys of the physical plant or review of building plans and specifications.

b) Application for a license to establish or operate a sheltered care facility shall be made in writing and submitted to the Department, with other such information as the Department may require, on forms furnished by the Department. (Section 3-103(1) of the Act)
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**c)** All license applications shall be accompanied with an application fee of $1,990. The fee for a 2-year license shall be double the fee for the annual license. (Section 3-103(2) of the Act)

**d)** The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:

1) The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;

2) The name and location of the facility for which a license is sought;

3) The name of the person or persons under whose management or supervision the facility will be conducted;

4) The number and type of residents for which maintenance, personal care, or nursing is to be provided; and

5) Such information relating to the number, experience, and training of the employees of the facility, any management agreements for the operation of the facility, and of the moral character of the applicant and employees as the Department may deem necessary. (Section 3-103(2) of the Act)

**e)** Ownership Change or Discontinuation

1) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold or leased; when operation is discontinued; when operation is moved to a new location; when the licensee (if an individual) dies; when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.

2) A license issued to a corporation shall become null, void and of no further effect upon the dissolution of the corporation. The license shall not be
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revived if the corporation is subsequently reinstated. A new license

shall must be obtained in such cases.

f) Each initial application shall be accompanied by a financial statement setting
forth the financial condition of the applicant and by a statement from the unit of
local government having zoning jurisdiction over the facility's location stating
that the location of the facility is not in violation of a zoning ordinance. An initial
application for a new facility shall be accompanied by a permit as required by the
Illinois Health Facilities Planning Act. After the application is approved, the
applicant shall advise the Department every six months of any changes in the
information originally provided in the application. (Section 3-103(3) of the Act)

g) The Department may issue licenses or renewals for periods of not less than six
months nor more than 18 months for facilities with annual licenses and not less
than 18 months nor more than 30 months for facilities with 2-year licenses in
order to distribute the expiration dates of such licenses throughout the calendar
year. The fees for such licenses shall be pro-rated on the basis of the portion of
the year for which they are issued. (Section 3-110 of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.165 Criteria for Adverse Licensure Actions

a) Adverse licensure actions are determinations to deny the issuance of an initial
license, to deny the issuance of a renewal of a license, or to revoke the current
license of a facility.

b) A determination by the Director or his or her designee to take adverse licensure
action against a facility shall be based on a finding that one or more of the
following criteria are met:

1) A substantial failure to comply with the Act or this Part. The facility has
substantially failed to meet any of the minimum standards set forth in the
Act or this Part. For purposes of this provision, substantial failure is a
failure to meet the requirements of this Part that which is other than a
variance from strict and literal performance and that which results only in
unimportant omissions or defects given the particular circumstances
involved. A substantial failure by a facility shall include, but not be
limited to, any of the following: (Section 3-117(l) and 3-119(a)(1) of the
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A) termination of Medicare or Medicaid certification by the Centers for Medicare and Medicaid Services; or

B) a failure by the facility to pay any fine assessed under the Act after the Department has sent to the facility at least 2 notices of assessment that include a schedule of payments as determined by the Department, taking into account extenuating circumstances and financial hardships of the facility. (Section 3-119(a)(1) of the Act)(Sections 3-117(1) and 3-119(a)(1) of the Act)

2) Conviction of the licensee, or of the person designated to manage or supervise the facility, of the license or applicant, or the person designated to manage or supervise the facility has been convicted of any of the following crimes during the previous five years. Such convictions shall be verified by a certified copy of the record of the court of conviction.

A) A felony; or

B) Two or more misdemeanors involving moral turpitude. (Section 3-117(2) and 3-119(a)(2) of the Act)

3) The moral character of the licensee, administrator, manager, or supervisor of the facility is not reputable. Evidence to be considered will include verifiable statements by residents of a facility, law enforcement officials, or other persons with knowledge of the individual's character. In addition, the definition afforded to the terms "reputable," "unreputable," and "irreputable" by the circuit courts of the State of Illinois shall apply when appropriate to the given situation. For purposes of this Section, a manager or supervisor of the facility is an individual with responsibility for the overall management, direction, coordination, or supervision of the facility or the facility staff. (Sections 3-117(2) and 3-119(a)(2) of the Act)

4) The facility is operating (or, for an initial applicant, intends to operate) with personnel who are insufficient in number or unqualified by training or experience to properly care for the number and type of
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Residents in the facility. Standards in these rules concerning personnel, including Sections 330.910, 330.920, and 330.930, will be considered in making this determination. (Section Sections 3-117(3) and 3-119(a)(3) of the Act)

5) Financial or other resources are available insufficient financial or other resources to operate the facility in accordance with the Act and these rules. Financial information and changes in financial information provided by the facility under Section 330.120(f) and under Section 3-208 of the Act will be considered in making this determination. (Section 3-119(a)(4) of the Act)

6) The facility is not under the direct supervision of a full-time administrator as required by Section 330.510. (Section Sections 3-117(6) and 3-119(a)(5) of the Act)

7) The facility has committed two Type "AA" violations within a two-year period. (Section 3-119(a)(6) of the Act)

8) The facility has violated the rights of residents of the facility by any of the following actions:

A) A pervasive pattern of cruelty or indifference to residents has occurred in the facility.

B) The facility has appropriated the property of a resident or has converted for its use the property of a resident without his written consent or the consent of his legal guardian.

C) The facility has secured property, or a bequest of property, from a resident by undue influence.

9) The facility knowingly submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the facility.

10) The facility has refused to allow an inspection or survey of the facility by agents of the Department to occur.
c) The Director or his or her designee shall consider all available evidence at the time of the determination, including the history of the facility and the applicant in complying with the Act and this Part, notices of violations that have been issued to the facility and the applicant, findings of surveys and inspections, and any other evidence provided by the facility, residents, law enforcement officials and other interested individuals.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.170 Denial of Initial License

a) A determination by the Director or his or her designee to deny the issuance of an initial license shall be based on a finding that one or more of the criteria outlined in Section 330.165 or the following criteria are met:

1) Conviction of the applicant, or if the applicant is a firm, partnership or association, or any of its members or if a corporation, the conviction of the corporation or any of its officers and stockholders, or of the person designated to manage or supervise the facility. The applicant, any member of the firm, partnership, or association which is the applicant, any officer or stockholder of the corporation which is the applicant, or the person designated to manage or supervise the facility has been convicted of any of the following crimes during the previous five years. Such convictions shall be verified by a certified copy of the record of the court of conviction.

A) A felony; or

B) Two or more misdemeanors involving moral turpitude. (Section 3-117(2) of the Act)

2) Prior license revocation. Both of the following conditions shall be met:

A) Revocation of a facility license during the previous 5 years, if such prior license was issued to the individual applicant, a controlling owner or controlling combination of owners of the applicant; or any affiliate of the individual applicant or controlling owner of the
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applicant or affiliate of the applicant was a controlling owner of the prior license. The license of a facility under this Act has been revoked during the past five years, which was owned or operated by the applicant, by a controlling owner of the applicant, by a controlling combination of owners of the applicant, or by an affiliate who is a controlling owner of the applicant. Operation for the purposes of this provision shall include individuals with responsibility for the overall management, direction, or supervision of the facility.

B) The denial of an application for a license pursuant to this subsection (a)(2) must be supported by evidence that such prior revocation renders the applicant unqualified or incapable of meeting or maintaining a facility in accordance with the Act and this Part. Such prior revocation renders the applicant unqualified or incapable of maintaining a facility in accordance with the minimum standards set forth in the Act or in this Part. This determination will be based on the applicant's qualifications and ability to meet the criteria outlined in Section 330.165(b) as evidenced by the application and the applicant's prior history. (Section 3-117(5) of the Act)

3) Personnel insufficient in number or unqualified by training or experience to properly care for the proposed number and type of residents. (Section 3-117(3) of the Act)

4) Insufficient financial or other resources to operate and conduct the facility in accordance with this Part and with contractual obligations assumed by a recipient of a grant under the Equity in Long-Term Care Quality Act and the plan (if applicable) submitted by a grantee for continuing and increasing adherence to best practices in providing high-quality nursing home care. (Section 3-117(4) of the Act)

5) That the facility is not under the direct supervision of a full-time administrator, as defined by this Part, who is licensed, if required, under the Nursing Home Administrators Licensing and Disciplinary Act. (Section 3-117(6) of the Act)
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6) That the facility is in receivership and the proposed licensee has not submitted a specific detailed plan to bring the facility into compliance with the requirements of the Act and this Part, and with federal certification requirements, if the facility is certified, and to keep the facility in such compliance. (Section 3-117(7) of the Act)

b) The Department shall notify an applicant immediately upon denial of any application. Such notice shall be in writing and shall include:

1) A clear and concise statement of the basis of the denial. The statement shall include a citation to the provisions of Section 3-117 of the Act and the provisions of these rules under which the application is being denied.

2) A notice of the opportunity for a hearing under Section 3-103 of the Act. If the applicant desires to contest the denial of a license, it shall provide written notice to the Department of a request for a hearing within 10 days after receipt of the notice of denial. (Section 3-118 of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.175 Denial of Renewal of License

a) Application for renewal of a license of a facility shall be denied and the license of the facility shall be allowed to expire when the Director or his or her designee finds that a condition, occurrence, or situation in the facility meets any of the criteria specified in Section 330.165(b) and in Section 3-119(a) of the Act. Pursuant to Section 10-65 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1010-65) [5 ILCS 100/10-65], licensees who are individuals are subject to denial of renewal of licensure if the individual is more than 30 days delinquent in complying with a child support order.

b) When the Director or his or her designee determines that an application for renewal of a license of a facility is to be denied, the Department shall notify the facility. The notice to the facility shall be in writing and shall include:

1) A clear and concise statement of the basis of the denial. The statement shall include a citation to the provisions of the Act and this Part on which
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the application for renewal is being denied.

2) A statement of the date on which the current license of the facility will expire as provided in subsection (c) of this Section and Section 3-119(d) of the Act.

3) A description of the right of the applicant to appeal the denial of the application for renewal and the right to a hearing. (Section 3-119(b) of the Act)

c) The effective date of the nonrenewal of a license shall be as provided in Section 3-119(db) of the Act.

d) The current license of the facility shall be extended by the Department when it finds that such extension is necessary to permit orderly removal and relocation of residents. (Section 3-119(d)(3) of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.180 Revocation of License

a) The license of a facility shall be revoked when the Director or his or her designee finds that a condition, occurrence or situation in the facility meets any of the criteria specified in Section 330.165(b) and in Section 3-119(a) of the Act. In addition, the license of a facility will be revoked when the facility fails to abate or eliminate a level A violation as provided in Section 330.282(b) or when the facility has committed 2 Type "AA" violations within a 2-year period. (Section 3-119(a)(6) of the Act) Pursuant to Section 10-65 of the Illinois Administrative Procedure Act, licensees who are individuals are subject to revocation of licensure if the individual is more than 30 days delinquent in complying with a child support order.

b) When the Director or his or her designee determines that the license of a facility is to be revoked, the Department shall notify the facility. The notice to the facility shall be in writing and shall include:

1) A clear and concise statement of the basis of the revocation. The statement shall include a citation to the provisions of the Act and this Part these rules on which the license is being revoked.
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2) A statement of the date on which the revocation will take effect as provided in subsection (c) of this Section and Section 3-119(d) of the Act.

3) Notice of the opportunity for a hearing under Section 3-703 of the Act. A description of the right of the facility to appeal the revocation of the license and the right to a hearing. (Section 3-119(b) of the Act)

c) The effective date of the revocation of a license shall be as provided in Section 3-119(d) of the Act.

d) The Department may extend the effective date of license revocation when it finds that such extension is necessary to permit orderly removal and relocation of residents. (Section 3-119(d)(3) of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.220 Information to Be Made Available to the Public By the Department

a) The Department shall respect the confidentiality of a resident's record and shall not divulge or disclose the contents of a record in a manner which identifies a resident, except upon a resident's death to a relative or guardian, or under judicial proceedings. Section 2-206 of the Act. This Section shall not be construed to limit the right of a resident or a resident's representative to inspect or copy the resident's records. (Section 2-206(a) of the Act)

b) Confidential medical, social, personal or financial information identifying a resident shall not be available for public inspection in a manner which identifies a resident. (Section 2-206(b) of the Act)

c) The following information is subject to disclosure to the public from the Department or the Department of Healthcare and Family Services:

1) Information submitted under Sections 3-103 and 3-207 of the Act, except information concerning the remuneration of personnel licensed, registered, or certified by the Department of Financial and Professional Regulation Registration and Education and monthly charges...
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for an individual private resident;

2) Records of license and certification inspections, surveys, and evaluations of facilities, other reports of inspections, surveys, and evaluations of resident care, whether a facility has been designated a distressed facility, and the basis for the designation, and reports concerning a facility prepared pursuant to Titles XVIII and XIX of the Social Security Act (42 U.S.C.A. 1395 et seq. and 1396 et seq.), subject to the provisions of the Social Security Act (42 U.S.C.A. 301 et seq.);

3) Cost and reimbursement reports submitted by a facility under Section 3-208 of the Act, reports of audits of facilities, and other public records concerning the cost incurred by, revenues received by, and reimbursement of facilities; and

4) Complaints filed against a facility and complaint investigation reports, except that a complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a facility under Section 3-702 of the Act, and, further, except that a complainant or resident's name shall not be disclosed except under Section 3-702 of the Act (Section 2-205 of the Act)

d) The Department shall disclose information under this Section in accordance with provisions for inspection and copying of public records required by the Freedom of Information Act (Ill. Rev. Stat. 1987, ch. 116, par. 201 et seq.). (Section 2-205 of the Act)

e) However, the disclosure of information described in subsection (c)(1) of this Section shall not be restricted by any provision of the Freedom of Information Act. (Section 2-205 of the Act)

f) Copies of reports available to the public may be obtained by making a written request to the Department in accordance with the Department's rules titled Access to Records of the Department of Public Health (2 Ill. Adm. Code 1127). Freedom of Information rules (2 Ill. Adm. Code 1126). However, access to cost reports shall be governed by Department of Public Aid rule "Access to Cost Reports" (89 Ill. Adm. Code 140.544). The Department may, at its discretion, waive reproduction fees if the party requesting the material is involved in legal
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action with the Department.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.274 Determination of the Level of a Violation

a) After determining that issuance of a notice of violation is warranted and prior to issuance of the notice, the Director or his or her designee will review the findings that are the basis of the violation, and any comments and documentation provided by the facility, to determine the level of the violation. Each violation shall be determined to be either a level AA, a level A, a level B, or level C violation based on the criteria outlined in this Section.

b) The following definitions of levels of violations shall be used in determining the level of each violation:

1) A "level AA violation" or a "Type AA violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death. (Section 1-128.5 of the Act)

2) A "level A violation" or "Type A violation" is a violation of the Act or these rules which creates a condition or occurrence relating to the operation and maintenance of a facility that presents a substantial probability that the risk of death or serious mental or physical harm will result therefrom or has resulted in actual physical or mental harm to a resident. (Section 1-129 of the Act)

3) A "level B violation" or "Type B violation" is a violation of the Act or these rules which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to directly threatening to the health, safety or welfare of a resident. (Section 1-130 of the Act)

4) A "level C violation" or "Type C violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less
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than minimal physical or mental harm to a resident will result therefrom.  
(Section 1-132 of the Act)

c) In determining the level of a violation, the Director or his or her designee shall consider the following criteria:

1) The specific requirements of this Part which have been violated and the designated level of violation for those provisions:

A) The designated level of violation is indicated by the letter or letters in parentheses following specific provisions. The presence of more than one letter following a specific provision indicates that the provision may be applicable to different levels of violation. The absence of any letter following a specific provision indicates that no designated level of violation applicable to that provision has been determined.

B) The designated level of violation will be considered in conjunction with the other criteria contained in subsections (c)(2) and (c)(3) of this Section which may increase or decrease the level of violation cited for a specific violation, except that no violation will be cited as a level B violation unless there is a direct threat to the health, safety or welfare of a resident, or as a level A violation unless there is a substantial probability of the death of a resident or serious mental or physical harm to a resident.

1)2) The degree of danger to the resident or residents that which is posed by the condition or occurrence in the facility. The following factors will be considered in assessing the degree of danger:

A) Whether the resident or residents of the facility are able to recognize conditions or occurrences that which may be harmful and are able to take measures for self-preservation and self-protection. The extent of nursing care required by the residents as indicated by review of patient needs will be considered in relation to this determination.

B) Whether the resident or residents have access to the area of the facility in which the condition or occurrence exists and the extent
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of such access. A facility's use of barriers, warning notices, instructions to staff and other means of restricting resident access to hazardous areas will be considered.

C) Whether the condition or occurrence was the result of inherently hazardous activities or negligence by the facility.

D) Whether the resident or residents of the facility were notified of the condition or occurrence and the promptness of such notice. Failure of the facility to notify residents of potentially harmful conditions or occurrences will be considered. The adequacy of the method of such notification and the extent to which such notification reduced the potential danger to the residents will also be considered.

2) The directness and imminence of the danger to the resident or residents by the condition or occurrence in the facility. In assessing the directness and imminence of the danger, the following factors will be considered:

A) Whether actual harm, including death, physical injury or illness, mental injury or illness, distress, or pain, to a resident or residents resulted from the condition or occurrence and the extent of such harm.

B) Whether available statistics and records from similar facilities indicate that direct and imminent danger to the resident or residents has resulted from similar conditions or occurrences and the frequency of such danger.

C) Whether professional opinions and findings indicate that direct and imminent danger to the resident or residents will result from the condition or occurrence.

D) Whether the condition or occurrence was limited to a specific area of the facility or was widespread throughout the facility. Efforts taken by the facility to limit or reduce the scope of the area affected by the condition or occurrence will be considered.

E) Whether the physical, mental, or emotional state of the resident or residents, who are subject to the danger, would facilitate or hinder
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harm actually resulting from the condition or occurrence.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.277 Administrative Warning

a) If the Department finds a situation, condition, or practice which violates the Act or this Part that does not constitute a Type "AA", Type "A", Type "B", or Type "C" violation, the Department shall issue an administrative warning. (Section 3-303.2(a) of the Act)

b) Each administrative warning shall be in writing and shall include the following information:

1) A description of the nature of the violation.

2) A citation of the specific statutory provision or rule which the Department alleges has been violated.

3) A statement that the facility shall be responsible for correcting the situation, condition, or practice. (Section 3-303.2(a) of the Act)

c) Each administrative warning shall be sent to the facility and the licensee or served personally at the facility within ten days after the Director or his or her designee determines that issuance of an administrative warning is warranted under Section 330.272.

d) The facility is not required to submit a plan of correction in response to an administrative warning.

e) If the Department finds, during the next on-site inspection which occurs no earlier than 90 days from the issuance of the administrative warning, that the facility has not corrected the situation, condition, or practice which resulted in the issuance of the administrative warning, the Department shall notify the facility of the finding. The facility shall then submit a written plan of correction as provided in Section 330.278. The Department will consider the plan of correction and take any necessary action in accordance with Section 330.278. (Section 3-303.2(b) of the Act)
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(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 330.278 Plans of Correction

a) The situation, condition, or practice constituting a Type "AA" violation or a Type "A" violation shall be abated or eliminated immediately unless a fixed period of time, not exceeding 15 days, as determined by the Department and specified in the notice of violation is required for correction. (Section 3-303(a) of the Act)

b) The facility shall have 10 days after receipt of notice of violation for a Type B violation, or after receipt of a notice under Section 330.277(d) of failure to correct a situation, condition, or practice that resulted in the issuance of an administrative warning, to prepare and submit a plan of correction to the Department. (Section 3-303(b) of the Act)

c) Within the 10-day period, a facility may request additional time for submission of the plan of correction. The Department will extend the period for submission of the plan of correction for an additional 30 days, when it finds that corrective action by a facility to abate or eliminate the violation will require substantial capital improvement. The Department will consider the extent and complexity of necessary physical plant repairs and improvements and any impact on the health, safety, or welfare of the residents of the facility in determining whether to grant a requested extension. (Section 3-303(b) of the Act)

d) Each plan of correction shall be based on an assessment by the facility of the conditions or occurrences that are the basis of the violation and an evaluation of the practices, policies, and procedures that have caused or contributed to the conditions or occurrences. Evidence of such assessment and evaluation shall be maintained by the facility. Each plan of correction shall include:

1) A description of the specific corrective action the facility is taking, or plans to take, to abate, eliminate, or correct the violation cited in the notice.

2) A description of the steps that will be taken to avoid future occurrences of the same and similar violations.

3) A specific date by which the corrective action will be completed.
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c) Submission of a plan of correction shall not be considered an admission by the facility that the violation has occurred.

d) The Department will review each plan of correction to insure that it provides for the abatement, elimination, or correction of the violation. The Department will reject a submitted plan only if it finds any of the following deficiencies:

1) The plan does not appear to address the conditions or occurrences that are the basis of the violation and an evaluation of the practices, policies, and procedures that have caused or contributed to the conditions or occurrences.

2) The plan is not specific enough to indicate the actual actions the facility will be taking to abate, eliminate, or correct the violation.

3) The plan does not provide for measures that will abate or eliminate, or correct the violation.

4) The plan does not provide steps that will avoid future occurrences of the same and similar violations.

5) The plan does not provide for timely completion of the corrective action, considering the seriousness of the violation, any possible harm to the residents, and the extent and complexity of the corrective action.

e) When the Department rejects a submitted plan of correction, it shall notify the facility. The notice of rejection shall be in writing and shall specify the reason for the rejection. The facility shall have 10 days after receipt of the notice of rejection in which to submit a modified plan. (Section 3-303(b) of the Act)

f) If a facility fails to submit a plan or modified plan meeting the criteria in subsection (d)(e) of this Section within the prescribed time periods in subsection (b)(a) or (c)(b) of this Section, or anytime the Department issues a Type AA, a Type A or repeat B violation, the Department will impose an approved plan of correction will be imposed by the Department.

g) The Department shall verify the completion of the corrective action required by the plan of correction within the specified time period during subsequent
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investigations, surveys and evaluations of the facility.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.282 Conditions for Assessment of Penalties

The Department will consider the assessment of a monetary penalty against a facility under the following conditions:

a) A licensee who commits a Type "AA" violation as defined in Section 1-128.5 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine up to $25,000 per violation. (Section 3-305(1) of the Act)

b) A licensee who commits a Type "A" violation as defined in Section 1-129 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to $12,500 per violation. (Section 3-305(1.5) of the Act)

c) A licensee who commits a Type "AA" or Type "A" violation as defined in Section 1-128.5 or 1-129 of the Act which continues beyond the time specified in Section 3-303(a) of the Act, which is cited as a repeat violation, shall have its license revoked and shall be assessed a fine of 3 times the fine computed per resident per day under subsection (a) or (b) of this Section. (Section 3-305(3) of the Act)

d) A licensee who commits a Type "B" violation as defined in Section 1-130 of the Act shall be assessed a fine of up to $1,100 per violation. (Section 3-305(2) of the Act)

e) A licensee who fails to satisfactorily comply with an accepted plan of correction for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or pursuant to this Part shall be automatically issued a conditional license for a period of not less than 6 months. A second or subsequent acceptable plan of correction shall be filed. A fine shall be assessed in accordance with subsection (d) of this Section when cited for the repeat violation. This fine shall be computed for all days of the violation, including the duration of the first plan of correction compliance time. (Section 3-305(4) of the Act)
f) *A licensee who commits 10 or more Type "C" violations, as defined in Section 1-132 of the Act, in a single survey shall be assessed a fine of up to $250 per violation. A licensee who commits one or more Type "C" violations with a high risk designation shall be assessed a fine of up to $500 per violation.* (Section 3-305(2.5) of the Act)

g) *If an occurrence results in more than one type of violation as defined in the Act (that is, a Type "AA", Type "A", Type "B", or Type "C" violation), the maximum fine that may be assessed for that occurrence is the maximum fine that may be assessed for the most serious type of violation charged. For purposes of the preceding sentence, a Type "AA" violation is the most serious type of violation that may be charged, followed by a Type "A", Type "B", or Type "C" violation, in that order.* (Section 3-305(7.5) of the Act)

h) *The minimum and maximum fines that may be assessed pursuant to Section 3-305 of the Act and this Section 330.282 shall be twice those otherwise specified for any facility that willfully makes a misstatement of fact to the Department, or willfully fails to make a required notification to the Department, if that misstatement or failure delays the start of a surveyor or impedes a survey.* (Section 3-305(8) of the Act)

i) *High risk designation. If the Department finds that a facility has violated a provision of this Part that has a high risk designation, or that a facility has violated the same provision of this Part 3 or more times in the previous 12 months, the Department may assess a fine of up to 2 times the maximum fine otherwise allowed.* (Section 3-305(9) of the Act)

j) For the purposes of calculating certain penalties pursuant to this Section, violations of the following requirements shall have the status of "high risk designation":

1) Section 330.715(a)
2) Section 330.715(b)
3) Section 330.715(c)
4) Section 330.725(a)
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5) Section 330.725(b)
6) Section 330.725(c)
7) Section 330.725(f)
8) Section 330.725(j)
9) Section 330.725(k)
10) Section 330.725(l)
11) Section 330.725(n)
12) Section 330.725(o)
13) Section 330.727(c)
14) Section 330.727(d)
15) Section 330.727(e)
16) Section 330.780
17) Section 330.785(b)
18) Section 330.911
19) Section 330.4240(a)
20) Section 330.4240(d)
21) Section 330.4240(e)

k) If a licensee has paid a civil monetary penalty imposed pursuant to the Medicare and Medicaid Certification Program for the equivalent federal violation giving rise to a fine under Section 3-305 of the Act and this Section 330.282, the Department shall offset the fine by the amount of the civil monetary penalty. The
offset may not reduce the fine by more than 75% of the original fine, however. (Section 3-305(10) of the Act)

l) When the Department finds that a provision of Article II has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or $100, which is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of Article II has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the violation in question. (Section 3-305(6) of the Act)

a) When a notice of violation for a level A violation is issued.

1) The penalty to be assessed for this violation shall be the greater of the following:

A) An amount not less than $5000 as determined by the Director or his designee considering the factors outlined in Section 330.286(a), or

B) The total of the following:

i) $5 per resident in the facility, plus ii) $.20 per resident for each day of the violation, commencing on the day on which the notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected, or

C) When death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than $10,000 as determined by the Director or his designee considering the factors outlined in Section 330.286(a). (Section 3-305(1) of the Act)

2) The facility shall also be issued a conditional license for a period of six months as provided in Section 330.260.

b) When a facility fails to abate or eliminate a level A violation immediately or within the period set by the Department in the notice of violation pursuant to
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Section 330.276(a)(4)(A):

1) The facility shall be cited for a repeat violation.

2) The penalty to be assessed shall be three times the penalty computed under subsection (a)(1) of this Section.

3) The license of the facility shall be revoked as provided in Section 330.180.

c) When a notice of violation for a level B violation is issued:

1) The penalty to be assessed for this violation shall be the greater of the following:

   A) An amount not less than $500 as determined by the Director or his designee considering the factors outlined in Section 330.286(a), or

   B) The total of the following:

      i) $3 per resident in the facility, plus

      ii) $.15 per resident for each day of the violation, commencing on the date a notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected. (Section 3-305(2) of the Act)

2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.

d) When a facility fails to correct a level B violation within the time period specified in the plan of correction approved by the Department:

1) The facility shall be cited for a repeat violation.

2) The penalty to be assessed shall be computed in accordance with subsection (c)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.
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3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 330.260.

e) When a notice of violation is issued for a violation of Article II of the Act with regard to the rights of a particular resident of the facility, the Department shall order the facility to reimburse the residents for any injuries incurred or if the amount of the injuries is less than $100, the Department shall order the facility to pay $100 to the resident. (Section 3-305(6) of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.284 Calculation of Penalties (Repealed)

a) For the purpose of calculating penalties as provided in Section 330.282, each day on which a violation continues to exist after the day on which notice of the violation is received by the facility shall be considered a separate violation. The Department shall not be required to send additional notices of violation to the facility for such continuing violations. (Section 3-302 of the Act)

b) For purposes of calculating penalties as provided in Section 330.282, the number of residents in the facility and the number of residents on each day shall be calculated as the average number of residents in the facility during the 30 days immediately preceding the day on which the findings were made in the facility and the conditions or occurrences determined to be a violation were discovered. The number of residents in the facility on the day on which the findings were made in the facility will be considered to be the same as the average number of residents in the facility during the preceding 30 days, unless evidence is provided by the facility substantiating that the average number of residents for that period was different. Changes in the number of residents in the facility subsequent to the day on which the findings were made shall not be considered in the calculation. (Section 3-305(5) of the Act)

(Source: Repealed at 35 Ill. Reg. ______, effective ____________)

Section 330.286 Determination to Assess Penalties

a) The Director or his or her designee shall consider the following factors in determining whether or not to assess penalties for violations under the conditions outlined in Section 330.282.
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1) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the Act or this Part were violated. The severity of harm, including death or serious physical or mental harm, which has resulted to a resident and the extent to which residents have been subject to potential serious harm. A penalty will be assessed when the Director or his designee finds that death or serious physical or mental harm to a resident has occurred or that the facility has knowingly subjected residents to potential serious harm.

2) The reasonable diligence exercised by the licensee and efforts to correct violations. The gravity of the violation and the extent to which the provisions of the Act or this Part were violated. The Director or his or her designee will assess a monetary penalty if he or she finds that the violation recurred or continued, is widespread throughout the facility or evidences flagrant violation of the Act or this Part.

3) Any previous violations committed by the licensee. The extent and seriousness of any previous violations committed by the facility and the extent of diligence exercised by the facility to correct such violations. The Director or his or her designee will assess a penalty when he or she finds that the facility has been cited for similar violations and has failed to correct such violations as promptly as practicable or has failed to exercise diligence in taking necessary corrective action. The Director or his or her designee will also consider any evidence that the violations constitute a pattern of deliberate action by the facility. The extent of any change in the ownership and management of the facility will be considered in relation to the seriousness of previous violations.

4) The financial benefit to the facility of committing or continuing the violation. Any possible financial benefit the facility could gain as a result of committing or continuing the violation. Such benefits include, but are not limited to, diversion of costs associated with physical plant repairs, staff salaries, consultant fees, or direct patient care services. (Section 3-306 of the Act)

b) If the Director or his or her designee determines that a penalty is to be assessed, a
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written notice of penalty assessment shall be sent to the facility. Each notice of penalty assessment shall include:

1) The amount of the penalty assessed as provided in Section 330.282.

2) The amount of any reduction or whether the penalty has been waived pursuant to Section 330.288.

3) A description of the violation, including a reference to the notices of violation and plans of correction that are the basis of the assessment.

4) A citation to the provision of the statute or the rule that the facility has violated.

5) A description of the right of the facility to appeal the assessment and of the right to a hearing under Section 3-703 of the Act. (Section 3-307 of the Act)

6) For violations which are continuing at the time the notice of assessment, the amount of additional penalties per day which will be assessed. (Section 3-307 of the Act)

c) A facility may contest an assessment of a penalty by sending a written request to the Department for hearing under Section 3-703 of the Act. Upon receipt of the request the Department shall hold a hearing as provided under Section 3-703 of the Act. Instead of requesting a hearing pursuant to Section 3-703 of the Act, a facility may, within 10 business days after receipt of the notice of violation and fine assessment, transmit to the Department:

1) 65% of the amount assessed for each violation specified in the penalty assessment; or

2) in the case of a fine subject to offset under Section 300.282(j) and Section 3-305 of the Act, up to 75% of the amount assessed. (Section 3-309 of the Act)

d) The facility shall pay penalties. Penalties shall be paid by the facility to the Department within the time periods provided in Section 3-310 of the Act.
Section 330.330 Definitions

The terms defined in this Section are terms that are used in one or more of the sets of licensing standards established by the Department to license various levels of long-term care. They are defined as follows:

*Abuse* — any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility. (Section 1-103 of the Act)

Abuse means:

Physical abuse refers to the infliction of injury on a resident that occurs other than by accidental means and that requires (whether or not actually given) medical attention.

Mental injury arises from the following types of conduct:

Verbal abuse refers to the use by a licensee, employee or agent of oral, written or gestured language that includes disparaging and derogatory terms to residents or within their hearing or seeing distance, regardless of their age, ability to comprehend or disability.

Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation, or offensive physical contact by a licensee, employee or agent.

Sexual harassment or sexual coercion perpetrated by a licensee, employee or agent.

Sexual assault.

*Access* — the right to:

Enter any facility;
Communicate privately and without restriction with any resident who consents to the communication;

Seek consent to communicate privately and without restriction with any resident;

Inspect the clinical and other records of a resident with the express written consent of the resident;

Observe all areas of the facility except the living area of any resident who protests the observation. (Section 1-104 of the Act)

Act – as used in this Part, the Nursing Home Care Act [210 ILCS 45].

Activity Program – a specific planned program of varied group and individual activities geared to the individual resident's needs and available for a reasonable number of hours each day.

Adaptive Behavior – the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.

Adaptive Equipment – a physical or mechanical device, material or equipment attached or adjacent to the resident's body that may restrict freedom of movement or normal access to one's body, the purpose of which is to permit or encourage movement, or to provide opportunities for increased functioning, or to prevent contractures or deformities. Adaptive equipment is not a physical restraint. No matter the purpose, adaptive equipment does not include any device, material or method described in Section 330.1145 as a physical restraint.

Addition – any construction attached to the original building that increases the area or cubic content of the building.

Adequate – enough in either quantity or quality, as determined by a reasonable person familiar with the professional standards of the subject under review, to meet the needs of the residents of a facility under the particular set of circumstances in existence at the time of review.

Administrative Warning – a notice to a facility issued by the Department under
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Section 330.277 of this Part and Section 3-303.2 of the Act, which indicates that a situation, condition, or practice in the facility violates the Act or the Department's rules, but is not a Type AA, Type A, Type B, or Type C violation.

Administrator – the person who is directly responsible for the operation and administration of the facility, irrespective of the assigned title. (See Licensed Nursing Home Administrator.)

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

Affiliate – means:

With respect to a partnership, each partner thereof.

With respect to a corporation, each officer, director and stockholder thereof.

With respect to a natural person: any person related in the first degree of kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder. (Section 1-106 of the Act)

Aide or Orderly – any person providing direct personal care, training or habilitation services to residents.

Alteration – any construction change or modification of an existing building that does not increase the area or cubic content of the building.

Ambulatory Resident – a person who is physically and mentally capable of walking without assistance, or is physically able with guidance to do so, including the ascent and descent of stairs.

Applicant – any person making application for a license. (Section 1-107 of the Act)
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Appropriate – term used to indicate that a requirement is to be applied according to the needs of a particular individual or situation.

Assessment – the use of an objective system with which to evaluate the physical, social, developmental, behavioral, and psychosocial aspects of an individual.

Audiologist – a person who is licensed as an audiologist under the Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Autism – a syndrome described as consisting of withdrawal, very inadequate social relationships, exceptional object relationships, language disturbances and monotonously repetitive motor behavior; many children with autism will also be seriously impaired in general intellectual functioning; mental illness observed in young children characterized by severe withdrawal and inappropriate response to external stimulation.

Autoclave – an apparatus for sterilizing by superheated steam under pressure.

Auxiliary Personnel – all nursing personnel in intermediate care facilities and skilled nursing facilities other than licensed personnel.

Basement – when used in this Part, means any story or floor level below the main or street floor. Where due to grade difference, there are two levels each qualifying as a street floor, a basement is any floor below the level of the two street floors. Basements shall not be counted in determining the height of a building in stories.

Behavior Modification – treatment to be used to establish or change behavior patterns.

Cerebral Palsy – a disorder dating from birth or early infancy, nonprogressive, characterized by examples of aberrations of motor function (paralysis, weakness, incoordination) and often other manifestations of organic brain damage such as sensory disorders, seizures, mental retardation, learning difficulty and behavior disorders.

Certification for Title XVIII and XIX – the issuance of a document by the Department to the Department of Health and Human Services or the Department of Healthcare and Family Services verifying compliance with applicable statutory
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or regulatory requirements for the purposes of participation as a provider of care and service in a specific federal or State health program.

Charge Nurse – a registered professional nurse or a licensed practical nurse in charge of the nursing activities for a specific unit or floor during a tour of duty.

Chemical Restraint – any drug that is used for discipline or convenience and is not required to treat medical symptoms or behavior manifestations of mental illness. (Section 2-106 of the Act)

Child Care/Habilitation Aide – any person who provides nursing, personal or rehabilitative care to residents of licensed Long-Term Care Facilities for Persons Under 22 Years of Age, regardless of title, and who is not otherwise licensed, certified or registered to render such care. Child Care/Habilitation aides must function under the supervision of a licensed nurse.

Community Alternatives – service programs in the community provided as an alternative to institutionalization.

Continuing Care Contract – a contract through which a facility agrees to supplement all forms of financial support for a resident throughout the remainder of the resident's life.

Contract – a binding agreement between a resident or the resident's guardian (or, if the resident is a minor, the resident's parent) and the facility or its agent.

Convenience – the use of any restraint by the facility to control resident behavior or maintain a resident, which is not in the resident's best interest, and with less use of the facility's effort and resources than would otherwise be required by the facility. This definition is limited to the definition of chemical restraint and Section 330.1145 of this Part.

Corporal Punishment – painful stimuli inflicted directly upon the body.

Cruelty and Indifference to Welfare of the Resident – failure to provide a resident with the care and supervision he or she requires, or, the infliction of mental or physical abuse.

Dentist – any person licensed by the State of Illinois to practice dentistry,
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includes persons holding a Temporary Certificate of Registration, as provided in the Illinois Dental Practice Act [225 ILCS 25].

Department – as used in this Part means the Illinois Department of Public Health.

Developmental Disabilities (DD) Aide—any person who provides nursing, personal or habilitative care to residents of Intermediate Care Facilities for the Developmentally Disabled, regardless of title, and who is not otherwise licensed, certified or registered to render medical care. Other titles often used to refer to DD Aides include, but are not limited to, Program Aides, Program Technicians and Habilitation Aides. DD Aides must function under the supervision of a licensed nurse or a Qualified Mental Retardation Professional (QMRP).

Developmental Disability – means a severe, chronic disability of a person which:

is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, epilepsy, autism;

is manifested before the person attains age 22;

is likely to continue indefinitely;

results in substantial functional limitations in 3 or more of the following areas of major life activity:

self-care,

receptive and expressive language,

learning,

mobility,

self-direction,

capacity for independent living, and

economic self-sufficiency; and
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reflects the person's need for combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. (Section 3-801.1 of the Act)

Dietetic Service Supervisor – a person who:

is a dietitian; or

is a graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association; or

is a graduate, prior to July 1, 1990, of a Department-approved course that provided 90 or more hours of classroom instruction in food service supervision and has had experience as a supervisor in a health care institution, which included consultation from a dietitian; or

has successfully completed a Dietary Manager's Association approved dietary managers course; or

is certified as a dietary manager by the Dietary Manager's Association; or

has training and experience in food service supervision and management in a military service equivalent in content to the programs in the second, third or fourth paragraph of this definition.

Dietitian – a person who is a licensed dietitian as provided in the Dietetic and Nutrition Services Practice Act [225 ILCS 30].

Direct Supervision – work performed under the guidance and direction of a supervisor who is responsible for the work, who plans work and methods, who is available on short notice to answer questions and deal with problems that are not strictly routine, who regularly reviews the work performed, and who is accountable for the results.

Director – the Director of the Department of Public Health or designee. (Section 1-110 of the Act)
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Director of Nursing Service – the full-time Professional Registered Nurse who is directly responsible for the immediate supervision of the nursing services.

*Discharge* – *the full release of any resident from a facility.* (Section 1-111 of the Act)

Discipline – any action taken by the facility for the purpose of punishing or penalizing residents.

Distinct Part – an entire, physically identifiable unit consisting of all of the beds within that unit and having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for a distinct part are established as set forth in the respective regulations governing the levels of services approved for the distinct part.

*Emergency* – *a situation, physical condition or one or more practices, methods or operations which present imminent danger of death or serious physical or mental harm to residents of a facility.* (Section 1-112 of the Act)

Epilepsy – a chronic symptom of cerebral dysfunction, characterized by recurrent attacks, involving changes in the state of consciousness, sudden in onset, and of brief duration. Many attacks are accompanied by a seizure in which the person falls involuntarily.

Existing Long-Term Care Facility – any facility initially licensed as a health care facility or approved for construction by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, prior to March 1, 1980. Existing long-term care facilities shall meet the design and construction standards for existing facilities for the level of long-term care for which the license (new or renewal) is to be granted.

*Facility, Intermediate Care* – a facility which provides basic nursing care and other restorative services under periodic medical direction. Many of these services may require skill in administration. Such facilities are for residents who have long-term illnesses or disabilities which may have reached a relatively stable plateau.

*Facility, Intermediate Care for the Developmentally Disabled*—when used in this
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Part, is a facility of three or more persons, or distinct part thereof, serving residents of which more than 50 percent are developmentally disabled.

Facility or Long-Term Care Facility — a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22 of the Counties Code [55 ILCS 5], or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons, not related to the applicant or owner by blood or marriage. It includes skilled nursing facilities and intermediate care facilities as those terms are defined in Title XVIII and Title XIX of the Federal Social Security Act (42 USCA 1395 et seq. and 1936 et seq.). It also includes homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans' Affairs.

A "facility" may consist of more than one building as long as the buildings are on the same tract, or adjacent tracts of land. However, there shall be no more than one "facility" in any one building. "Facility" does not include the following:

A home, institution, or other place operated by the federal government or agency thereof, or by the State of Illinois other than homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans' Affairs;

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

Any "facility for child care" as defined in the Child Care Act of 1969 [225 ILCS 10];

Any "community living facility" as defined in the Community Living Facilities Licensing Act [210 ILCS 35];

Any "community residential alternative" as defined in the Community Residential Alternatives Licensing Act [210 ILCS 140];

Any nursing home or sanatorium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer, in
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accordance with the creed or tenets of any well-recognized church or religious denomination. However, such nursing home or sanatorium shall comply with all local laws and rules relating to sanitation and safety;

Any facility licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135];

Any supportive residence licensed under the Supportive Residences Licensing Act [210 ILCS 65];

Any supportive living facility in good standing with the demonstration project established under Section 5-5.01a of the Illinois Public Aid Code [305 ILCS 5/5-5.01a];

Any assisted living or shared housing establishment licensed under the Assisted Living and Shared Housing Act [210 ILCS 9]; or

An Alzheimer’s disease management center alternative health care model licensed under the Alternative Health Care Delivery Act [210 ILCS 3]; or

A facility licensed under the MR/DD Community Care Act. (Section 1-113 of the Act)

Facility, Long-Term Care, for Residents Under 22 Years of Age — when used in this Part is synonymous with a long-term care facility for residents under 22 years of age, which facility provides total habilitative health care to residents who require specialized treatment, training and continuous nursing care because of medical or developmental disabilities.

Facility, Sheltered Care — when used in this Part is synonymous with a sheltered care facility, which facility provides maintenance and personal care.

Facility, Skilled Nursing — when used in this Part is synonymous with a skilled nursing facility. A skilled nursing facility provides skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with frequent medical supervision. Such facilities
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are provided for patients who need the type of care and treatment required during
the post-acute phase of illness or during recurrences of symptoms in long-term
illness.

Financial Responsibility – having sufficient assets to provide adequate services
such as: staff, heat, laundry, foods, supplies, and utilities for at least a two-month
period of time.

Full-time – on duty a minimum of 36 hours, four days per week.

Goal – an expected result or condition that involves a relatively long period of
time to achieve, that is specified in behavioral terms in a statement of relatively
broad scope, and that provides guidance in establishing specific, short-term
objectives directed toward its attainment.

Governing Body – the policy-making authority, whether an individual or a group,
that exercises general direction over the affairs of a facility and establishes
policies concerning its operation and the welfare of the individuals it serves.

Guardian – a person appointed as a guardian of the person or guardian of the
estate, or both, of a resident under the Probate Act of 1975 [755 ILCS 5].
(Section 1-114 of the Act)

Habilitation – an effort directed toward the alleviation of a disability or toward
increasing a person's level of physical, mental, social or economic functioning.
Habilitation may include, but is not limited to, diagnosis, evaluation, medical
services, residential care, day care, special living arrangements, training,
education, sheltered employment, protective services, counseling and other
services.

Health Information Management Consultant – a person who is certified as a
Registered Health Information Administrator (RHIA) or a Registered Health
Information Technician (RHIT) by the American Health Information
Management Association; or is a graduate of a school of health information
management that is accredited jointly by the American Medical Association and
the American Health Information Management Association.

Health Services Supervisor (Director of Nursing Service) – the full-time
Registered Nurse who is directly responsible for the immediate supervision of the
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health services in an Intermediate Care Facility.

**High Risk Designation** – a violation of a provision of the Illinois Administrative Code that has been identified by the Department through rulemaking to be inherently necessary to protect the health, safety, and welfare of a resident. (Section 1-114.005 of the Act)

Home for the Aged – any facility which is operated: by a not-for-profit corporation incorporated under, or qualified as a foreign corporation under, the General Not For Profit Corporation Act of 1986 [805 ILCS 105]; or by a county pursuant to Division 5-22 of the Counties Code [55 ILCS 5]; or pursuant to a trust or endowment established for nonprofit, charitable purposes; and which provides maintenance, personal care, nursing or sheltered care to three or more residents, 90 percent of whom are 60 or more years of age.

Hospitalization – the care and treatment of a person in a hospital as an inpatient.

**Identified Offender** – a person who:

*Has been convicted of, found guilty of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any felony offense listed in Section 25 of the Health Care Worker Background Check Act, except for the following: a felony offense described in Section 10-5 of the Nurse Practice Act; a felony offense described in Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; a felony offense described in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis Control Act; a felony offense described in Section 401, 401.1, 404, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act; and a felony offense described in the Methamphetamine Control and Community Protection Act; or*

*Has been convicted of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any sex offense as defined in subsection (c) of Section 10 of the Sex Offender Management Board Act; or Any other resident as determined by the Department of State Police, is a registered sex offender, or is serving a term of parole, mandatory supervised release, or probation for a felony offense. (Section 1-114.01 of the Act)
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Individual Education Program (IEP) — a written statement for each resident that provides for specific education and related services. The Individual Education Program may be incorporated into the Individual Habilitation Plan (IHP).

Individual Habilitation Plan (IHP) — a total plan of care that is developed by the interdisciplinary team for each resident, and that is developed on the basis of all assessment results.

Interdisciplinary Team — a group of persons that represents those professions, disciplines, or service areas that are relevant to identifying an individual's strengths and needs, and designs a program to meet those needs. This team shall include at least a physician, a social worker and other professionals. In Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) at least one member of the team shall be a Qualified Mental Retardation Professional. The Interdisciplinary Team includes the resident, the resident's guardian, the resident's primary service providers, including staff most familiar with the resident; and other appropriate professionals and caregivers as determined by the resident's needs. The resident or his or her guardian may also invite other individuals to meet with the Interdisciplinary Team and participate in the process of identifying the resident's strengths and needs.

Licensed Nursing Home Administrator — a person who is charged with the general administration and supervision of a facility and licensed under the Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70].

Licensed Practical Nurse — a person with a valid Illinois license to practice as a practical nurse.

Licensee — the person or entity licensed to operate the facility as provided under the Act. (Section 1-115 of the Act)

Life Care Contract — a contract through which a facility agrees to provide maintenance and care for a resident throughout the remainder of the resident's life.

Maintenance — food, shelter, and laundry services. (Section 1-116 of the Act)

Maladaptive Behavior — impairment in adaptive behavior as determined by a clinical psychologist or by a physician. Impaired adaptive behavior may be reflected in delayed maturation, reduced learning ability or inadequate social
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adjustment.

Mentally Retarded and Mental Retardation – subaverage general intellectual functioning originating during the developmental period and associated with maladaptive behavior.

Misappropriation of Property – using a resident's cash, clothing, or other possessions without authorization by the resident or the resident's authorized representative; failure to return valuables after a resident's discharge; or failure to refund money after death or discharge when there is an unused balance in the resident's personal account.

Mobile Nonambulatory – unable to walk independently or without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair, or a wheeled platform.

Mobile Resident – any resident who is able to move about either independently or with the aid of an assistive device such as a walker, crutches, a wheelchair, or a wheeled platform.

Monitor – a qualified person placed in a facility by the Department to observe operations of the facility, assist the facility by advising it on how to comply with the State regulations, and who reports periodically to the Department on the operations of the facility.

Neglect – a facility's failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a resident; or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. (Section 1-117 of the Act) Neglect means the failure to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or medical condition. This shall include any allegation:

the alleged failure causing injury or deterioration is ongoing or repetitious; or
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a resident required medical treatment as a result of the alleged failure; or

the failure is alleged to have caused a noticeable negative impact on a resident's health, behavior or activities for more than 24 hours.

New Long-Term Care Facility – any facility initially licensed as a health care facility by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, on or after March 1, 1980. New long-term care facilities shall meet the design and construction standards for new facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Normalization – the principle of helping individuals to obtain an existence as close to normal as possible, by making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

Nurse – a registered nurse or a licensed practical nurse as defined in the Nursing and Advanced Practice Nursing Act [225 ILCS 65]. (Section 1-118 of the Act)

Nursing Assistant – any person who provides nursing care or personal care to residents of licensed long-term care facilities, regardless of title, and who is not otherwise licensed, certified or registered by the Department of Financial and Professional Regulation to render medical care. Other titles often used to refer to nursing assistants include, but are not limited to, nurse's aide, orderly and nurse technician. Nursing assistants must function under the supervision of a licensed nurse.

Nursing Care – a complex of activities which carries out the diagnostic, therapeutic, and rehabilitative plan as prescribed by the physician; care for the resident's environment; observing symptoms and reactions and taking necessary measures to carry out nursing procedures involving understanding of cause and effect in order to safeguard life and health.

Nursing Unit – a physically identifiable designated area of a facility consisting of all the beds within the designated area, but having no more than 75 beds, none of which are more than 120 feet from the nurse's station.
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Objective – an expected result or condition that involves a relatively short period of time to achieve, that is specified in behavioral terms, and that is related to the achievement of a goal.

Occupational Therapist, Registered or (OTR) – a person who is registered as an occupational therapist under the Illinois Occupational Therapy Practice Act.[225 ILCS 75]

Occupational Therapy Assistant – a person who is registered as a certified occupational therapy assistant under the Illinois Occupational Therapy Practice Act.

Operator – the person responsible for the control, maintenance and governance of the facility, its personnel and physical plant.

Other Resident Injury – occurs where a resident is alleged to have suffered physical or mental harm and the allegation does not fall within the definition of abuse or neglect.

Oversight – general watchfulness and appropriate reaction to meet the total needs of the residents, exclusive of nursing or personal care. Oversight shall include, but is not limited to, social, recreational and employment opportunities for residents who, by reason of mental disability, or in the opinion of a licensed physician, are in need of residential care.

Owner – the individual, partnership, corporation, association or other person who owns a facility. In the event a facility is operated by a person who leases the physical plant, which is owned by another person, "owner" means the person who operates the facility, except that if the person who owns the physical plant is an affiliate of the person who operates the facility and has significant control over the day-to-day operations of the facility, the person who owns the physical plant shall incur jointly and severally with the owner all liabilities imposed on an owner under the Act. (Section 1-119 of the Act)

Person – any individual, partnership, corporation, association, municipality, political subdivision, trust, estate or other legal entity whatsoever.

Personal Care – assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the
physical and mental well-being of an individual who is incapable of maintaining a private, independent residence or who is incapable of managing his person, whether or not a guardian has been appointed for such individual. (Section 1-120 of the Act)

Pharmacist, Registered – a person who holds a certificate of registration as a registered pharmacist, a local registered pharmacist or a registered assistant pharmacist under the Pharmacy Practice Act of 1987 [225 ILCS 85].

Physical Restraint – any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident’s body that the individual cannot remove easily and which restricts freedom of movement or normal access to one’s body. (Section 2-106 of the Act)

Physical Therapist Assistant – a person who has graduated from a two year college level program approved by the American Physical Therapy Association.

Physical Therapist – a person who is registered as a physical therapist under the Illinois Physical Therapy Act [225 ILCS 90].

Physician – any person licensed to practice medicine in all its branches as provided in the Medical Practice Act of 1987 [225 ILCS 60].

Probationary License – an initial license issued for a period of 120 days during which time the Department will determine the qualifications of the applicant.

Provisional Admission Period – the time between the admission of an identified offender as defined in Section 1-114.01 of the Act and this Section, and 3 days following the admitting facility’s receipt of an Identified Offender Report and Recommendation in accordance with Section 2-201.6 of the Act. (Section 1-120.3 of the Act)

Psychiatric Services Rehabilitation Aide – an individual employed by a long-term care facility to provide, for mentally ill residents, at a minimum, crisis intervention, rehabilitation, and assistance with activities of daily living. (Section 1-120.7 of the Act)

Psychiatrist – a physician who has had at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.
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Psychologist – a person who is licensed to practice clinical psychology under the Clinical Psychologist Licensing Act [225 ILCS 15].

Qualified Mental Retardation Professional – a person who has at least one year of experience working directly with individuals with developmental disabilities and meets at least one of the following additional qualifications:

Be a physician as defined in this Section.

Be a registered nurse as defined in this Section.

Hold at least a bachelor's degree in one of the following fields: occupational therapy, physical therapy, psychology, social work, speech or language pathology, recreation (or a recreational specialty area such as art, dance, music, or physical education), dietary services or dietetics, or a human services field (such as sociology, special education, or rehabilitation counseling).

Qualified Professional – a person who meets the educational, technical and ethical criteria of a health care profession, as evidenced by eligibility for membership in an organization established by the profession for the purpose of recognizing those persons who meet such criteria; and who is licensed, registered, or certified by the State of Illinois, if required.

Reasonable Visiting Hours – any time between the hours of 10 A.M. and 8 P.M. daily. (Section 1-121 of the Act)

Registered Nurse – a person with a valid Illinois license to practice as a registered professional nurse under the Nurse Nursing and Advanced Practice Nursing Act.

Repeat Violation – for purposes of assessing fines under Section 3-305 of the Act, a violation that has been cited during one inspection of the facility for which a subsequent inspection indicates that an accepted plan of correction was not complied with, within a period of not more than twelve months from the issuance of the initial violation. A repeat violation shall not be a new citation of the same rule, unless the licensee is not substantially addressing the issue routinely throughout the facility. (Section 3-305(7) of the Act)
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Reputable Moral Character – having no history of a conviction of the applicant, or if the applicant is a firm, partnership, or association, of any of its members, or of a corporation, of any of its officers, or directors, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude, as shown by a certified copy of the record of the court of conviction, or in the case of the conviction of a misdemeanor by a court not of record, as shown by other evidence; or other satisfactory evidence that the moral character of the applicant, or manager, or supervisor of the facility is not reputable.

Resident – person residing in and receiving personal or medical care, including but not limited to mental health treatment, psychiatric rehabilitation, physical rehabilitation, and assistance with activities of daily living, care from a facility.

Resident Services Director – the full-time administrator, or an individual on the professional staff in the facility, who is directly responsible for the coordination and monitoring of the residents' overall plans of care in an intermediate care facility.

Resident's Representative – a person other than the owner, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his or her representative, or the resident's guardian, or the parent of a minor resident for whom no guardian has been appointed.

Restorative Care – a health care process designed to assist residents to attain and maintain the highest degree of function of which they are capable (physical, mental, and social).

Room – a part of the inside of a facility that is partitioned continuously from floor to ceiling with openings closed with glass or hinged doors.

Sanitization – the reduction of pathogenic organisms on a utensil surface to a safe level, which is accomplished through the use of steam, hot water, or chemicals.

Satisfactory – same as adequate.

Seclusion – the retention of a resident alone in a room with a door that the
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resident cannot open.

Self Preservation – the ability to follow directions and recognize impending danger or emergency situations and react by avoiding or leaving the unsafe area.

Sheltered Care – maintenance and personal care. (Section 1-124 of the Act)

Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

State Fire Marshal – the Fire Marshal of the Office of the State Fire Marshal, Division of Fire Prevention.

Sterilization – the act or process of destroying completely all forms of microbial life, including viruses.

Stockholder of a Corporation – any person who, directly or indirectly, beneficially owns, holds or has the power to vote, at least five percent of any class of securities issued by the corporation. (Section 1-125 of the Act)

Story – when used in this Part, means that portion of a building between the upper surface of any floor and the upper surface of the floor above except that the topmost story shall be the portion of a building between the upper surface of the topmost floor and the upper surface of the roof above.

Student Intern – means any person whose total term of employment in any facility during any 12-month period is equal to or less than 90 continuous days, and whose term of employment is either:

    an academic credit requirement in a high school or undergraduate institution; or

immediately succeeds a full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution, provided that such person is registered for another full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution which quarter, semester or trimester will commence immediately following the term of employment. (Section 1-125.1 of the
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Substantial Compliance – meeting requirements except for variance from the strict and literal performance that results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Sections 330.140(a)(3) and 330.150(a)(3).

Substantial Failure – the failure to meet requirements other than a variance from the strict and literal performance that results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Section 330.165(b)(1).

Sufficient – same as adequate.

Supervision – authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

Therapeutic Recreation Specialist – a person who is certified by the National Council for Therapeutic Recreation Certification and who meets the minimum standards it has established for classification as a Therapeutic Recreation Specialist.

Time Out – removing an individual from a situation that results in undesirable behavior. It is a behavior modification procedure which is developed and implemented under the supervision of a qualified professional.

*Title XVIII – Title XVIII of the Federal Social Security Act as now or hereafter amended.* (Section 1-126 of the Act)

*Title XIX – Title XIX of the Federal Social Security Act as now or hereafter amended.* (Section 1-127 of the Act)

*Transfer – a change in status of a resident's living arrangements from one facility to another facility.* (Section 1-128 of the Act)
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Type AA violation – a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death. (Section 1-128.5 of the Act)

Type A Violation – a violation of the Act or this Part that of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that the risk of death or serious mental or physical harm to a resident will result therefrom or has resulted in actual physical or mental harm to a resident. (Section 1-129 of the Act)

Type B Violation – a violation of the Act or this Part that of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to a resident or welfare of a resident. (Section 1-130 of the Act)

Type C Violation – a violation of the Act or this Part that creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom. (Section 1-132 of the Act)

Unit – an entire physically identifiable residence area having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for each distinct resident area are established as set forth in the respective rules governing the approved levels of service.

Universal Progress Notes – a common record with periodic narrative documentation by all persons involved in resident care.

Valid License – a license which is unsuspended, unrevoked and unexpired.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.340 Incorporated and Referenced Materials

a) The following standards and guidelines are incorporated in this Part:

1) For existing facilities (see Subpart O), National Fire Protection
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2) For new facilities (see Subpart M), the following standards of the National Fire Protection Association (NFPA), which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 01269:


F) NFPA 70B, Recommended Practice for Electrical Equipment Maintenance – 2002 Edition


J) NFPA 105, Recommended Practice for the Installation of Smoke-Control Door Assemblies – 1999 Edition
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3) For new and existing facilities (see Section 330.1510) NFPA 99: Standard for Health Care Facilities – 2002 Edition

4) The following guidelines of the Center for Infectious Diseases, Centers for Disease Control and Prevention, United States Public Health Service, Department of Health and Human Services may be obtained from the National Technical Information Services (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161:

A) Guideline for Hand Hygiene in Health-Care Settings (October 2002)

B) Guideline for Prevention of Nosocomial Pneumonia (February 1994)

C) Guideline for Isolation Precautions in Hospitals (February 18, 1997)


b) All incorporations by reference of federal guidelines and the standards of nationally recognized organizations refer to the standards on the date specified and do not include any amendments or editions subsequent to the date specified.

c) The following statutes and State regulations are referenced in this Part:

1) Federal statutes:

A) Civil Rights Act of 1964 (42 USC2000e et seq.)

B) Social Security Act (42 USC 301 et seq., 1395 et seq. and 1396 et seq.)

C) Controlled Substances Act (2 USC 802)

2) State of Illinois statutes:

A) Illinois Alcoholism and Other Drug Dependency Act [20 ILCS 305]
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B) Child Care Act of 1969 [225 ILCS 10]
C) Court of Claims Act [705 ILCS 505]
D) Illinois Dental Practice Act [225 ILCS 25]
E) Election Code [10 ILCS 5]
F) Freedom of Information Act [5 ILCS 140]
G) General Not For Profit Corporation Act of 1986 [805 ILCS 105]
H) Hospital Licensing Act [210 ILCS 85]
I) Illinois Health Facilities Planning Act [20 ILCS 3960]
K) Life Care Facilities Act [210 ILCS 40]
L) Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10]
M) Medical Practice Act of 1987 [225 ILCS 60]
N) Mental Health and Developmental Disabilities Code [405 ILCS 5]
O) Nurse Nursing and Advanced Practice Nursing Act [225 ILCS 65]
P) Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70]
Q) Nursing Home Care Act [210 ILCS 45]
R) Illinois Occupational Therapy Practice Act [225 ILCS 75]
S) Pharmacy Practice Act of 1987 [225 ILCS 85]
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T) Illinois Physical Therapy Act [225 ILCS 90]
U) Private Sewage Disposal Licensing Act [225 ILCS 225]
V) Probate Act of 1975 [755 ILCS 5]
W) Illinois Public Aid Code [305 ILCS 5]
X) Illinois Administrative Procedure Act [5 ILCS 100]
Y) Clinical Psychologist Licensing Act [225 ILCS 15]
Z) Dietetic and Nutrition Services Practice Act [225 ILCS 30]
AA) Health Care Worker Background Check Act [225 ILCS 46]
CC) Living Will Act [755 ILCS 35]
DD) Powers of Attorney for Health Care Law [755 ILCS 45/Art. IV]
EE) Health Care Surrogate Act [755 ILCS 40]
FF) Right of Conscience Act [745 ILCS 70]
GG) Abused and Neglected Long-Term Care Facility Residents Reporting Act [210 ILCS 30]
HH) Supportive Residences Licensing Act [210 ILCS 65]
II) Community Residential Alternatives Licensing Act [210 ILCS 140]
JJ) Community Living Facilities Licensing Act [210 ILCS 35]
KK) Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135]
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LL) Counties Code [55 ILCS 5]

MM) Alzheimer’s Special Care Disclosure Act [220 ILCS 4]

NN) Tort Immunity Act [745 ILCS 10]

OO) Illinois Act on the Aging [20 ILCS 105]

PP) Speech-Language Pathology and Audiology Practice Act [225 ILCS 110]

QQ) Assisted Living and Shared Housing Act [210 ILCS 9]

RR) Alternative Health Care Delivery Act [210 ILCS 3]

SS) Podiatric Medical Practice Act of 1987 [225 ILCS 100]

TT) Illinois Optometric Practice Act of 1987 [225 ILCS 80]

UU) Physician Assistant Practice Act of 1987 [225 ILCS 95]

VV) Language Assistance Services Act [210 ILCS 87]

WW) Equity in Long-term Care Quality Act [30 ILCS 772]

XX) MR/DD Community Care Act [210 ILCS 47]

YY) Methamphetamine Control and Community Protection Act [720 ILCS 646]

ZZ) Sex Offender Management Board Act [20 ILCS 4026]

AAA) Uniform Conviction Information Act [20 ILCS 2635]

BBB) Unified Code of Corrections [730 ILCS 5]

CCC) Court of Claims Act [705 ILCS 505]

3) State of Illinois rules:
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B) Department of Public Health
   i) Control of Communicable Diseases Code (77 Ill. Adm. Code 690)
   ii) Control of Sexually Transmissible Diseases Code (77 Ill. Adm. Code 693)
   iii) Food Service Sanitation Code (77 Ill. Adm. Code 750)
   v) Private Sewage Disposal Code (77 Ill. Adm. Code 905)
   x) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
   xi) Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300)
   xii) Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)
   xiii) Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390)
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xiv) Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395)

xv) Control of Tuberculosis Code (7 Ill. Adm. Code 696)

xvi) Health Care Worker Background Check Code (77 Ill. Adm. Code 955)

xvii) Language Assistance Services Code (77 Ill. Adm. Code 940)

C) Department of Human Services, Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 Ill. Adm. Code 2060)

D) Office of the State Fire Marshal, Fire Prevention and Safety (41 Ill. Adm. Code 100)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART C: POLICIES

Section 330.715 Request for Resident Criminal History Record Information

a) A facility shall, within 24 hours after admission of a resident, request a criminal history background check pursuant to the Uniform Conviction Information Act [210 ILCS 2635] for all persons 18 or older seeking admission to the facility, unless a background check was initiated by a hospital pursuant to the Hospital Licensing Act. Background checks shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. (Section 2-201.5(b) of the Act)

b) The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender.

c) If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of
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Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check.

d) A waiver issued pursuant to Section 2-201.5(b) of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. (Section 2-201.5(b)(d) of the Act)

e) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5(b) of the Act.

f) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history to the Department pursuant to the requirements of Section 2-201.6 of the Act and Section 330.725 of this Part. (Section 2-201.5(c) of the Act)

f(g) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.724 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
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a) The facility shall, by July 9, 2006, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who were residents of the facility on May 10, 2006. (Section 2-201.5(b) of the Act)

b) If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.

c) The facility shall be responsible for taking all steps necessary to ensure the safety of all residents while the results of the name-based background check are pending.

(Source: Repealed at 35 Ill. Reg. ______, effective ____________)

Section 330.725 Identified Offenders

a) The facility shall review the results of the criminal history background checks immediately upon receipt of these checks. The facility shall review the results of the criminal history background checks immediately upon receipt thereof. If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check unless the fingerprint-based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident’s health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check.

b) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist.

c) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.
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d) If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.

b) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based check are pending; while the results of a request for a waiver of a fingerprint-based check are pending; and/or while the Identified Offender Report and Recommendation/Criminal History Analysis Report is pending.

c) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall do the following: immediately fax the resident's name and criminal history information to the Department. (Section 2-201.5(c) of the Act)

1) Immediately notify the Department of State Police, in the form and manner required by the Department of State Police, that the resident is an identified offender.

2) Within 72 hours, arrange for a fingerprint-based criminal history record inquiry to be requested on the identified offender resident. The inquiry shall be based on the subject's name, sex, race, date of birth, fingerprint images, and other identifiers required by the Department of State Police. The inquiry shall be processed through the files of the Department of State Police and the Federal Bureau of Investigation to locate any criminal history record information that may exist regarding the subject. The Federal Bureau of Investigation shall furnish to the Department of State Police, pursuant to an inquiry under this subsection (c)(2), any criminal history record information contained in its files.

d) The facility shall comply with all applicable provisions contained in the Uniform Conviction Information Act.

e) All name-based and fingerprint-based criminal history record inquiries shall be submitted to the Department of State Police electronically in the form and manner
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prescribed by the Department of State Police. The Department of State Police may charge the facility a fee for processing name-based and fingerprint-based criminal history record inquiries. The fee shall be deposited into the State Police Services Fund. The fee shall not exceed the actual cost of processing the inquiry. (Section 2-201.5(c) of the Act)

If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:

1) The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. If a resident of a licensed facility is an identified offender, any federal, State, or local law enforcement officer or county probation officer shall be permitted reasonable access to the individual resident to verify compliance with the requirements of the Sex Offender Registration Act, to verify compliance with the requirements of Public Act 94-163 and Public Act 94-752, or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110(a-5) of the Act) Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.

2) The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 330.785 of this Part.

3) Every licensed facility shall provide to every prospective and current resident and resident's guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian, or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility.

A) The notice shall also be prominently posted within every licensed facility.
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B) The notice shall include a statement that information regarding registered sex offenders may be obtained from the Illinois State Police website, www.isp.state.il.us, and that information regarding persons serving terms of parole or mandatory supervised release may be obtained from the Illinois Department of Corrections website, www.idoc.state.il.us. (Section 2-216 of the Act)

4) If the identified offender is on probation, parole, or mandatory supervised release, the facility shall contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.

g) Facilities shall maintain written documentation of compliance with Section 330.715 of this Part.

h) Facilities shall annually complete all of the steps required in subsection (f)(g) of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.

i) For current residents who are identified offenders, the facility shall review the security measures listed in the Identified Offender Report and Recommendation Criminal History Analysis Report provided by the Department of the State Police.

j) Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, shall specifically address the resident's needs in an individualized plan of care.

k) The facility shall incorporate the Identified Offender Report and Recommendation Criminal History Analysis Report into the identified offender's care plan. (Section 2-201.6(f) of the Act)

l) If the identified offender is a convicted (see 730 ILCS 150/2) or registered (see 730 ILCS 150/3) sex offender or if the Identified Offender Report and
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Recommendation prepared Criminal History Analysis conducted pursuant to Section 2-201.6(a) of the Act reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility subject to the rights of married residents under Section 2-108(e) of the Act. (Section 2-201.6(d) of the Act)

The facility's reliance on the Identified Offender Report and Recommendation Criminal History Analysis Report prepared pursuant to Section 2-201.6(a) of the Act shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to the identified offender or other facility residents.

The facility shall evaluate care plans at least quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and shall document such review. The facility shall modify the care plan if necessary in response to this evaluation. The facility remains responsible for continuously evaluating the identified offender and for making any changes in the care plan that are necessary to ensure the safety of residents.

Incident reports shall be submitted to the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 330.780 of this Part. The facility shall review its placement determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility shall identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 330.4300 of this Part.

The facility shall notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.

The facility shall develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.
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(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 330.726 Discharge Planning for Identified Offenders

a) *If, based on the* security measures listed in the *Identified Offender Report and Recommendation* *Criminal History Analysis Report*, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 330.4300 of this Part. (Section 2-201.6(g) of the Act)

b) All discharges and transfers shall be pursuant to accordance with Section 330.4300 of this Part.

c) When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.

d) A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:

1) The facility's inability to meet the needs of the resident, based on Section 330.725 of this Part and subsection (a) of this Section;

2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or

3) The physical safety of the resident, other residents, the facility staff, or facility visitors.

e) Discharge planning shall be included as part of the plan of care developed pursuant to accordance with Section 330.725(j)(k).

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 330.727 Transfer of an Identified Offender

a) *If, based on the* security measures listed in the *Identified Offender Report and Recommendation* *Criminal History Analysis Report*, a facility determines that it
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cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 330.4300 of this Part. (Section 2-201 of the Act)

b) All discharges and transfers shall be pursuant to Section 330.4300 of this Part.

c) When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility shall notify the Department and the receiving facility that the individual is an identified offender before making the transfer.

d) This notification must include all of the documentation required under Section 330.725 of this Part and subsection (a) of this Section, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.

e) If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:

1) The mittimus and any pre-sentence investigation reports;

2) The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];

3) Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];

4) Reports of disciplinary infractions and dispositions;

5) Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and

6) The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)
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f) The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender shall not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 330.761 Whistleblower Protection

a) For the purposes of this Section, "retaliatory action" means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms and conditions of employment of any employee of a facility that is taken in retaliation for the employee's involvement in a protected activity as set forth in Section 3-810 of the Act and this Section 330.761. (Section 3-810(a) of the Act)

b) A facility shall not take any retaliatory action against an employee of the facility, including a nursing home administrator, because the employee does any of the following:

1) Discloses or threatens to disclose to a supervisor or to a public body an activity, inaction, policy, or practice implemented by a facility that the employee reasonably believes is in violation of a law, rule, or regulation.

2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by a nursing home administrator.

3) Assists or participates in a proceeding to enforce the provisions of the Act and this Part. (Section 3-810(b) of the Act)
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c) A violation of the Act and this Section may be established only upon a finding that the employee of the facility engaged in conduct described in subsection (b) of Section 3-810 of the Act and this Section 330.761 and this conduct was a contributing factor in the retaliatory action alleged by the employee. There is no violation of this Section, however, if the facility demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct. (Section 3-810(c) of the Act)

d) The employee of the facility may be awarded all remedies necessary to make the employee whole and to prevent future violations of this Section. Remedies imposed by the court may include, but are not limited to, all of the following:

1) Reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position;

2) Two times the amount of back pay;

3) Interest on the back pay;

4) Reinstatement of full fringe benefits and seniority rights; and

5) Payment of reasonable costs and attorney's fees. (Section 3-810(d) of the Act)

(Source: Added at 35 Ill. Reg. ______, effective ____________)

SUBPART D: PERSONNEL

Section 330.930 Personnel Policies

The personnel policies required in Section 330.760, Section 330.761, and other personnel policies established by the facility shall be followed in the operation of the facility.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section 330.1140 Care and Treatment of Sexual Assault Survivors Behavior Emergencies (Repealed)
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a) For the purposes of this Section, the following definitions shall apply:

1) Ambulance Provider – an individual or entity that owns and operates a business or service using ambulances or emergency medical services vehicles to transport emergency patients.

2) Sexual Assault – an act of nonconsensual sexual conduct or sexual penetration, as defined in Section 12-12 of the Criminal Code of 1961, including, without limitation, acts prohibited under Sections 12-13 through 12-16 of the Criminal Code of 1961.

b) The facility shall adhere to the following protocol for the care and treatment of residents who are suspected of having been sexually assaulted in a long term care facility or elsewhere (Section 3-808 of the Act):

1) Notify local law enforcement pursuant to the requirements of Section 330.785;

2) Call an ambulance provider;

3) Move the survivor, as quickly as reasonably possible, to a closed environment to ensure privacy while waiting for emergency and law enforcement personnel to arrive. The facility shall ensure the welfare and privacy of the survivor, including the use of code to avoid embarrassment; and

4) Offer to call a friend or family member and a sexual assault crisis advocate, when available, to accompany the survivor.

c) The facility shall take all reasonable steps to preserve evidence of the alleged sexual assault, including encouraging the survivor not to change clothes or bathe, if he or she has not done so since the sexual assault.

d) The facility shall notify the Department and draft a descriptive summary of the alleged sexual assault pursuant to the requirements of Section 330.780.
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(Source: Old Section repealed at 20 Ill. Reg. 12160, effective September 10, 1996; new Section added at 35 Ill. Reg. _______, effective ____________)

SUBPART Q: RESIDENT'S RIGHTS

Section 330.4300  Transfer or Discharge

a)  A resident may be voluntarily discharged from a facility after he or she gives the administrator, a physician, or a nurse of the facility written notice of his or her desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his or her guardian or if the resident is a minor, his or her parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being. (Section 2-111 of the Act)

b)  Each resident's rights regarding involuntary transfer or discharge from a facility shall be as described in subsections (c) through (y) of this Section.

c)  Reasons for Transfer or Discharge

1)  A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:

   A)  for medical reasons.

   B)  for the resident's physical safety.

   C)  for the physical safety of other residents, the facility staff or facility visitors.

   D)  for either late payment or nonpayment for the resident's stay, except as prohibited by Title XVIII and XIX of the Federal Social Security Act. For purposes of this Section, "late payment" means non-receipt of payment after submission of a bill. If payment is not received within 45 days after submission of a bill, the facility may send a notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon
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institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of the Act and subsection (e) of this Section, that the responsible party has the right to pay the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings. This subsection (c) does not apply to those residents whose care is provided under the Illinois Public Aid Code. (B) (Section 3-401 of the Act)

2) Prohibition of Discrimination

A) A facility participating in the Medical Assistance Program is prohibited from failing or refusing to retain as a resident any person because he or she is a recipient of or an applicant for the Medical Assistance Program under Article V of the Illinois Public Aid Code. (Section 3-401.1(a) of the Act) For the purposes of this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling 10 days or less following a hospital admission. (Section 3-401.1(a-10) of the Act) The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the 10-day period. (Section 3-401.1(a) of the Act)

B) A facility which violates subsection (c)(2)(A) of this Section shall be guilty of a business offense and fined not less than $500 nor more than $1,000 for the first offense and not less than $1,000 nor more than $5,000 for each subsequent offense. (Section 3-401.1(b) of the Act)

d) Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under subsection (j) of this Section and by a minimum written notice of 21 days, except in one of the following instances. The 21-day requirement shall not apply in any of the following instances:
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1) When an emergency transfer or discharge is ordered by the resident's attending physician because of the resident's health care needs mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician; (Section 3-402(a) of the Act)

2) When the transfer or discharge is mandated by the physical safety of other residents, the facility staff, or facility visitors, as documented in the clinical record. The Department shall be notified prior to any such involuntary transfer or discharge. The Department will immediately offer transfer, or discharge and relocation assistance to residents transferred or discharged under this subsection (d), and the Department may place relocation teams as provided in Section 3-419 of the Act; or (Section 3-402(b) of the Act)

3) When an identified offender is within the provisional admission period defined in Section 1-120.3 of the Act and Section 330.330 of this Part. If the Identified Offender Report and Recommendation prepared under Section 2-201.6 of the Act shows that the identified offender poses a serious threat or danger to the physical safety of other residents, the facility staff, or facility visitors in the admitting facility, and the facility determines that it is unable to provide a safe environment for the other residents, the facility staff, or facility visitors, the facility shall transfer or discharge the identified offender within 3 days after its receipt of the Identified Offender Report and Recommendation. (Section 3-402(c) of the Act)

e) For transfer or discharge made under subsection (d), the notice of transfer or discharge shall be made as soon as practicable before the transfer or discharge. The notice required by subsection (d) of this Section shall be on a form prescribed by the Department and shall contain all of the following:

1) The stated reason for the proposed transfer or discharge; (Section 3-403(a) of the Act)

2) The effective date of the proposed transfer or discharge; (Section 3-403(b) of the Act)
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3) A statement in not less than 12-point type, which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within ten days after receiving this notice. If you request a hearing, it will be held not later than ten days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions, call the Department of Public Health at the telephone number listed below." (Section 3-403(c) of the Act)

4) A hearing request form, together with a postage paid, preaddressed envelope to the Department; and (Section 3-403(d) of the Act)

5) The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge. (Section 3-403(e) of the Act)

f) A request for a hearing made under subsection (e) of this Section shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-404 of the Act)

g) A copy of the notice required by subsection (d) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Healthcare and Family Services. (Section 3-405 of the Act)

h) When the basis for an involuntary transfer or discharge is the result of an action by the Department of Healthcare and Family Services with respect to a recipient of Title XIX and a hearing request is filed with the Department of Healthcare and Family Services, the 21-day written notice period shall
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not begin until a final decision in the matter is rendered by the Department of Healthcare and Family Services Public Aid or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility. (Section 3-406 of the Act)

i) When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (Section 3-407 of the Act)

j) The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the resident's placement, maintenance, and care in the facility. The explanation and discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's clinical record. (Section 3-408 of the Act)

k) The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)

l) A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his or her parent shall have the opportunity to file a request for a hearing with the Department within 10 days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)

m) The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Healthcare and Family Services Public Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than 10 days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request. (Section 3-411 of the Act)

n) The hearing before the Department provided under subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 through 3-712 of the Act. In determining
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whether a transfer or discharge is authorized, the burden of proof in this hearing
rests on the person requesting the transfer or discharge. (Section 3-412 of the
Act)

o) If the Department determines that a transfer or discharge is authorized under
subsection (c) of this Section, the resident shall not
be required to leave the facility before the 34th day following receipt of the notice
required under subsection (d) of this Section, or the
10th day following receipt of the Department's decision, whichever is later,
unless a condition which would have allowed transfer or discharge in less than 21
days as described under subsections (d)(1) and (2) of this Section develops in the interim. (B) (Section 3-413 of the Act)

p) The Department of Healthcare and Family Services shall continue Title
XIX Medicaid funding during the appeal, transfer, or discharge period for those
residents who are Title XIX recipients affected by subsection (c) of this
Section. (Section 3-414 of the Act)

q) The Department may transfer or discharge any resident from any facility required
to be licensed under the Act and this Part when any of the following
conditions exist:

1) Such facility is operating without a license; (Section 3-415(a) of the Act)

2) The Department has suspended, revoked or refused to renew the license of
the facility as provided under Section 3-119 of the Act. (Section 3-415(b) of the Act)

3) The facility has requested the aid of the Department in the transfer or
discharge of the resident and the Department finds that the resident
consents to transfer or discharge; (Section 3-415(c) of the Act)

4) The facility is closing or intends to close and adequate arrangement for
relocation of the resident has not been made at least 30 days prior to
closure; or (Section 3-415(d) of the Act)

5) The Department determines that an emergency exists which requires
immediate transfer or discharge of the resident. (Section 3-415(e) of the
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r) In deciding to transfer or discharge a resident from a facility under subsection (q) of this Section, the Department shall consider the likelihood of serious harm which may result if the resident remains in the facility. (Section 3-416 of the Act)

s) The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under subsection (c) through (q) of this Section, including information on available alternative placements. Residents shall be involved in planning the transfer or discharge and shall choose among the available alternative placements, except that where an emergency makes prior resident involvement impossible, the Department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement. Where the Department makes or participates in making the relocation decision, consideration shall be given to proximity to the resident’s relatives and friends. The resident shall be allowed three visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate transfer or discharge requires reduction in the number of visits. (Section 3-417 of the Act)

t) The Department shall prepare resident transfer or discharge plans to assure safe and orderly removals and protect residents’ health, safety, welfare and rights. In nonemergencies and where possible in emergencies, the Department shall design and implement such plans in advance of transfer or discharge. (Section 3-418 of the Act)

u) The Department may place relocation teams in any facility from which residents are being discharged or transferred for any reason, for the purpose of implementing transfer or discharge plans. (Section 3-419 of the Act)

v) In any transfer or discharge conducted under subsection (q) through (t) of this Section, the Department shall:

1) Provide written notice to the facility prior to the transfer or discharge. The notice shall state the basis for the order of transfer or discharge and
shall inform the facility of its right to an informal conference prior to transfer or discharge under this Section, and its right to a subsequent hearing under subsection (x) of this Section. If a facility desires to contest a nonemergency transfer or discharge, prior to transfer or discharge it shall, within four working days after receipt of the notice, send a written request for an informal conference to the Department. The Department shall, within four working days from the receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference, the Department may affirm, modify or overrule its previous decision. Except in an emergency, transfer or discharge may not begin until the period for requesting a conference has passed or, if a conference is requested, until after a conference has been held; and (Section 3-420(a) of the Act)

2) Provide written notice to any resident to be removed, to the resident's representative, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the reason for which transfer or discharge is ordered and shall inform the resident of the resident's right to challenge the transfer or discharge under subsection (x) of this Section. The Department shall hold an informal conference with the resident or the resident's representative prior to transfer or discharge at which the resident or the representative may present any objections to the proposed transfer or discharge plan or alternative placement. (Section 3-420(b) of the Act)

w) In any transfer or discharge conducted under subsection (q)(5) of this Section, the Department shall notify the facility and any resident to be removed that an emergency has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the Department shall provide written notice to the facility, to the resident, to the resident's representative, if any, and to a member of the resident's family, where practicable, of the basis for the finding that an emergency existed and of the right to challenge removal under subsection (x) of this Section. (Section 3-421 of the Act)

x) Within ten days following transfer or discharge, the facility or any resident transferred or discharged may send a written request to the Department for a hearing under Section 3-703 of the Act to challenge the transfer or discharge. The Department shall hold the hearing within 30 days after receipt of the
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request. The hearing shall be held at the facility from which the resident is being transferred or discharged, unless the resident or resident's representative, requests an alternative hearing site. Where a challenge is by a resident, the hearing shall be held at a location convenient to the resident. If the facility prevails, it may file a claim against the State under the Court of Claims Act for payments lost less expenses saved as a result of the transfer or discharge. No resident transferred or discharged may be held liable for the charge for care which would have been made had the resident remained in the facility. If a resident prevails, the resident may file a claim against the State under the Court of Claims Act (Ill. Rev. Stat. 1987, ch. 37, pars. 439.1 et seq.) for any excess expenses directly caused by the order to transfer or discharge. The Department shall assist the resident in returning to the facility if assistance is requested. (Section 3-422 of the Act)

y) Any owner of a facility licensed under the Act shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than 10% of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility as provided under subsection (u) of this Section. (A, B) (Section 3-423 of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
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1) **Heading of the Part:** Illinois Veterans' Homes Code

2) **Code Citation:** 77 Ill. Adm. Code 340

3) **Section Numbers:**

   - 340.1000  Amend
   - 340.1010  Amend
   - 340.1120  Amend
   - 340.1130  Amend
   - 340.1150  Amend
   - 340.1220  Amend
   - 340.1225  New
   - 340.1230  Amend
   - 340.1240  Repeal
   - 340.1245  Amend
   - 340.1305  Amend
   - 340.1314  Repeal
   - 340.1315  Amend
   - 340.1316  Amend
   - 340.1317  Amend
   - 340.1351  New
   - 340.1470  Amend
   - 340.1505  Amend
   - 340.1575  New

4) **Statutory Authority:** Nursing Home Care Act [210 ILCS 45]

5) **A Complete Description of the Subjects and Issues Involved:** Part 340 regulates Illinois veterans' homes, including licensure, violations and resident care and safety.

In 2010, the General Assembly passed Public Act 96-1372, a comprehensive overhaul of all aspects of licensure, violations, resident care and safety. PA 96-1372 added new definitions or amended existing ones for identified offenders and the levels of violations, updated the requirements for screening and treating identified offenders, doubled license fees, established minimum requirements for comprehensive resident care plans, increased fines and revamped the levels of violations, added statutory protections for "whistleblowers," and required the Department to draft rules for the care and treatment of sexual assault victims.
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This rulemaking implements PA 96-1372, amending 13 Sections, repealing two Sections, and adding three Sections.

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

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

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

7) Will this rulemaking replace an 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 may create a State mandate.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the Illinois Register to:

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

217/782-2043
DEPARTMENT OF PUBLIC HEALTH
NOTICE OF PROPOSED AMENDMENTS

e-mail: dph.rules@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Type of small businesses, small municipalities and not-for-profit corporations affected: Veterans' homes

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

C) Types of professional skills necessary for compliance: Nursing

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

The full text of the Proposed Amendments begins on the next page:
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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 340
ILLINOIS VETERANS' HOMES CODE

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AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

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SUBPART A: GENERAL PROVISIONS

Section 340.1000 Definitions

The terms defined in this Section are terms that are used in one or more of the sets of licensing standards established by the Department to license various levels of long-term care. They are defined as follows:

Abuse – any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility. (Section 1-103 of the Act)

Abuse means:

Physical abuse refers to the infliction of injury on a resident that occurs other than by accidental means and that requires (whether or not actually given) medical attention.

Mental injury arises from the following types of conduct:

Verbal abuse refers to the use by a licensee, employee or agent of oral, written or gestured language that includes disparaging and derogatory terms to residents or within
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their hearing or seeing distance, regardless of their age, ability to comprehend or disability.

Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation, or offensive physical contact by a licensee, employee or agent.

Sexual harassment or sexual coercion perpetrated by a licensee, employee or agent.

Sexual assault.

Access – The right to:

Enter any facility;

Communicate privately and without restriction with any resident who consents to the communication;

Seek consent to communicate privately and without restriction with any resident;

Inspect the clinical and other records of a resident with the express written consent of the resident;

Observe all areas of the facility except the living area of any resident who protests the observation. (Section 1-104 of the Act)

Act – as used in this Part, the Nursing Home Care Act [210 ILCS 45].

Activity Program – a specific planned program of varied group and individual activities geared to the individual resident's needs and available for a reasonable number of hours each day.

Adaptive Behavior – the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.

Adaptive Equipment – a physical or mechanical device, material or equipment
attached or adjacent to the resident's body that may restrict freedom of movement or normal access to one's body, the purpose of which is to permit or encourage movement, or to provide opportunities for increased functioning, or to prevent contractures or deformities. Adaptive equipment is not a physical restraint. No matter the purpose, adaptive equipment does not include any device, material or method described in Section 340.1580 as a physical restraint.

Adequate – enough in either quantity or quality, as determined by a reasonable person familiar with the professional standards of the subject under review, to meet the needs of the residents of a facility under the particular set of circumstances in existence at the time of review.

Administrative Warning – a notice to a facility issued by the Department under Section 340.1220 of this Part and Section 3-303.2 of the Act, which indicates that a situation, condition, or practice in the facility violates the Act or the Department's rules, but is not a Type AA, Type A, Type B, or Type C violation.

Administrator – the person who is directly responsible for the operation and administration of the facility, irrespective of the assigned title. (See Licensed Nursing Home Administrator.)

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

Affiliate – means:

| With respect to a partnership, each partner thereof. |
| With respect to a corporation, each officer, director and stockholder thereof. |
| With respect to a natural person: any person related in the first degree of kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder. (Section 1-106 of the Act) |
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Aide – any person providing direct personal care, training or habilitation services to residents.

Applicant – any person making application for a license. (Section 1-107 of the Act)

Appropriate – term used to indicate that a requirement is to be applied according to the needs of a particular individual or situation.

Assessment – the use of an objective system with which to evaluate the physical, social, developmental, behavioral, and psychosocial aspects of an individual.

Audiologist – a person who is licensed as an audiologist under the Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Autoclave – an apparatus for sterilizing by superheated steam under pressure.

Certification for Title XVIII and XIX – the issuance of a document by the Department to the Department of Health and Human Services or the Department of Healthcare and Family Services verifying compliance with applicable statutory or regulatory requirements for the purposes of participation as a provider of care and service in a specific federal or State health program.

Charge Nurse – a registered professional nurse or a licensed practical nurse in charge of the nursing activities for a specific unit or floor during a tour of duty.

Chemical Restraint – any drug that is used for discipline or convenience and is not required to treat medical symptoms or behavior manifestations of mental illness. (Section 2-106 of the Act)

Continuing Care Contract – a contract through which a facility agrees to supplement all forms of financial support for a resident throughout the remainder of the resident's life.

Contract – a binding agreement between a resident or the resident's guardian (or, if the resident is a minor, the resident's parent) and the facility or its agent.

Convenience – the use of any restraint by the facility to control resident behavior
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or maintain a resident, that is not in the resident's best interest, and with less use of the facility's effort and resources than would otherwise be required by the facility. This definition is limited to the definition of chemical restraint and Section 340.1580 of this Part.

Corporal Punishment – painful stimuli inflicted directly upon the body.

Cruelty and Indifference to Welfare of the Resident – failure to provide a resident with the care and supervision he or she requires; or, the infliction of mental or physical abuse.

Dentist – any person licensed to practice dentistry, including persons holding a Temporary Certificate of Registration, as provided in the Illinois Dental Practice Act [225 ILCS 25].

Department – as used in this Part means the Illinois Department of Public Health.

Developmental Disability – means a severe, chronic disability of a person which:

is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, epilepsy, autism;

is manifested before the person attains age 22;

is likely to continue indefinitely;

results in substantial functional limitations in 3 or more of the following areas of major life activity:

self-care,
receptive and expressive language,
learning,
mobility,
self-direction,
capacity for independent living, and

economic self-sufficiency; and

reflects the person's need for combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. (Section 3-801.1 of the Act)

Dietetic Service Supervisor – a person who:

is a dietitian; or

is a graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association; or is a graduate, prior to July 1, 1990, of a Department-approved course that provided 90 or more hours of classroom instruction in food service supervision and has had experience as a supervisor in a health care institution, which included consultation from a dietitian; or

has successfully completed a Dietary Manager's Association approved dietary managers course; or

is certified as a dietary manager by the Dietary Manager's Association; or

has training and experience in food service supervision and management in a military service equivalent in content to the programs in the second, third or fourth paragraph of this definition.

Dietitian – a person who is a licensed dietitian as provided in the Dietetic and Nutrition Services Practice Act [225 ILCS 30].

Direct Supervision – work performed under the guidance and direction of a supervisor who is responsible for the work, who plans work and methods, who is available on short notice to answer questions and deal with problems that are not strictly routine, who regularly reviews the work performed, and who is accountable for the results.
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*Director* – the Director of the Department of Public Health or designee. (Section 1-110 of the Act)

Director of Nursing Service – the full-time Professional Registered Nurse who is directly responsible for the immediate supervision of the nursing services.

*Discharge* – the full release of any resident from a facility. (Section 1-111 of the Act)

Discipline – any action taken by the facility for the purpose of punishing or penalizing residents.

Distinct Part – an entire, physically identifiable unit consisting of all of the beds within that unit and having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for a distinct part are established as set forth in the respective regulations governing the levels of services approved for the distinct part.

*Emergency* – a situation, physical condition or one or more practices, methods or operations which present imminent danger of death or serious physical or mental harm to residents of a facility. (Section 1-112 of the Act)

Existing Long-Term Care Facility – any facility initially licensed as a health care facility or approved for construction by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, prior to March 1, 1980. Existing long-term care facilities shall meet the design and construction standards for existing facilities for the level of long-term care for which the license (new or renewal) is to be granted.

*Facility or Long-term Care Facility* – A private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22 of the Counties Code [55 ILCS 5], or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons, not related to the applicant or owner by blood or marriage. It includes skilled nursing facilities and intermediate care facilities as those terms are defined in Title XVIII and Title XIX of the Federal Social Security Act (42 USCA 1395 et seq. and 1936 et seq.). It also includes homes, institutions, or other places
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operated by or under the authority of the Illinois Department of Veterans' Affairs. A "facility" may consist of more than one building as long as the buildings are on the same tract or adjacent tracts of land. However, there shall be no more than one "facility" in any one building. "Facility" does not include the following:

A home, institution, or other place operated by the federal government or agency thereof, or by the State of Illinois other than homes, institutions or other places operated by or under the authority of the Illinois Department of Veterans' Affairs;

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

Any "facility for child care" as defined in the Child Care Act of 1969 [225 ILCS 10];

Any "community living facility" as defined in the Community Living Facilities Licensing Act [210 ILCS 35];

Any "community residential alternative" as defined in the Community Residential Alternatives Licensing Act [210 ILCS 140];

Any nursing home or sanatorium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any well-recognized church or religious denomination. However, such nursing home or sanatorium shall comply with all local laws and rules relating to sanitation and safety;

Any facility licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135];

Any supportive residence licensed under the Supportive Residences Licensing Act [210 ILCS 65];

Any supportive living facility in good standing with the demonstration
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project established under Section 5-5.01a of the Illinois Public Aid Code [305 ILCS 5/5-5.01a];

Any assisted living or shared housing establishment licensed under the Assisted Living and Shared Housing Act [210 ILCS 9]; or

An Alzheimer's disease management center alternative health care model licensed under the Alternative Health Care Delivery Act [210 ILCS 3]; or

A facility licensed under the MR/DD Community Care Act.

Financial Resources – having sufficient assets to provide adequate services such as: staff, heat, laundry, foods, supplies, and utilities for at least a two-month period of time.

Full-time – on duty a minimum of 36 hours, four days per week.

Goal – an expected result or condition that involves a relatively long period of time to achieve, that is specified in behavioral terms in a statement of relatively broad scope, and that provides guidance in establishing specific, short-term objectives directed toward its attainment.

Governing Body – the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

Guardian – a person appointed as a guardian of the person or guardian of the estate, or both, of a resident under the Probate Act of 1975 [755 ILCS 5].

Health Information Management Consultant – a person who is certified as a Registered Health Information Administrator (RHIA) or a Registered Health Information Technician (RHIT) by the American Health Information Management Association; or is a graduate of a school of health information management that is accredited jointly by the American Medical Association and the American Health Information Management Association.
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**High Risk Designation** – a violation of a provision of the Illinois Administrative Code that has been identified by the Department through rulemaking to be inherently necessary to protect the health, safety, and welfare of a resident. (Section 1-114.005 of the Act)

Hospitalization – the care and treatment of a person in a hospital as an in-patient.

**Identified Offender** – a person who:

*Has has been convicted of, found guilty of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any felony offense listed in Section 25 of the Health Care Worker Background Check Act, except for the following: a felony offense described in Section 10-5 of the Nurse Practice Act; a felony offense described in Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; a felony offense described in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis Control Act; a felony offense described in Section 401, 401.1, 404, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act; and a felony offense described in the Methamphetamine Control and Community Protection Act; or

*Has been convicted of, adjudicated delinquent for, found not guilty by reason of insanity for, or found unfit to stand trial for, any sex offense as defined in subsection (c) of Section 10 of the Sex Offender Management Board Act; or is a registered sex offender, or is serving a term of parole, mandatory supervised release, or probation for a felony offense.

*Any other resident as determined by the Department of State Police.* (Section 1-114.01 of the Act)

Illinois Veterans' Home – a facility operated by or under the authority of the Illinois Department of Veterans' Affairs. (Section 1-113(1) of the Act)

Interdisciplinary Team – a group of persons that represents those professions, disciplines, or service areas that are relevant to identifying an individual's strengths and needs, and designs a program to meet those needs. This team shall include at least a physician, a social worker and other professionals. The Interdisciplinary Team includes at least the resident, the resident's guardian, the resident's primary service providers, including staff most familiar with the
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resident; and other appropriate professionals and caregivers as determined by the resident's needs. The resident or his or her guardian may also invite other individuals to meet with the Interdisciplinary Team and participate in the process of identifying the resident's strengths and needs.

Licensed Nursing Home Administrator – a person who is charged with the general administration and supervision of a facility and licensed under the Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70].

Licensed Practical Nurse – a person with a valid Illinois license to practice as a practical nurse.

Licensee – the person or entity licensed to operate the facility as provided under the Act. (Section 1-115 of the Act)

Life Care Contract – a contract through which a facility agrees to provide maintenance and care for a resident throughout the remainder of the resident's life.

Maintenance – food, shelter, and laundry services. (Section 1-116 of the Act)

Misappropriation of Property – using a resident's cash, clothing, or other possessions without authorization by the resident or the resident's authorized representative; failure to return valuables after a resident's discharge; or failure to refund money after death or discharge when there is an unused balance in the resident's personal account.

Monitor – a qualified person placed in a facility by the Department to observe operations of the facility, assist the facility by advising it on how to comply with the State regulations, and who reports periodically to the Department on the operations of the facility.

Neglect – a facility's failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a resident. Neglect – a failure in a facility to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a...
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Resident's physical or mental condition. (Section 1-117 of the Act) Neglect means the failure to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. This shall include any allegation in which:

1. the alleged failure causing injury or deterioration is ongoing or repetitious; or
2. a resident required medical treatment as a result of the alleged failure; or
3. the failure is alleged to have caused a noticeable negative impact on a resident's health, behavior or activities for more than 24 hours.

New Long Term Care Facility – any facility initially licensed as a health care facility by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, on or after March 1, 1980. New long-term care facilities shall meet the design and construction standards for new facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Nurse – a registered nurse or a licensed practical nurse as defined in the Nursing and Advanced Practice Act [225 ILCS 65]. (Section 1-118 of the Act)

Nursing Care – a complex of activities that carries out the diagnostic, therapeutic, and rehabilitative plan as prescribed by the physician; care for the resident's environment; observing symptoms and reactions and taking necessary measures to carry out nursing procedures involving understanding of cause and effect in order to safeguard life and health.

Objective – an expected result or condition that involves a relatively short period of time to achieve, that is specified in behavioral terms, and that is related to the achievement of a goal.

Occupational Therapist, Registered (OTR) – a person who is registered as an occupational therapist under the Illinois Occupational Therapy Practice Act [225 ILCS 75].
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Occupational Therapy Assistant – a person who is registered as a certified occupational therapy assistant under the Illinois Occupational Therapy Practice Act.

Operator – the person responsible for the control, maintenance and governance of the facility, its personnel and physical plant.

Other Resident Injury – occurs where a resident is alleged to have suffered physical or mental harm and the allegation does not fall within the definition of abuse or neglect.

Oversight – general watchfulness and appropriate reaction to meet the total needs of the residents, exclusive of nursing or personal care. Oversight shall include, but is not limited to, social, recreational and employment opportunities for residents who, by reason of mental disability, or in the opinion of a licensed physician, are in need of residential care.

Owner – the individual, partnership, corporation, association or other person who owns a facility. In the event a facility is operated by a person who leases the physical plant, which is owned by another person, "owner" means the person who operates the facility, except that if the person who owns the physical plant is an affiliate of the person who operates the facility and has significant control over the day-to-day operations of the facility, the person who owns the physical plant shall incur jointly and severally with the owner all liabilities imposed on an owner under the Act. (Section 1-119 of the Act)

Person – any individual, partnership, corporation, association, municipality, political subdivision, trust, estate or other legal entity whatsoever.

Personal Care – assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of maintaining a
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**private, independent residence or who is incapable of managing his person,**
whether or not a guardian has been appointed for such individual. **Personal Care**
—assistance with meals, dressing, movement, bathing or other personal needs or
maintenance, or general supervision and oversight of the physical and mental
well-being of an individual who is incapable of maintaining a private,
independent residence or who is incapable of managing his person, whether or not
a guardian has been appointed for such individual. (Section 1-120 of the Act)

Pharmacist, Registered — a person who holds a certificate of registration as a
registered pharmacist, a local registered pharmacist or a registered assistant
pharmacist under the Pharmacy Practice Act of 1987 [225 ILCS 85].

**Physical Restraint** — any manual method or physical or mechanical device,
material, or equipment attached or adjacent to a resident's body that the resident
cannot remove easily and which restricts freedom of movement or normal access
to one's body. **Physical Restraint** — any manual method or physical or mechanical
device, material, or equipment attached or adjacent to the resident's body, which
the individual cannot remove easily and which restricts freedom of movement or
normal access to one's body. (Section 2-106 of the Act)

Physical Therapist Assistant — a person who has graduated from a two year
college level program approved by the American Physical Therapy Association.

Physical Therapist — a person who is registered as a physical therapist under the
Illinois Physical Therapy Act [225 ILCS 90].

Physician — any person licensed to practice medicine in all its branches as
provided in the Medical Practice Act of 1987 [225 ILCS 60].

Probationary License — an initial license issued for a period of 120 days during
which time the Department will determine the qualifications of the applicant.

**Provisional Admission Period** — the time between the admission of an identified
offender as defined in Section 1-114.01 of the Act and this Section, and 3 days
following the admitting facility's receipt of an Identified Offender Report and
Recommendation in accordance with Section 2-201.6 of the Act. (Section 1-120.3
of the Act)
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_Psychiatric Services Rehabilitation Aide_ – an individual employed by a long-term care facility to provide, for mentally ill residents, at a minimum, crisis intervention, rehabilitation, and assistance with activities of daily living. (Section 1-120.7 of the Act)

Psychiatrist – a physician who has had at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

Psychologist – a person who is licensed to practice clinical psychology under the Clinical Psychologist Licensing Act [225 ILCS 15].

Qualified Professional – a person who meets the educational, technical and ethical criteria of a health care profession, as evidenced by eligibility for membership in an organization established by the profession for the purpose of recognizing those persons who meet such criteria; and who is licensed, registered, or certified by the State of Illinois, if required.

_Reasonable Visiting Hours_ – any time between the hours of 10 a.m. and 8 p.m. daily. (Section 1-121 of the Act)

Registered Nurse – a person with a valid license to practice as a registered professional nurse under the Nurse Nursing and Advanced Practice Nursing Act.

_Repeat Violation_ – for purposes of assessing fines under Section 3-305 of the Act, a violation that has been cited during one inspection of the facility for which a subsequent inspection indicates that an accepted plan of correction was not complied with, within a period of not more than twelve months from the issuance of the initial violation. A repeat violation shall not be a new citation of the same rule, unless the licensee is not substantially addressing the issue routinely throughout the facility. (Section 3-305(7) of the Act)

_Resident_ – person receiving personal or medical care, including but not limited
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to mental health treatment, psychiatric rehabilitation, physical rehabilitation, and assistance with activities of daily living, from a facility. Resident—person residing in and receiving personal care from a facility. (Section 1-122 of the Act)

Resident Services Director— the full-time administrator, or an individual on the professional staff in the facility, who is directly responsible for the coordination and monitoring of the residents' overall plans of care in an intermediate care facility.

Resident's Representative— a person other than the owner, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his or her representative, or the resident's guardian, or the parent of a minor resident for whom no guardian has been appointed. (Section 1-123 of the Act)

Restorative Care— a health care process designed to assist residents to attain and maintain the highest degree of function of which they are capable (physical, mental, and social).

Sanitization— the reduction of pathogenic organisms on a utensil surface to a safe level, which is accomplished through the use of steam, hot water, or chemicals.

Satisfactory— same as adequate.

Seclusion— the retention of a resident alone in a room with a door which the resident cannot open.

Self Preservation— the ability to follow directions and recognize impending danger or emergency situations and react by avoiding or leaving the unsafe area.

Social Worker— a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

State Fire Marshal— the Fire Marshal of the Office of the State Fire Marshal, Division of Fire Prevention.
Sterilization – the act or process of destroying completely all forms of microbial life, including viruses.

**Stockholder of a Corporation** – any person who, directly or indirectly, beneficially owns, holds or has the power to vote, at least five percent of any class of securities issued by the corporation. (**Stockholder of a Corporation** – any person who, directly or indirectly, beneficially owns, holds or has the power to vote, at least five percent of any class of securities issued by the corporation. (Section 1-125 of the Act)

**Student Intern** – means any person whose total term of employment in any facility during any 12-month period is equal to or less than 90 continuous days, and whose term of employment is either:

- an academic credit requirement in a high school or undergraduate institution; or

- immediately succeeds a full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution, provided that such person is registered for another full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution which quarter, semester or trimester will commence immediately following the term of employment. (**Student Intern** – means any person whose total term of employment in any facility during any 12-month period is equal to or less than 90 continuous days, and whose term of employment is either:

- an academic credit requirement in a high school or undergraduate institution; or

- immediately succeeds a full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution, provided that such person is registered for another full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution which quarter, semester or trimester will commence immediately following the term of employment. (Section 1-125.1 of the Act)
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Substantial Failure – the failure to meet requirements other than a variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Section 340.1130(b)(1).

Sufficient – same as adequate.

Supervision – authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Unless otherwise stated in this Part, the supervisor must be on the premises if the person does not meet assistant level (two-year training program) qualifications specified in these definitions.

Therapeutic Recreation Specialist – a person who is certified by the National Council for Therapeutic Recreation Certification and who meets the minimum standards it has established for classification as a Therapeutic Recreation Specialist.

Time Out – removing an individual from a situation that results in undesirable behavior. It is a behavior modification procedure which is developed and implemented under the supervision of a qualified professional.

Title XVIII – Title XVIII of the Federal Social Security Act as now or hereafter amended. (Section 1-126 of the Act)

Title XIX – Title XIX of the Federal Social Security Act as now or hereafter amended. (Section 1-127 of the Act)

Transfer – a change in status of a resident's living arrangements from one facility to another facility. (Section 1-128 of the Act)

Type AA violation – a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death. (Section 1-128.5 of the Act)
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Type A Violation – a violation of the Act or this Part that creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that the risk of death or serious mental or physical harm to a resident will result therefrom or has resulted in actual physical or mental harm to a resident. Type A Violation – a violation of the Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom. (Section 1-129 of the Act)

Type B Violation – a violation of the Act or this Part that creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to a resident. Type B Violation – a violation of the Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility directly threatening to the health, safety or welfare of a resident. (Section 1-130 of the Act)

Type C Violation – a violation of the Act or this Part that creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom. (Section 1-130 of the Act)

Universal Progress Notes – a common record with periodic narrative documentation by all persons involved in resident care.

Valid License – a license which is unsuspended, unrevoked and unexpired.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 340.1120 Application for License

a) Application for a license to establish or operate a facility shall be made in writing and submitted to the Department, with other such information as the Department may require, on forms furnished by the Department. (Section 3-1031 of the Act)

b) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately

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become void and shall be returned to the Department when a new license is issued to operate the facility; or when operation is discontinued; or when operation is moved to a new location; or when the licensee (if an individual) dies; or when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.

c) **All license applications shall be accompanied with an application fee of $1,990.** The fee for a 2-year license shall be double the fee for the annual license. (Section 3-103(2) of the Act)

d) The Department may issue licenses or renewals for periods of not less than six months nor more than 18 months for facilities with annual licenses and not less than 18 months nor more than 30 months for facilities with 2-year licenses in order to distribute the expiration dates of such licenses throughout the calendar year. Fees for such licenses shall be prorated on the basis of the portion of a year for which they are issued. (Section 3-110 of the Act)

e) The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last 24 consecutive months.

f) **A renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act [220 ILCS 4] and Section 340.1125 of this Part, if applicable.** (Section 3-115 of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 340.1130 Criteria for Adverse Licensure Actions

a) Adverse licensure actions are determinations to deny the issuance of an initial license, to deny the issuance of a renewal of a license, or to revoke the current license of a facility.

b) The Director or his or her designee may take adverse licensure action against a facility based on a finding that one or more of the following criteria are met:

1) **A There has been a substantial failure by the facility to comply with the Act or this Part.** (Section 3-119(a)(1) of the Act) For purposes of this
provision, substantial failure is a failure to meet the requirements of the Act and this Part that is other than a variance from strict and literal performance and that results only in unimportant omissions or defects given the particular circumstances involved. A substantial failure by a facility shall include, but not be limited to, any of the following:

A) termination of Medicare or Medicaid certification by the Centers for Medicare and Medicaid Services; or

B) a failure by the facility to pay any fine assessed under the Act after the Department has sent to the facility at least 2 notices of assessment that include a schedule of payments as determined by the Department, taking into account extenuating circumstances and financial hardships of the facility. (Section 3-119(a)(1) of the Act)

2) Conviction of the licensee, or of the applicant, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude, during the previous five years as shown by a certified copy of the record of the court of conviction. (Section 3-119 (a)(2) of the Act)

3) Personnel (or, for an initial applicant, the proposed personnel) are insufficient in number or unqualified by training or experience to properly care for the number and type of residents served by the facility. (Section 3-119(a)(3) of the Act)

4) Financial or other resources are insufficient to conduct or operate the facility in accordance with the Act and this Part. (Section 3-119(a)(4) of the Act)

5) The facility is not under the direct supervision of a full-time administrator as required by Section 340.1370. (Section 3-119(a)(5) of the Act)

6) The facility has committed two Type "AA" violations within a two-year period. (Section 3-119(a)(6) of the Act)

7) The rights of residents of the facility have been violated by any of the following actions:
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A) A pervasive pattern of cruelty or indifference to residents has occurred in the facility.

B) The facility has appropriated or converted for its use the property of a resident or has converted a resident's property for the facility's use without the resident's written consent or the consent of the resident's legal guardian.

C) The facility has secured property, or a bequest of property, from a resident by undue influence.

8) False information has been knowingly submitted by the facility either on the licensure or renewal application forms or during the course of an inspection or survey of the facility.

9) Refusal to permit entry or inspection of the facility by agents of the Department. (Section 3-214 of the Act).

c) The Director or his or her designee shall consider all available evidence at the time of the determination, including the history of the facility and the applicant in complying with the Act and this Part, notices of violations that have been issued to the facility and the applicant, findings of surveys and inspections, and any other evidence provided by the facility, residents, law enforcement officials and other interested individuals.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 340.1150 Revocation or Denial of Renewal of License

a) The license of a facility shall be revoked or application for renewal of a license of a facility shall be denied and the license of the facility shall be allowed to expire when the Director or his or her designee finds that a condition, occurrence, or situation in the facility meets any of the criteria specified in Section 340.1130(b) and in Section 3-119(a) of the Act).

b) Pursuant to Section 10-65 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1010-65) [5 ILCS 100/10-65], licensees who are individuals are subject to denial of renewal of licensure if the individual is more
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than 30 days delinquent in complying with a child support order.

c) The license of a facility will be revoked when the facility fails to abate or eliminate a Type A violation **or when the facility has committed 2 Type "AA" violations within a 2-year period.** Section 3-119(a) of the Act

d) When the Director, **or his or her designee** determines that the license of a facility is to be revoked or an application for renewal of a license of a facility is to be denied, the Department shall notify the facility. The notice to the facility shall be in writing and shall include:

1) **A clear and concise statement of the violations on which the nonrenewal or revocation is based.** (Section 3-119(b) of the Act)

   The statement shall include a citation to the provisions of the Act or this Part on which the application for renewal is being revoked or denied.

2) A statement of the date on which revocation will take effect or the current license of the facility will expire as provided in Section 3-119(d) of the Act.

3) **A notice of the opportunity of the applicant for a hearing to contest the nonrenewal or revocation of the license.** (Section 3-119(b) and (c) of the Act)

e) **The Department may extend the effective date of the license revocation or expiration in any case in order to permit orderly removal and relocation of residents.** (Section 3-119(d)(3) of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 340.1220 Determination of the Level of a Violation

a) After determining that issuance of a notice of violation is warranted and prior to issuance of the notice, the Director **or his or her designee** will review the findings that are the basis of the violation, and any comments and documentation provided by the facility. The level of violation shall be determined **to be either a level AA, a level A, a level B, or a level C violation** based on the definition of level of violation contained in the Act, Section 340.1000 of this Part and on the criteria outlined in this Section.
b) The following definitions of levels of violations shall be used in determining the level of each violation:

1) A "level AA violation" or a "Type AA violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death. (Section 1-128.5 of the Act)

2) A "level A violation" or "Type A violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that the risk of death or serious mental or physical harm will result therefrom or has resulted in actual physical or mental harm to a resident. (Section 1-129 of the Act)

3) A "level B violation" or "Type B violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to a resident. (Section 1-130 of the Act)

4) A "level C violation" or "Type C violation" is a violation of the Act or this Part which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom. (Section 1-132 of the Act)

c) In determining the level of a violation, the Director or his or her designee shall consider the following criteria:

1) The degree of danger to the resident or residents which is posed by the condition or occurrence in the facility. The following factors will be considered in assessing the degree of danger:

A) Whether the resident or residents of the facility are able to recognize conditions or occurrences that may be harmful and are able to take measures for self-preservation and self-protection. The extent of nursing care required by the residents as indicated by review of patient needs will be considered in relation to this
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determination.

B) Whether the resident or residents have access to the area of the facility in which the condition or occurrence exists and the extent of such access. A facility's use of barriers, warning notices, instructions to staff and other means of restricting resident access to hazardous areas will be considered.

C) Whether the condition or occurrence was the result of inherently hazardous activities or negligence by the facility.

D) Whether the resident or residents of the facility were notified of the condition or occurrence and the promptness of such notice. Failure of the facility to notify residents of potentially harmful conditions or occurrences will be considered. The adequacy of the method of such notification and the extent to which such notification reduced the potential danger to the residents will also be considered.

2) The directness and imminence of the danger to the resident or residents by the condition or occurrence in the facility. In assessing the directness and imminence of the danger, the following factors will be considered:

A) Whether actual harm, including death, physical injury or illness, mental injury or illness, distress, or pain, to a resident or residents resulted from the condition or occurrence and the extent of such harm.

B) Whether available statistics and records from similar facilities indicate that direct and imminent danger to the resident or residents has resulted from similar conditions or occurrences and the frequency of such danger.

C) Whether professional opinions and findings indicate that direct and imminent danger to the resident or residents will result from the condition or occurrence.

D) Whether the condition or occurrence was limited to a specific area of the facility or was widespread throughout the facility. Efforts taken by the facility to limit or reduce the scope of the area
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affected by the condition or occurrence will be considered.

E) Whether the physical, mental, or emotional state of the resident or residents, who are subject to the danger, would facilitate or hinder harm actually resulting from the condition or occurrence.

e) If the Director determines that the report's findings constitute a violation which does not directly threaten the health, safety, or welfare of a resident, the Department shall issue an administrative warning. (Section 3-303.2(a) of the Act)

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 340.1225 Administrative Warning

a) If the Department finds a situation, condition, or practice which violates the Act or this Part that does not constitute a Type "AA", Type "A", Type "B", or Type "C" violation, the Department shall issue an administrative warning. (Section 3-303.2(a) of the Act)

b) Each administrative warning shall be in writing and shall include the following information:

1) A description of the nature of the violation.

2) A citation of the specific statutory provision or rule that the Department alleges has been violated.

3) A statement that the facility shall be responsible for correcting the situation, condition, or practice. (Section 3-303.2(a) of the Act)

c) Each administrative warning shall be sent to the facility and the licensee or served personally at the facility within 10 days after the Director or his or her designee determines that issuance of an administrative warning is warranted under Section 300.272.

d) The facility is not required to submit a plan of correction in response to an administrative warning.
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e) If the Department finds, during the next on-site inspection which occurs no earlier than 90 days from the issuance of the administrative warning, that the facility has not corrected the situation, condition, or practice which resulted in the issuance of the administrative warning, the Department shall notify the facility of the finding. The facility shall then submit a written plan of correction as provided in Section 340.1230. The Department will consider the plan of correction and take any necessary action in accordance with Section 340.1230. (Section 3-303.2(b) of the Act)

(Source: Added at 35 Ill. Reg. ______, effective ____________)

Section 340.1230  Plans of Correction and Reports of Correction

a) The situation, condition, or practice constituting a Type "AA" violation or a Type "A" violation shall be abated or eliminated immediately unless a fixed period of time, not exceeding 15 days, as determined by the Department and specified in the notice of violation is required for correction. (Section 3-303(a) of the Act)

b) The facility shall have ten days after receipt of notice of violation for a Type B violation, or after receipt of a notice of failure to correct a situation, condition, or practice that resulted in the issuance of an administrative warning, to prepare and submit a plan of correction to the Department. (Section 3-303(b) of the Act)

c) Within the 10 ten-day period, a facility may request additional time for submission of the plan of correction. The Department may extend the period for submission of the plan of correction for an additional 30 days, when it finds that corrective action by a facility to abate or eliminate the violation will require substantial capital improvement. The Department will consider the extent and complexity of necessary physical plant repairs and improvements and any impact on the health, safety, or welfare of the residents of the facility in determining whether to grant a requested extension. (Section 3-303(b) of the Act)

d) In lieu of submission of a plan of correction, a facility may submit a report of correction if corrective action has been completed. The report of correction shall be submitted within the time period required in subsections (a) and (b) of this Section.

e) Each plan of correction or report of correction shall be based on an assessment by the facility of the conditions or occurrences that are the basis of the violation and
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an evaluation of the practices, policies, and procedures that have caused or contributed to the conditions or occurrences. Evidence of such assessment and evaluation shall be maintained by the facility. Each plan of correction or report of correction shall include:

1) A description of the specific corrective action the facility is taking, or plans to take, or has taken to abate, eliminate, or correct the violation cited in the notice.

2) A description of the steps that will be or have been taken to avoid future occurrences of the same and similar violations.

3) A specific date by which the corrective action will be or was completed.

Submission of a plan of correction or report of correction shall not be considered an admission by the facility that the violation has occurred.

The Department will review each plan of correction or report of correction to ensure that it provides for the abatement, elimination, or correction of the violation. The Department will reject a submitted plan or report only if it finds any of the following deficiencies:

1) The plan or report does not address the conditions or occurrences that are the basis of the violation and an evaluation of the practices, policies, and procedures that have caused or contributed to the conditions or occurrences.

2) The plan or report is not specific enough to indicate the actual actions the facility will be taking to abate, eliminate, or correct the violation.

3) The plan or report does not provide for measures that will abate or eliminate, or correct the violation.

4) The plan or report does not provide steps that will avoid future occurrences of the same or similar violations.

5) The plan or report does not provide for timely completion of the corrective action, considering the seriousness of the violation, any possible harm to the residents, and the extent and complexity of the corrective action.
When the Department rejects a submitted plan of correction or report of correction, it **shall** notify the facility. The notice of rejection shall be in writing and shall specify the reason for the rejection. The facility shall have **ten** days after receipt of the notice of rejection to submit a modified plan. (Section 3-303(b) of the Act)

If a facility fails to submit a plan or report of correction or modified plan meeting the criteria in subsection (e)(d) of this Section within the prescribed time periods in subsections (a) and (b) of this Section, or anytime the Department issues a Type AA, Type A or Repeat B violation, the Department will impose an approved plan of correction will be imposed by the Department. (Section 3-303(b) of the Act)

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 340.1240 Calculation of Penalties *(Repealed)*

a) For the purpose of calculating penalties, each day the violation exists after the date upon which a notice of the violation is received by the facility shall constitute a separate violation. The Department shall not be required to send additional notices of violation to the facility for such continuing violations. (Section 3-302 of the Act)

b) For purposes of calculating penalties, the number of residents per day shall be based on the average number of residents in the facility during the 30 days preceding the discovery of the violation. (Section 3-305(5) of the Act)

(Source: Repealed at 35 Ill. Reg. _____, effective ____________)

Section 340.1245 Conditions for Assessment of Penalties

The Department **shall** consider the assessment of a monetary penalty against a facility under the following conditions:

a) A licensee who commits a Type "AA" violation as defined in Section 1-128.5 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine up to $25,000 per violation. (Section 3-305(1) of the Act)
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b) A licensee who commits a Type "A" violation as defined in Section 1-129 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to $12,500 per violation. (Section 3-305(1.5) of the Act)

c) A licensee who commits a Type "AA" or Type "A" violation as defined in Section 1-128.5 or 1-129 of the Act which continues beyond the time specified in Section 3-303(a) of the Act, which is cited as a repeat violation, shall have its license revoked and shall be assessed a fine of 3 times the fine computed per resident per day under subsection (a) or (b) of this Section. (Section 3-305(3) of the Act)

d) A licensee who commits a Type "B" violation as defined in Section 1-130 of the Act shall be assessed a fine of up to $1,100 per violation. (Section 3-305(2) of the Act)

e) A licensee who fails to satisfactorily comply with an accepted plan of correction for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or pursuant to this Part shall be automatically issued a conditional license for a period of not less than 6 months. A second or subsequent acceptable plan of correction shall be filed. A fine shall be assessed in accordance with subsection (d) of this Section when cited for the repeat violation. This fine shall be computed for all days of the violation, including the duration of the first plan of correction compliance time. (Section 3-305(4) of the Act)

f) A licensee who commits 10 or more Type "C" violations, as defined in Section 1-132 of the Act, in a single survey shall be assessed a fine of up to $250 per violation. A licensee who commits one or more Type "C" violations with a high risk designation shall be assessed a fine of up to $500 per violation. (Section 3-305(2.5) of the Act)

g) If an occurrence results in more than one type of violation as defined in the Act (that is, a Type "AA", Type "A", Type "B", or Type "C" violation), the maximum fine that may be assessed for that occurrence is the maximum fine that may be assessed for the most serious type of violation charged. For purposes of the preceding sentence, a Type "AA" violation is the most serious type of violation that may be charged, followed by a Type "A", Type "B", or Type "C" violation, in that order. (Section 3-305(7.5) of the Act)
h) The minimum and maximum fines that may be assessed pursuant to Section 3-305 of the Act and this Section 340.1245 shall be twice those otherwise specified for any facility that willfully makes a misstatement of fact to the Department, or willfully fails to make a required notification to the Department, if that misstatement or failure delays the start of a surveyor or impedes a survey. (Section 3-305(8) of the Act)

i) High risk designation. If the Department finds that a facility has violated a provision of this Part that has a high risk designation, or that a facility has violated the same provision of this Part 3 or more times in the previous 12 months, the Department may assess a fine of up to 2 times the maximum fine otherwise allowed. (Section 3-305(9) of the Act)

j) For the purposes of calculating certain penalties pursuant to this Section, violations of the following requirements shall have the status of "high risk designation".

1) Section 340.1305(a)
2) Section 340.1305(b)
3) Section 340.1305(c)
4) Section 340.1315(a)
5) Section 340.1315(b)
6) Section 340.1315(c)
7) Section 340.1315(f)
8) Section 340.1315(j)
9) Section 340.1315(k)
10) Section 340.1315(l)
11) Section 340.1315(n)
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12) Section 340.1315(o)
13) Section 340.1317(c)
14) Section 340.1317(d)
15) Section 340.1317(e)
16) Section 340.1330
17) Section 340.1377
18) Section 340.1380(b)
19) Section 340.1440(a)
20) Section 340.1440(d)
21) Section 340.1440(e)
22) Section 340.1505(b)
23) Section 340.1505(d)
24) Section 340.1505(g)

k) If a licensee has paid a civil monetary penalty imposed pursuant to the Medicare and Medicaid Certification Program for the equivalent federal violation giving rise to a fine under Section 3-305 of the Act and this Section 340.1245, the Department shall offset the fine by the amount of the civil monetary penalty. The offset may not reduce the fine by more than 75% of the original fine, however. (Section 3-305(10) of the Act)

l) When the Department finds that a provision of Article II has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or $100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of
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Article II has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the violation in question. (Section 3-305(6) of the Act)

a) When a notice of violation for a level A violation is issued.

1) The penalty to be assessed for this violation shall be the greater of the following:

A) An amount not less than $5000 as determined by the Director or his designee considering the factors outlined in Section 3-306 of the Act.

B) The total of the following:

i) $5 per resident in the facility, plus

ii) $.20 per resident for each day of the violation, commencing on the day on which the notice of violation is received by the facility and ending on the day the violation is corrected. (Section 3-305(1) of the Act)

2) The facility shall also be issued a conditional license for a period of six months.

b) When a facility fails to abate or eliminate a level A violation immediately or within the period set by the Department in the notice of violation:

1) The facility shall be cited for a repeat violation;

2) The penalty to be assessed shall be three times the penalty computed under subsection (a)(1) of this Section, and

3) The license of the facility shall be revoked as provided in Section 340.1150.

c) When a notice of violation for a level B violation is issued.

1) The penalty to be assessed for this violation shall be the greater of the
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following:

A) An amount not less than $500 as determined by the Director or his designee considering the factors outlined in Section 3-306 of the Act.

B) The total of the following:

i) $3 per resident in the facility, plus

ii) $.15 per resident for each day of the violation, commencing on the day on which the notice of violation is received by the facility and ending on the day the violation is corrected. (Section 3-305(2) of the Act)

2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.

d) When a facility fails to correct a level B violation within the time period specified in the plan of correction approved by the Department.

1) The facility shall be cited for a repeat violation.

2) The penalty to be assessed shall be computed in accordance with subsection (e)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.

3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 340.1150.

e) When a Notice of Violation is issued for a provision of Article II which has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or $100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of Article II has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the violation in question. (Section 3-305(6) of the Act)
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(Source: Amended at 35 Ill. Reg. _____, effective ____________)

SUBPART B: POLICIES AND FACILITY RECORDS

Section 340.1305 Request for Resident Criminal History Record Information

a) A facility shall, within 24 hours after admission of a resident, request a criminal history background check pursuant to the Uniform Conviction Information Act [210 ILCS 2635] for all persons 18 or older seeking admission to the facility, unless a background check was initiated by a hospital pursuant to the Hospital Licensing Act. Background checks shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. (Section 2-201.5(b) of the Act)

b) The facility shall check for the individual's name on the Illinois Sex Offender Registration website at www.isp.state.il.us and the Illinois Department of Corrections sex registrant search page at www.idoc.state.il.us to determine if the individual is listed as a registered sex offender.

c) If the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based check.

d) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. (Section 2-201.5(b) of the Act)

e) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is
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respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident's immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.

f) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the facility shall immediately fax the resident's name and criminal history to the Department pursuant to the requirements of Section 2-201.6 of the Act and Section 340.1315 of this Part. (Section 2-201.5(c) of the Act)

f) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based background check are pending; while the results of a request for waiver of a fingerprint-based check are pending; and/or while the Criminal History Analysis Report is pending.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 340.1314 Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)

a) The facility shall, by July 9, 2006, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who were residents of the facility on May 10, 2006. (Section 2-201.5(b) of the Act)

b) If the current resident has already had a criminal history record check requested by that facility and performed subsequent to July 12, 2005, subsection (a) shall not apply.

e) The facility shall be responsible for taking all steps necessary to ensure the safety of all residents while the results of the name-based background check are pending.

(Source: Repealed at 35 Ill. Reg. ______, effective ____________)

Section 340.1315 Identified Offenders
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a) The facility shall review the results of the criminal history background checks immediately upon receipt of these checks. If the results of the background checks are inconclusive, the facility shall initiate a fingerprint-based check unless the fingerprint-based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident’s health or lack of potential risk, such as the existence of a severe, debilitating physical, medical, or mental condition that nullifies any potential risk presented by the resident. (Section 2-201.5(b) of the Act) The facility shall arrange for a fingerprint-based background check or request a waiver from the Department within 5 days after receiving inconclusive results of a name-based background check. The fingerprint-based background check shall be conducted within 25 days after receiving the inconclusive results of the name-based background check.

b) A waiver issued pursuant to Section 2-201.5 of the Act shall be valid only while the resident is immobile or while the criteria supporting the waiver exist.

e) The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility.

d) If a fingerprint-based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident’s dignity and that minimizes any emotional or physical hardship to the resident. (Section 2-201.5(b) of the Act) If a facility is unable to conduct a fingerprint-based background check in compliance with this Section, then it shall provide conclusive evidence of the resident’s immobility or risk nullification of the waiver issued pursuant to Section 2-201.5 of the Act.

b) The facility shall be responsible for taking all steps necessary to ensure the safety of residents while the results of a name-based background check or a fingerprint-based check are pending; while the results of a request for a waiver of a fingerprint-based check are pending; and/or while the Identified Offender Report and Recommendation Criminal History Analysis Report is pending.

c) If the results of a resident’s criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01 of the Act, the
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facility shall do the following: immediately fax the resident’s name and criminal history information to the Department. (Section 2-201.5(c) of the Act)

1) Immediately notify the Department of State Police, in the form and manner required by the Department of State Police, that the resident is an identified offender.

2) Within 72 hours, arrange for a fingerprint-based criminal history record inquiry to be requested on the identified offender resident. The inquiry shall be based on the subject’s name, sex, race, date of birth, fingerprint images, and other identifiers required by the Department of State Police. The inquiry shall be processed through the files of the Department of State Police and the Federal Bureau of Investigation to locate any criminal history record information that may exist regarding the subject. The Federal Bureau of Investigation shall furnish to the Department of State Police, pursuant to an inquiry under this subsection (2), any criminal history record information contained in its files.

d) The facility shall comply with all applicable provisions contained in the Uniform Conviction Information Act.

e) All name-based and fingerprint-based criminal history record inquiries shall be submitted to the Department of State Police electronically in the form and manner prescribed by the Department of State Police. The Department of State Police may charge the facility a fee for processing name-based and fingerprint-based criminal history record inquiries. The fee shall be deposited into the State Police Services Fund. The fee shall not exceed the actual cost of processing the inquiry. (Section 2-201.5(c) of the Act)

If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:

1) The facility shall inform the appropriate county and local law enforcement offices of the identity of identified offenders who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense who are residents of the facility. If a resident of a licensed facility is an identified offender, any federal, State, or local law enforcement officer or county probation officer shall be permitted reasonable access to the individual resident to verify
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compliance with the requirements of the Sex Offender Registration Act, to verify compliance with the requirements of Public Act 94-163 and Public Act 94-752, or to verify compliance with applicable terms of probation, parole, or mandatory supervised release. (Section 2-110(a-5) of the Act) Reasonable access under this provision shall not interfere with the identified offender's medical or psychiatric care.

2) The facility staff shall meet with local law enforcement officials to discuss the need for and to develop, if needed, policies and procedures to address the presence of facility residents who are registered sex offenders or are serving a term of parole, mandatory supervised release or probation for a felony offense, including compliance with Section 340.1380 of this Part.

3) Every licensed facility shall provide to every prospective and current resident and resident's guardian, and to every facility employee, a written notice, prescribed by the Department, advising the resident, guardian, or employee of his or her right to ask whether any residents of the facility are identified offenders. The facility shall confirm whether identified offenders are residing in the facility.

A) The notice shall also be prominently posted within every licensed facility.

B) The notice shall include a statement that information regarding registered sex offenders may be obtained from the Illinois State Police website, www.isp.state.il.us, and that information regarding persons serving terms of parole or mandatory supervised release may be obtained from the Illinois Department of Corrections website, www.idoc.state.il.us. (Section 2-216 of the Act)

4) If the identified offender is on probation, parole, or mandatory supervised release, the facility shall contact the resident's probation or parole officer, acknowledge the terms of release, update contact information with the probation or parole office, and maintain updated contact information in the resident's record. The record must also include the resident's criminal history record.
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Facilities shall maintain written documentation of compliance with Section 340.1305 of this Part.

Facilities shall annually complete all of the steps required in subsection (fg) of this Section for identified offenders. This requirement does not apply to residents who have not been discharged from the facility during the previous 12 months.

For current residents who are identified offenders, the facility shall review the security measures listed in the Identified Offender Report and Recommendation Criminal History Analysis Report provided by the Department of State Police.

Upon admission of an identified offender to a facility or a decision to retain an identified offender in a facility, the facility, in consultation with the medical director and law enforcement, shall specifically address the resident's needs in an individualized plan of care.

The facility shall incorporate the Identified Offender Report and Recommendation Criminal History Analysis Report into the identified offender's care plan. (Section 2-201.6(f) of the Act)

If the identified offender is a convicted (see 720 ILCS 150/2) or registered (see 730 ILCS 150/3) sex offender or if the Identified Offender Report and Recommendation Criminal History Analysis conducted pursuant to Section 2-201.6(a) of the Act reveals that the identified offender poses a significant risk of harm to others within the facility, the offender shall be required to have his or her own room within the facility subject to the rights of married residents under Section 2-108(e) of the Act. (Section 2-201.6(d) of the Act)

The facility's reliance on the Identified Offender Report and Recommendation Criminal History Analysis Report prepared pursuant to Section 2-201.6(a)(4) of the Act shall not relieve or indemnify in any manner the facility's liability or responsibility with regard to the identified offender or other facility residents.

The facility shall evaluate care plans at least quarterly for identified offenders for appropriateness and effectiveness of the portions specific to the identified offense and shall document such review. The facility shall modify the care plan if
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necessary in response to this evaluation. The facility remains responsible for continuously evaluating the identified offender and for making any changes in the care plan that are necessary to ensure the safety of residents.

Incident reports shall be submitted to the Division of Long-Term Care Field Operations in the Department's Office of Health Care Regulation in compliance with Section 340.1330 of this Part. The facility shall review its placement determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility shall identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 340.1470 of this Part.

The facility shall notify the appropriate local law enforcement agency, the Illinois Prisoner Review Board, or the Department of Corrections of the incident and whether it involved substance abuse, aggressive behavior, or inappropriate sexual behavior that would necessitate relocation of that resident.

The facility shall develop procedures for implementing changes in resident care and facility policies when the resident no longer meets the definition of identified offender.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 340.1316 Discharge Planning for Identified Offenders

a) If, based on the security measures listed in the Identified Offender Report and Recommendation Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 340.1470 of this Part. (Section 2-201.6(g) of the Act)

b) All discharges and transfers shall be pursuant to in accordance with Section 340.1470 of this Part.
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c) When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.

d) A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:

1) The facility's inability to meet the needs of the resident, based on Section 340.1315 of this Part and subsection (a) of this Section;

2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or

3) The physical safety of the resident, other residents, the facility staff, or facility visitors.

e) Discharge planning shall be included as part of the plan of care developed in accordance with Section 340.1315(k).

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 340.1317 Transfer of an Identified Offender

a) If, based on the security measures listed in the Identified Offender Report and Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 340.1470 of this Part. (Section 2-201.6(g) of the Act)

b) All discharges and transfers shall be pursuant to accordance with Section 340.1470 of this Part.

c) When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility must notify the Department and the receiving facility that the individual is an identified offender before making the transfer.
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d) This notification shall include all of the documentation required under Section 340.1315 of this Part and subsection (a) of this Section, and the transferring facility shall provide this information to the receiving facility to complete the discharge planning.

e) If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:

1) The mittimus and any pre-sentence investigation reports;

2) The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];

3) Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];

4) Reports of disciplinary infractions and dispositions;

5) Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and

6) The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)

f) The information required by this Section shall be provided upon transfer.

Information compiled concerning an identified offender shall not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.
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(Source: Amended at 35 Ill. Reg. _____, effective ____________)

Section 340.1351  Whistleblower Protection

a) For the purposes of this Section, "retaliatory action" means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms and conditions of employment of any employee of a facility that is taken in retaliation for the employee's involvement in a protected activity as set forth in Section 3-810 of the Act and this Section 340.1351. (Section 3-810(a) of the Act)

b) A facility shall not take any retaliatory action against an employee of the facility, including a nursing home administrator, because the employee does any of the following:

   1) Discloses or threatens to disclose to a supervisor or to a public body an activity, inaction, policy, or practice implemented by a facility that the employee reasonably believes is in violation of a law, rule, or regulation.

   2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by a nursing home administrator.

   3) Assists or participates in a proceeding to enforce the provisions of the Act and this Part. (Section 3-810(b) of the Act)

c) A violation of the Act and this Section may be established only upon a finding that the employee of the facility engaged in conduct described in subsection (b) of Section 3-810 of the Act and this Section 340.1351 and this conduct was a contributing factor in the retaliatory action alleged by the employee. There is no violation of this Section, however, if the facility demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct. (Section 3-810(c) of the Act)

d) The employee of the facility may be awarded all remedies necessary to make the employee whole and to prevent future violations of this Section. Remedies imposed by the court may include, but are not limited to, all of the following:

   1) Reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position;
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2) Two times the amount of back pay;

3) Interest on the back pay;

4) Reinstatement of full fringe benefits and seniority rights; and

5) Payment of reasonable costs and attorney's fees. (Section 3-810(d) of the Act)

(Source: Added at 35 Ill. Reg. _____, effective ____________)

SUBPART C: RESIDENT RIGHTS

Section 340.1470 Transfer or Discharge

a) A resident may be voluntary discharged from a facility after he or she gives the administrator, a physician, or a nurse of the facility written notice of his or her desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his or her guardian or if the resident is a minor, his or her parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being. (Section 2-111 of the Act)

b) A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:

1) for medical reasons;

2) for the resident's physical safety;

3) for the physical safety of other residents, the facility staff or facility visitors; or

4) for either late payment or nonpayment for the resident's stay, except as prohibited by Titles XVIII and XIX of the federal Social Security Act. For purposes of this Section, "Late Payment" means non-receipt of payment after submission of a bill. If payment is not received within 45 days after
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submission of a bill, the facility may send a notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of the Act and subsection (e) of this Section, that the responsible party has the right to pay the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings. This subsection (b) does not apply to those residents whose care is provided under the Illinois Public Aid Code. (Section 3-401 of the Act)

c) A facility participating in the Medical Assistance Program is prohibited from failing or refusing to retain as a resident any person because he or she is a recipient of, or an applicant for, the Medical Assistance Program under Article V of the Illinois Public Aid Code. For the purposes of Section 401.1 of the Act, this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling 10 days or less following a hospital admission. (Section 3-401.1(a-10) of the Act) The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the 10-day period. (Section 3-401.1(a) of the Act)

d) Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under Section 3-408 of the Act and subsection (j) of this Section and by a minimum written notice of 21 days, except in one of the following instances: The 21-day requirement shall not apply in any of the following instances:

1) When an emergency transfer or discharge is ordered by the resident's attending physician because of the resident's health care needs; (Section 3-402(a) of the Act)

2) When the transfer or discharge is mandated by the physical safety of other residents, the facility staff, or facility visitors as documented in the clinical record. The Department shall be notified prior to any such involuntary transfer or discharge. The Department will immediately offer transfer, or
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discharge and relocation assistance to residents transferred or discharged under this subsection (d), and the Department may place relocation teams as provided in Section 3-419 of the Act; or (Section 3-402(b) of the Act)

3) When an identified offender is within the provisional admission period defined in Section 1-120.3 of the Act and Section 340.1000 of this Part. If the Identified Offender Report and Recommendation prepared under Section 2-201.6 of the Act shows that the identified offender poses a serious threat or danger to the physical safety of other residents, the facility staff, or facility visitors in the admitting facility, and the facility determines that it is unable to provide a safe environment for the other residents, the facility staff, or facility visitors, the facility shall transfer or discharge the identified offender within 3 days after its receipt of the Identified Offender Report and Recommendation. (Section 3-402(c) of the Act)

e) For transfer or discharge made under subsection (d), the notice of transfer or discharge shall be made as soon as practicable before the transfer or discharge. The notice required by Section 3-402 of the Act and subsection (d) of this Section shall be on a form prescribed by the Department and shall contain all of the following:

1) The stated reason for the proposed transfer or discharge; (Section 3-403(a) of the Act)

2) The effective date of the proposed transfer or discharge; (Section 3-403(b) of the Act)

3) A statement in not less than 12-point type, which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within 10 ten days after receiving this notice. If you request a hearing, it will be held not later than 10 ten days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions,
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call the Department of Public Health at the telephone number listed below."; (Section 3-403(c) of the Act)

4) A hearing request form, together with a postage paid, preaddressed envelope to the Department; and (Section 3-403(d) of the Act)

5) The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge. (Section 3-403(e) of the Act)

f) A request for a hearing made under Section 3-403 of the Act and subsection (e) of this Section shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-404 of the Act)

g) A copy of the notice required by Section 3-402 of the Act and subsection (d) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Healthcare and Family Services Public Aid. (Section 3-405 of the Act)

h) When the basis for an involuntary transfer or discharge is the result of an action by the Department of Healthcare and Family Services Public Aid with respect to a recipient of Title XIX and a hearing request is filed with the Department of Healthcare and Family Services Public Aid, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Healthcare and Family Services Public Aid or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility. (Section 3-406 of the Act)

i) When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (Section 3-407 of the Act)

j) The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the
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resident's placement, maintenance, and care in the facility. The explanation and discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions. This summary shall be made a part of the resident's clinical record. (Section 3-408 of the Act)

k) The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)

l) A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his or her parent shall have the opportunity to file a request for a hearing with the Department within 10 days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)

m) The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Healthcare and Family ServicesPublic Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than 10 days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request. (Section 3-411 of the Act)

n) The hearing before the Department provided under Section 3-411 of the Act and subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 of the Act through 3-712 of the Act. In determining whether a transfer or discharge is authorized, the burden of proof in this hearing rests on the person requesting the transfer or discharge. (Section 3-412 of the Act)

o) If the Department determines that a transfer or discharge is authorized under Section 3-401 of the Act and subsection (b) of this Section, the resident shall not be required to leave the facility before the 34th day following receipt of the notice required under Section 3-402 of the Act and subsection (c) of this Section, or the 10th day following receipt of the Department's decision, whichever is later, unless a condition which would have allowed transfer or discharge in less than 21 days as described under Section 3-402 of the Act and subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-413 of the Act)
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p) The Department of Healthcare and Family Services shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by Section 3-402 of the Act and subsection (c) of this Section. (Section 3-414 of the Act)

q) Any owner of a facility licensed under the Act and this Part shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than 10% of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. (Section 3-423 of the Act)

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART D: HEALTH SERVICES

Section 340.1505 Medical, Nursing and Restorative Services

a) Comprehensive resident care plan. A facility, with the participation of the resident and the resident's guardian or representative, as applicable, must develop and implement a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing, and mental and psychosocial needs that are identified in the resident's comprehensive assessment, which allow the resident to attain or maintain the highest practicable level of independent functioning, and provide for discharge planning to the least restrictive setting based on the resident’s care needs. The assessment shall be developed with the active participation of the resident and the resident’s guardian or representative, as applicable. (Section 3-202.2a of the Act)

b) The facility must provide the necessary care and services to attain or
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maintain the highest practicable physical, mental, and psychosocial well-being of the resident, in accordance with each resident's comprehensive resident care assessment and plan of care. Adequate and properly supervised nursing care shall be provided to each resident to meet the total nursing care needs of the resident.

1) The licensed nurse in charge of the restorative/rehabilitative nursing program shall have successfully completed a course or other training program that includes at least 60 hours of classroom/lab training in restorative/rehabilitative nursing as evidenced by a transcript, certificate, diploma, or other written documentation from an accredited school or recognized accrediting agency such as a State or National organization of nursing or a state licensing authority. This person may be the Director of Nursing Services, Assistant Director of Nursing Services or another nurse designated by the Director of Nursing Services to be in charge of the restorative/rehabilitative nursing program.

2) All nursing personnel shall assist and encourage residents so that a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable. All nursing personnel shall assist and encourage residents so that a resident with a limited range of motion receives appropriate treatment and services to increase range of motion and/or prevent further decrease in range of motion.

3) All nursing personnel shall assist and encourage residents so that a resident who is incontinent of bowel and/or bladder receives the appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible. All nursing personnel shall assist residents so that a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary.

4) All nursing personnel shall assist and encourage residents so that a resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's abilities to bathe, dress, and groom; transfer and ambulate; toilet; eat; and use speech,
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language or other functional communication systems. A resident who is unable to carry out activities of daily living shall receive the services necessary to maintain good nutrition, grooming, and personal hygiene.

5) All nursing personnel shall assist and encourage residents with ambulation and safe transfer activities as necessary in an effort to help them retain or maintain their highest practicable level of functioning.

c) Each direct care-giving staff shall review and be knowledgeable about his or her residents' respective resident care plan.

d) Pursuant to subsection (a), general nursing care shall include at a minimum the following and shall be practiced on a 24-hour, seven-day-a-week basis:

1) Medications, including oral, rectal, hypodermic, intravenous, and intramuscular, shall be properly administered.

2) All treatments and procedures shall be administered as ordered by the physician.

3) Objective observations of changes in a resident's conditions, including mental and emotional changes, as a means for analyzing and determining care required and the need for further medical evaluation and treatment shall be made by nursing staff and recorded in the resident's medical record.

e) A regular program to prevent and treat pressure sores, heat rashes or other skin breakdown shall be practiced on a 24-hour, seven-day-a-week basis so that a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that the pressure sores were unavoidable. A resident having pressure sores shall receive treatment and services to promote healing, prevent infection, and prevent new pressure sores from developing.

f) If physical therapy, occupational therapy, speech therapy or any other specialized rehabilitative service is offered, it shall be provided by, or supervised by, a qualified professional in that specialty and upon the written order of the physician.
1) In addition to the provision of direct services, any such qualified professional personnel shall be used as consultants to the total restorative program and shall assist with resident evaluation, resident care planning, and inservice education.

2) Appropriate records shall be maintained by these personnel. Direct service to individual residents shall be documented on the individual clinical record as set forth in Section 340.1800(e) of this Part. A summary of program consultation and recommendations shall be documented.

All necessary precautions shall be taken to assure that the resident's environment remains as free of accident hazards as possible. All nursing personnel shall evaluate residents to see that each resident receives adequate supervision and assistance to prevent accidents.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 340.1575 Care and Treatment of Sexual Assault Survivors

a) For the purposes of this Section, the following definitions shall apply:

1) Ambulance Provider – an individual or entity that owns and operates a business or service using ambulances or emergency medical services vehicles to transport emergency patients.

2) Sexual Assault – an act of nonconsensual sexual conduct or sexual penetration, as defined in Section 12-12 of the Criminal Code of 1961 including, without limitation, acts prohibited under Sections 12-13 through 12-16 of the Criminal Code of 1961.

b) The facility shall adhere to the following protocol for the care and treatment of residents who are suspected of having been sexually assaulted in a long term care facility or elsewhere (Section 3-808 of the Act):

1) Notify local law enforcement pursuant to the requirements of Section 340.1830;

2) Call an ambulance provider;
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3) Move the survivor, as quickly as reasonably possible, to a closed environment to ensure privacy while waiting for emergency and law enforcement personnel to arrive. The facility shall ensure the welfare and privacy of the survivor, including the use of code to avoid embarrassment; and

4) Offer to call a friend or family member and a sexual assault crisis advocate, when available, to accompany the survivor.

c) The facility shall take all reasonable steps to preserve evidence of the alleged sexual assault, including encouraging the survivor not to change clothes or bathe, if he or she has not done so since the sexual assault.

d) The facility shall notify the Department and draft a descriptive summary of the alleged sexual assault pursuant to the requirements of Section 340.1330.

(Source: Added at 35 Ill. Reg. ______, effective _____________)

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1) Heading of the Part: Issuance of Licenses

2) Code Citation: 92 Ill. Adm. Code 1030

3) Section Number: Proposed Action:
   1030.92 Amendment

4) Statutory Authority: 625 ILCS 5/6-113(a), 625 ILCS 5/6-521

5) A Complete Description of the Subjects and Issues Involved: The Department, as a result of a Federal Motor Carrier Safety Administration (FMCSA) audit of the Illinois' CDL program, is required to implement new federal CDL license restrictions and discontinue the use of state specific restrictions in this Part. This requirement is in accordance with the Federal Motor Carrier Safety Regulations (FMCSR) 49 CFR 384.204.

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: The rulemaking will not create or enlarge a State mandate.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Text of the prepared amendments is posted on the Secretary of State's website, www.sos.il.us/departments/index/home as part of the Illinois Register. Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after publication of this Notice to:
NOTICE OF PROPOSED AMENDMENTS

Jennifer Egizii
Office of the Secretary of State
Driver Services Department
2701 South Dirksen Parkway
Springfield, Illinois 62723
217/557-4462

13) Initial Regulatory Flexibility Analysis:

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

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

C) Types of Professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: the need for this rulemaking was not anticipated at the time the agendas were prepared.

The full text of the Proposed Amendments begins on the next page:
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**NOTICE OF PROPOSED AMENDMENTS**

**TITLE 92: TRANSPORTATION**  
**CHAPTER II: SECRETARY OF STATE**

**PART 1030**  
**ISSUANCE OF LICENSES**

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1030.93 Restricted Local Licenses
1030.94 Duplicate or Corrected Driver's License or Instruction Permit
1030.95 Consular Licenses (Repealed)
1030.96 Seasonal Restricted Commercial Driver's License
1030.97 Invalidation of a Driver's License, Permit and/or Driving Privilege
1030.98 School Bus Commercial Driver's License or Instruction Permit
1030.100 Anatomical Gift Donor (Repealed)
1030.110 Emergency Medical Information Card
1030.115 Change-of-Address
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1030.APPENDIX A Questions Asked of a Driver's License Applicant
1030.APPENDIX B Acceptable Identification Documents


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Section 1030.92 Restrictions

a) A driver services facility representative shall have the authority to determine license restrictions. No restriction shall be added until the driving test is given unless the restriction is due to a vision or hearing defect.

b) If a change in a person's physical and/or visual condition is discovered by a facility representative, the representative has the authority to add, delete or change the restrictions.

c) A Type B restriction requires corrective eye lenses. This restriction is added when a person needs corrective eye lenses to meet visual acuity standards as provided in Section 1030.70. This restriction includes eye glasses and contact lenses in one or both eyes, pursuant to Section 1030.75.

d) A Type C restriction requires the driver to use one or more mechanical aids (e.g., hand operated brake, gearshift extension, shoulder harness, or foot operated steering wheel) to assist with the proper and safe operation of the vehicle.

e) A Type D restriction requires the driver to use one or more prosthetic aids (e.g., artificial legs, artificial hands, hook on right or left arm, or brace on each leg) while operating a motor vehicle.

f) A Type E restriction requires automatic transmission. An automatic transmission
NOTICE OF PROPOSED AMENDMENTS

restriction is added when a driver is unable to operate a standard shift vehicle due to the minimal use of one or both arms and/or legs.

g) A Type F restriction requires left and right outside rearview mirrors when a driver is hearing impaired, has a monocular visual acuity reading of 20/100 or worse in either eye, requires a right outside rearview mirror because of problems turning the head while backing, cannot meet the peripheral vision requirements of Section 1030.70(a), and/or takes the road test in a right hand-driven vehicle with the steering wheel on the right side. A driver may be restricted to both left and right rearview mirrors if minimum peripheral standards are met by the use of only one eye in accordance with Sections 1030.70 and 1030.75.

h) A Type G restriction requires the driver to drive only in the daylight. This restriction is added when a driver has binocular visual acuity that does not meet the 20/40 minimum in accordance with Section 1030.70(a), but is not worse than 20/70. People who want to drive utilizing a non-standard lens arrangement pursuant to Section 1030.75 are restricted to daylight driving only.

i) A Type J restriction with appropriate numerical indicators includes other restrictions not listed in this Section. These Type J restrictions and numerical indicators are as follows:

1) J01 Driver has been issued an Illinois Medical Restriction Card, which must be carried in addition to a valid Illinois driver's license/permit.

2) J02 Driver authorized to operate a religious organization bus within classification, as provided in IVC Section 6-106.2.

3) J03 Driver authorized to operate a religious organization bus or van within Class D only. The driver took the religious organization bus test in a Class D vehicle, but may hold a Class A, B or C license.

4) J04 Driver authorized to operate a religious organization bus or van within Class C or a lesser classification vehicle only. The driver took the religious organization bus test in a Class C vehicle, but may hold a Class A or B license.
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5) J05 Driver authorized to operate a senior citizen transportation vehicle within classification. The driver operates a vehicle that is utilized solely for the purpose of providing transportation for senior citizens, as provided in IVC Section 6-106.3.

6) J06 Driver authorized to operate a senior citizen transportation vehicle within Class D only. The driver took the senior citizen transportation vehicle test in a Class D vehicle, but may hold a Class A, B or C license.

7) J07 Driver authorized to operate a senior citizen transportation vehicle within written Class C vehicle, or a lesser classification vehicle only. The driver took the senior citizen transportation vehicle test in a Class C vehicle, but may hold a Class A or B license.

8) J08 Driver authorized to operate a commuter van in a for-profit ridesharing arrangement within classification, as provided in IVC Section 6-106.4.

9) J09 Driver who is 16 or 17 years of age authorized to operate either Class L motor-driven cycles or Class M motorcycles, as provided in IVC Section 6-103(2).

10) J10 Driver restricted to the operation of a vehicle with a GVWR of 16,000 pounds or less.

11) J11 Indicates the driver took the road test on a three-wheel motorcycle (Class M) or three-wheel motor-driven cycle (Class L) and is restricted to a three-wheel cycle of the proper class.

12) J12 Driver authorized to operate Class B or lesser classification vehicle for the passenger endorsement.

13) J13 Driver authorized to operate Class C classification vehicle for the passenger endorsement.

14) J14 Restricted to the use of a non-standard lens arrangement pursuant to Section 1030.75 when operating a motor vehicle. (Lens arrangement may be designed for monocular or binocular vision.)
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1345) J15 Special Restrictions – An applicant may have special restrictions applied specifically to the vehicle the applicant is operating at the time a road test is being administered by a facility examiner. These special restrictions may apply only when the applicant is operating that particular motor vehicle. This J15 restriction only applies to variations of C, D or E restrictions. To remove a special restriction or to operate another motor vehicle would require the applicant to be administered another road test in the new vehicle.

1416) J16 Moped Pedalcycle – Only – Authorizes an applicant holding a Class L license to operate a moped pedalcycle only.

1547) J17 Authorizes a person holding a Class L or M license to operate a motorcycle or motor driven cycle with rear wheel extensions while maintaining a single front wheel.

1648) J33 Driver authorized to operate a Class D vehicle using a non-standard lens arrangement, pursuant to Section 1030.75, during nighttime hours.

19) J48 Allows a person to use commercial privileges only for driving school buses to transport students for school-related activities.

1720) J50 Farm waived non-CDL (Class A only) – Allows farmers or a member of the farmer's family who is 21 years of age or older and has completed all of the applicable exams (core, combination, air brake, and all three parts of the road test) to drive a farm waived non-CDL (Class A only) vehicle. Those eligible may operate the truck/tractor semi-trailer to transport farm products, equipment or supplies to or from a farm, if used within 150 air miles of the farm, and not used in the operations of a common or contract carrier.

1824) J71 No photo or signature – out of state at renewal – license issued to driver who is temporarily absent from State of Illinois at expiration date of his/her driver's license.

1922) J72 No photo or signature – out of country at renewal – license issued to driver who is temporarily residing outside the United States of
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America at the expiration date of his/her driver's license.

2023) J73 No photo or signature – military or military dependent – license issued at the expiration of the driver's license of the licensee, spouse and dependent children who are living with the licensee while on active duty serving in the Armed Forces of the United States outside the State of Illinois.

2124) J74 Military deferral card issued at the expiration of the driver's license to extend the expiration while in the military of the licensee, spouse and dependent children who are living with the licensee while on active duty serving in the Armed Forces of the United States outside the State of Illinois.

2225) J75 No photo or signature – administrative approval license to driver who having his/her photograph taken is against his/her religious convictions or has a serious facial disfigurement.

2326) J88 Deaf/Hard of Hearing – requires alternative forms of communication.

2427) J99 This restriction appears on the license if more than two J restrictions are placed on the driver.

j) A Type K restriction indicates the driver is authorized to operate a commercial motor vehicle intrastate only.

k) A Type L restriction indicates that the person is not authorized to operate vehicles equipped with air brakes.

l) A Type M restriction indicates P endorsement only valid in a Class B or lesser classification vehicle.

m) A Type N restriction indicates P endorsement only valid in a Class C or lesser classification vehicle.

n) An applicant who wants to appeal a type of restriction that has been added to a driver's license, depending on the type of restriction, shall:
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1) For Type B, C, D, E, F, G, J01, or any other medical restriction that has been added to the driver's license pursuant to the restrictions contained in subsection (i), follow the manner prescribed by this Part.

2) For any other types of restrictions that have been added to the driver's license pursuant to this Section, appeal to the Department of Administrative Hearings pursuant to IVC Section 2-118.

3) Further review of all restrictions shall be conducted by the courts pursuant to the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Amended at 35 Ill. Reg. ______, effective ____________)
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) **Heading of the Part:** Licensing Standards for Day Care Homes

2) **Code Citation:** 89 Ill. Adm. Code 406

3) **Section Numbers:**

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4) **Statutory Authority:** Child Care Act of 1969 [225 ILCS 10], the Child Product Safety Act [430 ILCS 125], and the Abused and Neglected Child Reporting Act [325 ILCS 5/3]

5) **Effective Date of Amendments:** December 15, 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:** 33 Ill. Reg. 16895; December 18, 2009

10) **Has JCAR issued a Statement of Objection to these amendments?** No

11) **Differences between proposal and final version:** In addition to editing and formatting corrections, the following amendments were made:
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In Section 406.4, the requirement of 15 hours of pre-service training for initial applicants now states that it must include training on the topics of sudden infant death syndrome, shaken baby syndrome and Department-approved mandated reporter training.

In Section 406.9, the required date of a high school diploma for new applicants was changed from September 1, 2010 to January 1, 2011.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: In addition to formatting and grammatical corrections, the Department is amending Part 406 as follows:

**Section 406.2** Add the definition of "Substantiated violation" as mentioned in Section 406.24.

**Section 406.4** Requires 15 hours of pre-service training for new applicants. Fire safety prevention inspections shall be done by the Office of the State Fire Marshal for multi-level or unusual or complex homes; for single-floor homes the inspections shall be done by a trained licensing representative. Clarifies the provisions concerning when a new license is required.

**Section 406.5** Clarifies language for how a renewal application is to be considered timely and sufficient. Adds the requirement that prior to license renewal, the licensee must complete the required 15 hours of annual training. The licensing representative shall review the day care home's emergency, tornado and hazard protection plans prior to renewal. Fire safety prevention inspections are to be done by the Office of the State Fire Marshal or a trained licensing representative.

**Section 406.7** Adds provisions requiring completion of 15 hours of pre-service training and fire safety prevention inspections prior to issuing a permit.

**Section 406.8** Requires smoke detectors to be installed in each room where children nap or sleep as required by State Fire Code, and not just within 15 feet of these rooms. Requires that the home be maintained in good repair and provide a safe environment for
children. In addition, it requires a range of ambient temperatures during summer and winter months. Improves fire safety standards in the home as required by the State Fire Code and the Department's agreement with the Office of the State Fire Marshal.

**Section 406.9** Requires that after January 2011, new day care home applicants shall have a high school diploma or equivalent certificate.

**Section 406.12** Amended to comply with the Missing Children Records Act [325 ILCS 50/5] that requires that the parent or guardian of a child to be enrolled for the first time in a day care home provide a certified copy of the child's birth certificate within 30 days after enrollment. The licensee shall report to the Illinois State Police any request concerning flagged records or knowledge as to the whereabouts of any missing child.

**Section 406.16** Deletes the obsolete date to start complying with 89 Il. Adm. Code 386 (Children's Product Safety).

**Section 406.24** Requires that substantiated licensing violations be posted in a prominent area of the home until all violations have been corrected.

**Section Appendix D** Adds the pre-service requirement mentioned in previous Sections. Sets the time frame for completing the 15 hours of in-service training to the period of the licensing year instead of calendar year and deletes the requirement to prorate hours of training in each calendar year.

**Section Appendix E** Revises the List of Items for Fire Safety Prevention Inspection in accordance with revised provisions in Part 406.

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

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

Telephone: 217/524-1983  
TDD: 217/524-3715  
E-Mail: cfpolicy@idcfs.state.il.us
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

The full text of the Adopted Amendments begins on the next page:
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TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 406
LICENSING STANDARDS FOR DAY CARE HOMES

Section
406.1 Purpose
406.2 Definitions
406.3 Effective Date of Standards (Repealed)
406.4 Application for License
406.5 Application for Renewal of License
406.6 Provisions Pertaining to the License
406.7 Provisions Pertaining to Permits
406.8 General Requirements for Day Care Homes
406.9 Characteristics and Qualifications of the Day Care Family
406.10 Qualifications for Assistants
406.11 Substitutes
406.12 Admission and Discharge Procedures
406.13 Number and Ages of Children Served
406.14 Health, Medical Care and Safety
406.15 Discipline of Children
406.16 Activity Requirements
406.17 Nutrition and Meals
406.18 Transportation of Children By Day Care Home
406.19 Swimming
406.20 Children with Special Needs
406.21 School Age Children
406.22 Children Under 30 Months of Age
406.23 Night Care
406.24 Records and Reports
406.25 Confidentiality of Records and Information
406.26 Cooperation with the Department
406.27 Severability of This Part
406.APPENDIX A Meal Pattern Chart for Children 0 to 12 Months of Age
406.APPENDIX B Meal Pattern Chart for Children Over One Year of Age
406.APPENDIX C Background of Abuse, Neglect, or Criminal History Which May Prevent Licensure or Employment in a Day Care Home
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406.APPENDIX D  Pre-Service and In-Service Training
406.APPENDIX E  List of Items for Fire Prevention Inspection

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10], the Children’s Product Safety Act [430 ILCS 125], Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/3], Sections 1 and 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/1 and 2], and Section 5 of The Missing Children Records Act [325 ILCS 50/5].


Section 406.2 Definitions

"Access to children" means an employee's job duties require that the employee be present in a licensed child care facility during the hours that children are present in the facility. In addition, any person who is permitted to be alone outside the visual or auditory supervision of facility staff with children receiving care in a licensed child care facility is subject to the background check requirements of this Part.

"Adult" means any person who is 18 years of age or older.

"Applicant" means a person living in the residence to be licensed who will be the primary caregiver in the day care home.

"Approved smoke detector" or "detector" means a smoke detector of the ionization or photoelectric type which complies with all the requirements of the rules and regulations of the Illinois State Fire Marshal. (Section 2 of the
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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Facilities Requiring Smoke Detectors Act [425 ILCS 10/2])

"Assistant" or "child care assistant" means a person (whether a volunteer or an employee) who assists a licensed home caregiver in the operation of the day care home.

"Attendance" means the total number of children under the age of 12 present at any one time.

"Authorized representative of the Department" means the licensing representative or any person acting on behalf of the Director of the Department.

"Background check" means:

- a criminal history check via fingerprints of persons age 18 and over that are submitted to the Illinois State Police and the Federal Bureau of Investigation (FBI) for comparison to their criminal history records, as appropriate; and

- a check of the Statewide Automated Child Welfare Information System (SACWIS) and other state child protection systems, as appropriate, to determine whether an individual is currently alleged or has been indicated as a perpetrator of child abuse or neglect; and

- a check of the Statewide Child Sex Offender Registry.

"Basement" means the story below the street floor where occupants must traverse a full set of stairs, 8 or more risers, to access the street floor.

"CANTS" means the Child Abuse and Neglect Tracking System operated and maintained by the Department. This system is being replaced by the Statewide Automated Child Welfare Information System (SACWIS).

"Caregiver" means the individual directly responsible for child care.

"Children with special needs" means children who exhibit one or more of the following characteristics, confirmed by clinical evaluation:

- Visual impairment: the child's visual impairment is such that development
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to full potential without special services cannot be achieved.

- **Hearing impairment**: the child's residual hearing is not sufficient to enable him or her to understand the spoken word and to develop language, thus causing extreme deprivation in learning and communication, or a hearing loss is exhibited that prevents full awareness of environmental sounds and spoken language, limiting normal language acquisition and learning.

- **Physical or health impairment**: the child exhibits a physical or health impairment that requires adaptation of the physical plant.

- **Speech and/or language impairment**: the child exhibits deviations of speech and/or language processes that are outside the range of acceptable variation within a given environment and prevent full social development.

- **Learning disability**: the child exhibits one or more deficits in the essential processes of perception, conceptualization, language, memory, attention, impulse control or motor function.

- **Behavioral disability**: the child exhibits an effective disability and/or maladaptive behavior that significantly interferes with learning and/or social functioning.

- **Mental impairment**: the child's intellectual development, mental capacity, and/or adaptive behavior are markedly delayed. Such mental impairment may be mild, moderate, severe or profound.

"Consultants" means those individuals providing technical assistance or advice regarding any aspect of the operation of the day care home.

"Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. (Section 2-5 of the Criminal Code of 1961 [720 ILCS 5/2-5])

"Corporal punishment" means hitting, spanking, swatting, beating, shaking, pinching, excessive exercise, exposure to extreme temperatures, and other measures that produce physical pain.
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"Cot" means a comfortable, safe and child-sized alternative bed made of resilient, fire retardant, sanitizable fabric that is on legs or otherwise above the floor and can be stored to allow for air flow.

"Day care homes" means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The maximum of 12 children includes the family's natural, foster, or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household. (Section 2.18 of the Child Care Act of 1969 [225 ILCS 10/2.18])

"Department" means the Illinois Department of Children and Family Services. (Section 2.02 of the Child Care Act of 1969)

"Discipline" means the process of helping children to develop inner controls so that they can manage their own behavior in socially acceptable ways.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents (e.g., heat). In the child care environment, a solution of ¼ cup household liquid chlorine bleach added to one gallon of water (or one tablespoon bleach to one quart water) and prepared fresh daily is an effective disinfectant for environmental surfaces and other objects. A weaker solution of 1 tablespoon bleach to 1 gallon of cool water is effective for use on toys, eating utensils, etc. Commercial products may also be used.

"Family home" or "family residence" means the location or portion of a location where the applicant and his or her family reside, and may include basements and attics. It does not include other structures that are separate from the home but are considered part of the overall premises, such as adjacent apartments, unattached basements in multi-unit buildings, unattached garages, and other unattached buildings.

"Ground level" means that a child can step directly from the exit onto the ground, a sidewalk, a patio, or any surface that is not above or below the ground.

"Guardian" means the guardian of the person of a minor. (Section 2.03 of the Child Care Act of 1969 [225 ILCS 10/2.03])

"Infant" means a child through 12 months of age.
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"Initial background check" means fingerprints have been obtained for a criminal history check, and the individual has cleared a check of the Statewide Automated Child Welfare Information System (SACWIS) and the Illinois Sex Offender Registry.

"License" means a document issued by the Department that authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act of 1969.

"License applicant", for purposes of background checks, means the operator or persons with direct responsibility for daily operation of the facility to be licensed. (Section 4.4 of the Child Care Act of 1969 [225 ILCS 10/4.4])

"License study" means the review of an application for license, on-site visits, interviews, and the collection and review of supporting documents to determine compliance with the Child Care Act of 1969 and the standards prescribed by this Part.

"Licensed capacity" means the number of children the Department has determined the day care home can care for at any one time in addition to any children living in the home who are under the age of 12 years. Children age 12 and over on the premises are not considered in determining licensed capacity.

"Licensing representative" means a person authorized by the Department under Section 5 of the Child Care Act of 1969 to examine facilities for licensure.

"Licensing year" often called the anniversary year, means the period of time from the date a day care home license is issued until the same date of the following year.

"Member of the household" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, or receiving mail at the household address, or using identification with the household address.

"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority therein or another state or municipal authority that is punishable solely as a petty offense. (See Section 6-601 of the Illinois
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Driver Licensing Law [625 ILCS 5/6-601].

"Parents", as used in this Part, means those persons assuming legal responsibility for care and protection of the child on a 24-hour basis; includes guardian or legal custodian.

"Permit" means a one-time only document issued by the Department of Children and Family Services for a 2-month period to allow the individuals to become eligible for a license.

"Person" means any individual, group of persons, agency, association, or organization.

"Persons subject to background checks" means:

• the operators of the child care facility;
• all current and conditional employees of the child care facility;
• any person who is used to replace or supplement staff; and
• any person who has access to children, as defined in this Section.

If the child care facility operates in a family home, the license applicants and all members of the household age 13 and over are subject to background checks, as appropriate, even if these members of the household are not usually present in the home during the hours the child care facility is in operation.

"Physician" means a person licensed to practice medicine in the State of Illinois or a contiguous state.

"Premises" means the location of the day care home wherein the family resides and includes the attached yard, garage, basement and any other outbuildings.

"Preschool age" means children under 5 years of age and children 5 years old who do not attend full day kindergarten.

"Program" means all activities provided for the children during their hours of attendance in the day care home.
"Protected exit from a basement" means an exit that is separated from the remainder of the day care home by barriers (such as walls, floors, or solid doors) providing one-hour fire resistance. The separation must be designed to limit the spread of fire and restrict the movement of smoke.

"Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, sibling, great-grandparent, great-uncle, great-aunt, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin. (Section 2.04 of the Child Care Act of 1969 [225 ILCS 10/2.04])

"SACWIS" means the Statewide Automated Child Welfare Information System operated by the Illinois Department of Children and Family Services that is replacing the Child Abuse and Neglect Tracking System (CANTS).

"School age" means children from 6 to 12 years of age and 5 year olds who are in full-day kindergarten.

"Special use areas" means areas of the home that may not be included in the measurements of the area used for child care. Special use areas include, but are not limited to, laundry rooms, furnace rooms, bathrooms, hazardous areas, and areas off-limits to children.

"Story" means that level of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

"Street floor" means a story or floor level accessible from the street or from outside a building at ground level, with the floor level at the main entrance located not more than 4 risers above or below the ground level and arranged and utilized to qualify as the main floor.

"Substantiated violation" means that the licensing representative has determined, during a licensing complaint investigation or a monitoring or renewal visit, that the licensee has violated a licensing standard of this Part or the Child Care Act.

"Supervising agency", as used in this Part, means a licensed child welfare agency, a licensed day care agency, or the Department.
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"Swimming pool" means any natural or artificial basin of water intended for public swimming or recreational bathing that exceeds 2'6" in depth as specified in the Illinois Swimming Pool and Bathing Beach Code (77 Ill. Adm. Code 820). The term includes bathing beaches and pools at private clubs, health clubs, or private residences when used for children enrolled in a child care facility.

"Wading pool" means any natural or artificial basin of water less than 2'6" in depth that is intended for recreational bathing, water play or similar activity. The term includes recessed areas less than 2'6" in depth in swimming pools that are designated primarily for children.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.4 Application for License

a) A complete application shall be filed with the Department of Children and Family Services by the supervising agency on forms prescribed and provided by the Department.

b) **Contents of Application**

1) A complete application shall include:

   A1) a completed, signed and dated Application for Home License;

   B2) a list of persons who will be working in the day care home, including any substitutes and assistants, and members of the household age 13 and over;

   C3) completed, signed and dated authorizations to conduct the background check for the applicants, each employee or person used to replace or supplement staff, and each member of the household age 13 and over;

   D4) a completed, signed and dated Child Support Certification form;

   E5) the names, addresses and telephone numbers of at least 3 adults not related to the applicants, nor living in the household, who can attest to their character and suitability to provide child care; and
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F6) a written hazard protection plan identifying potential hazards within the home and outdoor area accessible to the children in care. The written plan shall address the specific hazards and the adult supervision and physical means required to minimize the risks to children. Conditions to be addressed include, but are not limited to, traffic construction, bodies of water accessible to the children, open stairwells, and neighborhood dogs; and-

G) a copy of high school diploma or equivalent certificate.

2) For initial applications submitted after January 1, 2011, the applicant, who shall be the primary caretaker, shall have completed, not more than one year prior to the application date, at least 15 hours of pre-service training listed in Appendix D, which shall include the following topics:

A) Sudden Infant Death Syndrome (SIDS);
B) Shaken Baby Syndrome; and
C) Department approved Mandated Reporter training.

c) The supervising agency shall study each day care home under its supervision before recommending issuance of a license. The licensing study shall be conducted by a licensing representative and shall be reviewed and approved by his/her supervisor. Supervisory approval indicates recommendation for license or denial of a license and compliance or non-compliance with the standards prescribed by this Part. The study shall be in writing and shall be signed by the licensing representative performing the study and by his/her supervisor. A license may not be recommended without the receipt of at least 3 positive, written references, and a written study signed by the licensing representative and supervisor. The applicant shall receive a copy of the results of the on-site compliance review upon request.

d) Fire Safety Inspection

1) The Department shall request the Office of the State Fire Marshal (OSFM) to perform a fire safety inspection of homes when an initial application is being considered for licensure and when care will be provided on other
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than grade level and for homes in multi-housing units and submit a written recommendation of the inspection to the supervising agency of the day care home and to the applicant;

2) The fire safety inspection on single floor homes, at grade with no unusual or complex code considerations, shall be completed following the list of items for fire safety inspection in Appendix E by a licensing representative trained by OSFM to conduct that fire prevention inspection;

3) Prior to the Department issuance of a permit or a license, the day care home shall have written approval by OSFM or staff trained by OSFM, indicating the home meets fire safety requirements.

1) In order for a home to be licensed as a day care home, a fire inspection report (Appendix E) must be completed using forms provided by the Department indicating that the home is safe.

2) The fire inspection may be conducted by the licensing representative conducting the licensure study, staff of the private agency that supervises the day care home, the local fire department or the Office of the State Fire Marshal.

A) For each new application received, the Department's Central Office of Licensing will notify the local fire prevention authorities and give them the opportunity to inspect the home applying for licensure and make recommendations on its suitability based on the standards prescribed by this Part.

B) Department licensing staff and staff of child welfare agencies supervising licensed day care homes shall keep a list of fire departments that receive this notification. For license applicants residing in areas not covered by a participating fire department, Department staff or staff of the supervising agency shall notify the Office of the State Fire Marshal.

C) Once notified, the fire prevention authority shall have 15 working days to return its recommendations to the Department or supervising agency. Any comments received by the Department or supervising agency shall be considered in the licensing study.
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Applicants must comply with all requirements of this Part, whether or not recommendations are received.

D) If the local fire prevention authority or OSFM does not conduct a fire inspection, the fire inspection report shall be completed by the Department licensing representative or staff of the private agency supervising the home.

3) All fire inspection reports must be completed on forms prescribed and provided by the Department.

e4) Licensed day care homes that fail to comply with all applicable local, municipal and State regulations may be prohibited from operating.

fe) New Applications

1) A new application shall be filed when any of the following occurs:

A4) When an application for a license has been withdrawn, surrendered or denied and the applicant or licensee or agency seeks to reapply;

B2) When there is a failure to submit a completed application within 14 days after a change of change in the name of the licensee, the location of the day care home, or the supervising agency;

3) When there is a change in the status of joint licensees, such as separation, divorce or death; or

C4) Not sooner than 12 months after the Department has revoked or refused to renew a license, after the previous license has been surrendered with cause, or refused to issue a full license to a permit holder, and a new license is sought.

2) For the application to be considered timely and sufficient, a new application shall be completed, signed by the licensee and submitted to the supervising agency within 30 days after the following changes:
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A) When there is a change in the name of the licensee, the supervising agency or the legal status from a social security number to Federal Employer Identification Number (FEIN); or

B) When there is a change in the status of joint licensees, such as separation, divorce or death.

f) Written approval of the supervising agency is required to effect changes in the license capacity or the ages of children served in conformance with the requirements of Section 406.13. Approval will not be granted unless the day care home's current operation is in compliance with the standards prescribed by this Part.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.5 Application for Renewal of License

a) Application forms for license renewal shall be mailed to day care home licensees by the supervising agency 6 months prior to the expiration date of the license.

b) The completed application shall be signed by the licensees and submitted to the supervising agency at least 3 months prior to expiration of the current license, in order no later than 3 months from the date mailed to licensees to be considered timely and sufficient.

c) When a licensed day care home seeks to change its name, location, or supervising agency, a new application reflecting the changes must be completed, signed by the licensees and submitted to the supervising agency 30 days prior to the effective date of the changes for the application to be considered timely and sufficient.

d) When a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any activity of a continuing nature and the Department fails to render a decision on the application for renewal of the license prior to the expiration date of the license, the existing license shall continue in full force and effect for up to 30 days until the final Department decision has been made. The Department may further extend the period in which such decision must be made in individual cases for up 30 days, if good cause is shown. [225 ILCS 10/5(d)]
e) Prior to renewal, the licensee shall be current with the annual 15 hours of required training in accordance with Appendix D.

f) At the time of license renewal, the supervising agency shall review the fire emergency, tornado/severe weather emergency, and hazard protection written plans. Any revision or enhancement shall be part of the licensing renewal process. Licensed homes that do not have a written hazard plan (see Section 406.4(b)(6)) shall develop a plan and submit it to the supervising agency prior to renewal.

g) Fire Safety Inspection

1) Fire safety inspections of homes licensed for multi-housing unit or single family dwelling in which care will be provided on other than grade level shall be completed by OSFM or its designee;

2) Fire safety inspection of homes licensed for a single floor with no unusual or complex code considerations shall be completed by a licensing representative trained by OSFM;

3) The fire safety inspection shall be conducted in accordance with the requirements of Appendix E.

1) In order for a home to be licensed as a day care home, a fire inspection report (Appendix E) must be completed using forms provided by the Department indicating that the home is safe.

2) The fire inspection may be conducted by the licensing representative conducting the licensure study, staff of the private agency that supervises the day care home, the local fire department or the Office of the State Fire Marshal.

A) For each renewal application received, the Department's Central Office of Licensing will notify the local fire prevention authorities and give them the opportunity to inspect the home applying for licensure and make recommendations on its suitability based on the standards prescribed by this Part.
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B) Department licensing staff and staff of child welfare agencies supervising licensed day care homes shall keep a list of fire departments that receive this notification. For license applicants residing in areas not covered by a participating fire department, Department staff or staff of the supervising agency shall notify the Office of the State Fire Marshal.

C) Once notified, the fire prevention authority shall have 15 working days to return its recommendations to the Department or supervising agency. Any comments received by the Department or supervising agency shall be considered in the licensing study. Applicants must comply with all requirements of this Part, whether or not recommendations are received.

D) If the local fire prevention authority or OSFM does not conduct a fire inspection, the fire inspection report shall be completed by the Department licensing representative or staff of the private agency supervising the home.

3) All fire inspection reports must be completed on forms prescribed and provided by the Department.

4) Licensed day care homes that fail to comply with all applicable local, municipal and State regulations may be prohibited from operating.

hf) Upon receipt of the application for license renewal, the supervising agency shall conduct a license study in order to determine that the day care home continues to meet licensing standards. The licensing study shall be in writing and shall be reviewed and signed by the licensing supervisor and the licensing representative performing the study. The licensees shall receive a copy of the results of the on-site compliance review upon request.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.6 Provisions Pertaining to the License

a) The licensees shall be a primary caregiver or caregivers who reside in the family home and meet the requirements of this Part. If there are joint licensees, they must be related and both must live in the family home.
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b) A day care home license is valid for 3 years unless revoked by the Department or voluntarily surrendered by the licensee.

c) The number and age of children under age 12 cared for in the day care home at any one time shall be in compliance with provision in Section 406.13. *Increases in the license capacity or the ages of children served shall be with written approval of the supervising agency.*

d) The age limits specified on the license shall be observed, unless the licensee has submitted a transition plan to the Department in accordance with Section 406.13(h) in order to keep members of a sibling group together and the Department has approved the plan.

e) Child care may be provided only in those areas specified on the license.

f) The license is valid only for the family residence of the licensee and shall not be transferred to another person or other legal entity.

g) The license shall not be valid for a name or location other than the name and location on the license.

h) No day care home provider shall be licensed to provide care for more than 18 hours within a 24-hour period.

i) The license shall be prominently displayed in the home at all times.

j) There shall be no fee or charge for the license.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.7 Provisions Pertaining to Permits

a) A permit shall not be issued until:

1) The application for license has been completed and signed by the applicants and submitted to the Department;

2) The background checks required by Section 406.9 have been completed
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and the results of the background check have been received for the operator of the day care home;

3) Medical reports as required in Section 406.24(jh) have been received by the Department for all caregivers and assistants;

4) The applicant who is the primary caregiver has been certified in first-aid, the Heimlich maneuver, and infant/child cardiopulmonary resuscitation (CPR) in accordance with Section 406.9(nk);

5) For initial applications submitted after January 1, 2011, the applicant for license shall have completed, not more than one year prior to application, at least 15 hours of pre-service training listed in Appendix D, which shall include the following topics:

A) Sudden Infant Death Syndrome (SIDS);

B) Shaken Baby Syndrome; and

C) Department approved Mandated Reporter training;

6) Character references have been requested, and at least two favorable references have been received and the results of the background check have been received for the operator of the day care home;

7) A personal visit to the home by a licensing representative has been completed. The purpose of this visit is to determine compliance with all the licensing requirements except the requirements for remaining character references, medical examination reports, and well water tests compliance that may be complied with within the 2 month period covered by the permit. However, when well water tests are required, applicants must agree to boil all drinking and cooking water and to provide only bottled water for children under 15 months of age until the test results are received; and

8) A written plan has been submitted to the licensing representative that indicates that requirements for a license shall be met within the 2 month permit period; and.
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9) A written fire safety inspection and approval of the home has been completed in accordance with Section 406.4(d) of this Part.

b) A permit shall not be issued retroactively.

c) Permits shall not be transferred to another person or other legal entity.

d) Permits shall not be valid for a name or location different from the name and location shown on the issued permit.

e) Permits shall not be renewable.

f) A current permit shall be prominently displayed in the day care home at all times while the home is operating under a permit.

g) A license shall be issued at any time within the 2 month period covered by the permit provided that the day care home achieves and maintains compliance with the Department's licensing standards.

h) The day care home shall adhere to the provisions or restrictions specified on the permit.

i) There shall be no fee or charge for the permit.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.8 General Requirements for Day Care Homes

a) The physical facilities of the home, both indoors and outdoors, shall meet the following requirements for safety to children.

1) The home shall have a first aid kit consisting of adhesive bandages, scissors, thermometer, non-permeable gloves, Poison Control Center telephone number (1-800-222-1222 or 1-800-942-5969), sterile gauze pads, adhesive tape, tweezers and mild soap.

2) The kitchen shall be equipped with a readily accessible and operable fire extinguisher rated for Class A, B, and C fires and a flashlight in working order.
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3) All electrical outlets that are in areas used by the day care children within reach of children under 5 years of age shall have protective coverings. There shall be no exposed or uninsulated wiring.

4) The home shall be equipped with a minimum of one approved smoke detector in operating condition on every floor level, including basements and occupied attics.

A) A smoke detector in operating condition shall be within each room 15 feet of rooms where children nap or sleep. The detector shall be installed on the ceiling and at least 6 inches from any wall, or on a wall located between 4 and 6 inches from the ceiling. In addition, there shall be at least one detector at the beginning and end of each separate corridor or hallway 200 feet or more in length in any occupied story.

B) In any facility constructed after December 31, 1987, or which undergoes substantial remodeling of its structure or wiring system after that date, the smoke detectors shall be permanently wired into the structure's AC power line, and, if more than one detector is required to be installed, the detectors shall be wired so that the activation of one detector will activate all the detectors in the facility unit. For purposes of this subsection (a)(4), "substantial remodeling" represents more than 15% of the replacement cost of the day care home.

C) Compliance with any applicable federal, State or local law, rule or building code which requires the installation and maintenance of smoke detectors in a manner different from this Section, but providing a level of safety for occupants which is equal to or greater than that provided by this Section, shall be deemed to be compliance with this Section. (Section 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/2])

5) Carbon Monoxide Detector

A) A home that has an attached garage and/or relies on combustion of fossil fuel for heating, ventilation, or hot water shall be equipped...
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with a minimum of one approved carbon monoxide detector in operating condition within 15 feet of rooms where children nap or sleep.

B) The carbon monoxide detector may be combined with smoke detector devices, provided that the combined unit complies with subsection (a)(4) and this subsection (a)(5). [430 ILCS 135/10]

6) The home and indoor space shall be maintained in good repair and shall provide a safe, comfortable environment for the children.

7) A draft-free temperature of 65°F to 75°F shall be maintained during the winter months or heating season. For infants and toddlers, a temperature of 68°F to 82°F shall be maintained during the summer or air-conditioning months. When the temperature in the home exceeds 78°F, measures shall be taken to cool the children. Temperatures shall be measured at least 3 feet above the floor.

8) Fixed space heaters, fireplaces, radiators, and other heating sources in areas occupied by children shall be separated by partitions or a sturdy barrier to prevent contact. Portable space heaters may not be used in a day care home during the hours that child care is provided.

9) Facilities in which a wood-burning stove or fireplace has been installed and which is used during the hours that child care is provided shall provide a written plan of how the stove or fireplace will be used and what actions will be taken to ensure the children's safety when in use.

10) When the basement area may be used for child care, 2 exits shall be provided.

A) At least one exit shall be a basement exit via a door directly to the outside (without traversing any other level of the home) or a protected exit from a basement via a door or stairway that allows unobstructed travel directly to the outside of the building at street or ground level. The stairway may not be more than 8 feet high.

B) A second exit may be a window.
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i) The window shall be operable from the inside without the use of tools and provide a clear opening not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area.

ii) If the window is used as a second exit, the bottom of the window opening shall be no more than 44 inches above the floor.

iii) When the bottom of the window opening used as a second exit is greater than 24 inches above the floor, there shall be a permanently affixed, sturdy ramp or stairs located below the window to allow speedy access in the event of an emergency.

C) If the basement area does not meet these exiting requirements, the basement may be used for child care only with the prior written approval of the Office of the State Fire Marshal or local agencies authorized by the Office of the State Fire Marshal to conduct inspections on its behalf.

118) All walls and surfaces shall be free from chipped or peeling paint, carpeting, fabric or plastic products. Flammable or combustible artwork attached to the walls shall not exceed 20% of the wall area.

129) Walls of rooms that children use shall be maintained free of lead paint.

1349) Furniture and equipment shall be kept in safe repair.

144) First aid supplies, medication, cleaning materials, poisons, sharp scissors, plastic bags, sharp knives, cigarettes, matches, lighters, flammable liquids, and other hazardous materials shall be stored in places inaccessible to children. Hazardous items for infants and toddlers also include items that can cause choking, including but not limited to: coins, balloons, safety pins, marbles, Styrofoam™ and similar products, and sponge, soft rubber or soft plastic toys that can be bitten or broken into small pieces.

1542) Tools and gardening equipment shall be stored in locked cabinets, if possible, or in places inaccessible to all children.
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16(4) Handguns are prohibited on the premises of the day care home except in the possession of peace officers or other adults who must possess a handgun as a condition of employment and who reside in the day care home.

17(4) Any firearm, other than a handgun in the possession of a peace officer or other person as provided in subsection (a)(16(4)), shall be kept in a disassembled state, without ammunition, in locked storage in a closet, cabinet, or other locked storage facility inaccessible to children.

A) Ammunition for such firearms shall be kept in locked storage separate from that of the disassembled firearms, inaccessible to children.

B(4) The operator of the home shall notify the parents or guardian of any child accepted for care that firearms and ammunition are stored on the premises. The operator shall also notify the parents or guardian that such firearms and ammunition are locked in storage inaccessible to children. (Section 7 of the Act) Such notification need not disclose the location where the firearms and ammunition are stored.

18(4) There shall be written plans for fire and tornado emergencies, immediate evacuation in case of emergency. Caregivers and assistants in the home shall be familiar with these plans.

A) The fire evacuation plan shall identify the exits from each area used for child care and shall specify the evacuation route.

B) The fire evacuation plan shall identify a safe assembly area outside of the home. It shall also identify a near-by indoor location for post-evacuation holding if needed.

C) The fire evacuation plan shall require that the home be evacuated before calling the local emergency number 911.
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D) The written tornado plan shall specify what actions will be taken in the event of tornado or other severe weather warning, including designation of those areas of the home to be used as the safe spots.

19) Monthly fire drills shall be conducted for the purpose of removing children from the home as quickly as possible.

20) Tornado drills shall be conducted monthly for the purpose of getting children accustomed to moving to a position of safety in the event of a tornado. Records shall be maintained of the dates and times required drills are conducted.

21) Fire and tornado drills shall be recorded on forms prescribed by the Department and maintained on file for a period of 3 years.

22) Escape routes from the home shall be designed and maintained for swift and safe exiting in the event of an emergency.

A) All corridors and escape routes from the home shall be kept clear of obstructions.

B) Dead-end paths or corridors within the home shall be a maximum of 20 feet in length.

C) All escape routes from the home shall have operable lighting. The lighting shall be activated during any hours of operation when natural lighting is reduced to a level that prohibits visibility within the escape route.

D) Bathroom doors in areas accessible to day care children shall allow a caregiver to open the door from outside of the bathroom if necessary.

E) All closet doors accessible to children shall be able to be opened from inside of the closet without the use of a key.

F) There shall be no more than 2 releasing devices (door knobs, hand-operated deadbolts, thumb-turn locks, etc.) on any exit door or exit window.
G) Exit doors and exit windows shall be operable without the use of a key, a tool or special knowledge to open for exit to the outside.

H17) Exit doors and exit windows shall be kept clear of equipment and debris at all times.

23) The licensee shall inspect the home daily, prior to arrival of children, ensuring that escape routes are clear and that exit doors and exit windows are operable. A log of these daily inspections shall be maintained for at least one year, and shall be available for review. The log shall reflect, at minimum, the date and time of each inspection and the full name of the person who conducted it.

24) The licensee shall hold monthly fire inspections of the day care home.

2518) In the event of a fire, the day care home shall be evacuated immediately and the children's safety insured before calling the fire department or attempting to combat the fire.

2619) There shall be an operable telephone available on the premises of the licensee. The number of the Poison Control Center (1-800-222-1222 or 1-800-942-5969) and other emergency numbers shall be posted in an area that is readily available in an emergency.

2720) All in-ground swimming pools located in areas accessible to children shall be fenced. The fence shall be at least 5 feet in height and secured by a locked gate. Day care homes that have a license or a permit on April 1, 2001 and are in compliance with the requirement for a 3½ foot fence shall be considered in compliance with the fence requirement.

2821) All above-ground pools shall have non-climbable sidewalls that are at least 4 feet high or shall be enclosed with a 5 foot fence that is at least 36 inches away from the pool's side wall and secured with a locked gate. When the pool is not in use, steps shall be removed from the pool or otherwise protected to insure the pool cannot be accessed. Day care homes that have a license or a permit on April 1, 2001 and are in compliance with the requirement for a 3½ foot fence shall be considered in compliance with the fence requirement.
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2922) Portable wading pools shall be emptied daily and disinfected before being air-dried.

3023) All hot tubs shall have securely locked covers or otherwise be inaccessible to children.

3124) Free hanging cords on blinds, shades and drapes shall be tied or otherwise kept out of reach of children.

25) Carbon Monoxide Detector

A) A home that has an attached garage and/or relies on combustion of fossil fuel for heating, ventilation, or hot water shall be equipped with a minimum of one approved carbon monoxide detector in operating condition within 15 feet of rooms where children nap or sleep.

B) The carbon monoxide detector may be combined with smoke detector devices, provided that the combined unit complies with subsection (a)(4) and this subsection (a)(25). [430 ILCS 135/10]

b) The kitchen shall be clean, equipped for the preservation, storage, preparation and serving of food, and reasonably safe from hazards.

c) Garbage and refuse containers used to discard diapering supplies, food products or disposable meal service supplies in areas for child care shall be disinfected daily unless plastic liners are used and disposed of daily.

d) A safe and sanitary water supply shall be maintained. If a private water supply is used instead of an approved public water supply, the applicant shall supply written records of current test results indicating the water supply is safe for drinking. New test results must be provided prior to renewal of licensure/licensing. If nitrate content exceeds 10 parts per million, bottled water must be used for children under 15 months of age.

e) Hot and cold running water shall be provided. When children under age 10 or who are developmentally disabled are cared for, the maximum hot water temperature from all faucets of sinks designated for children washing hands shall
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be no more than 115º Fahrenheit. Caregivers shall always test the hot water before allowing children less than 5 years of age to use the water.

f) Insect and rodent control shall be maintained.

1) All outside doors except those with operable self-closing devices, operable windows, and other openings used for ventilation shall be screened.

2) Chemicals for insect and rodent control shall be applied in minimum amounts and shall not be used when children are present. Over-the-counter products may be used only according to package instructions. Commercial chemicals, if used, shall be applied by a licensed pest control operator and shall meet all standards of the Department of Public Health (Structural Pest Control Code, 77 Ill. Adm. Code 830). A record of any pesticides used shall be maintained.

g) Healthy household pets that present no danger to children are permitted.

1) A licensed veterinarian shall certify that the animals are free of diseases that could endanger the children's health and that dogs and cats have been inoculated for rabies.

2) If certification is not available, animals shall be confined at all times in an area inaccessible to children.

3) There shall be careful supervision of children who are permitted to handle and care for the animals.

4) Immediate treatment shall be available to any child who is bitten or scratched by an animal.

5) The presence of monkeys, ferrets, turtles, iguanas, psittacine birds (birds of the parrot family) or any wild or dangerous animal is prohibited in areas accessible to children during the hours the day care home is in operation. Wild and dangerous animals include, but are not limited to, venomous and constricting snakes, undomesticated cats and dogs, raccoons, and other animals determined to be dangerous by local public health authorities.

h) Indoor space shall consist of a clean, comfortable environment for children.
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1) The day care home shall be well-ventilated, free from observable hazards, properly lighted and heated, and free of fire hazards.

2) The dwelling shall be kept clean, sanitary, and in good repair.

3) There shall be provision for isolating a child who becomes ill or who is suspected of having a contagious disease.

4) When used for child care, floors shall have protective covering such as, but not limited to, tile, carpet, linoleum. Paint or sealer alone is not acceptable as a protective covering.

5) When children under 30 months of age are in care, stairs leading to second levels, attics or basements shall be fitted with a sturdy gate, door or other barrier to prevent the children's access to stairs without adult supervision. Such a barrier shall be moveable enough so as not to impede evacuation, if necessary.

i) The licensee shall identify those areas in the home used for child care. The identified areas minus any special use areas shall be measured to calculate the square footage available for child care. When the licensed capacity of the home exceeds 8 children, there shall be:

1) A minimum of 35 square feet of floor space per each child in care, and

2) An additional 20 square feet of floor space for each child under 30 months of age when the play area is the same as the sleep area. However, if portable bedding is used for napping, then removed, the licensing representative shall approve the use of only 35 square feet of space for each child if the applicant/licensee has adequate storage for the bedding materials and the bedding materials are removed before and after naptime.

j) No person may smoke tobacco in any area of the day care home in which day care services are being provided to children, while those children are present on the premises. In addition, no person may smoke tobacco while providing transportation, in either an open or enclosed motor vehicle, to children who are receiving child care services. Nothing in this subsection prohibits smoking in the home in the presence of a person's own children or in the presence of children to
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whom day care services are not then being provided. [225 ILCS 10/5.5]

k) There shall be safe outdoor space for active play.

1) Space shall be provided for play in yards, nearby parks or playgrounds under adult supervision.

2) Space shall be protected by physical means (e.g., fence, tree line, chairs, ropes, etc.) against all water hazards, including, but not limited to, pools, ponds, standing water, ornamental bodies of water, and retention ponds, regardless of the depth of the water, and by adult caregiver supervision at times when children in care are present. Other hazards, such as, but not limited to, heavy traffic and construction, shall be inaccessible to children in care through a physical barrier and adult supervision.

3) Play areas shall be well drained and safely maintained.

4) All pieces of outdoor equipment used by children 5 years of age and younger on the day care home premises that is purchased or installed on or after April 1, 2001 shall meet the following standards to guard against entrapment or situations that may cause strangulation.

A) Openings in exercise rings shall be smaller than 4½ inches or larger than 9 inches in diameter.

B) There shall be no openings in a play structure with a dimension between 3½ inches and 9 inches (except for exercise rings). Side railings, stairs and other locations that a child might slip or climb through shall be checked for appropriate dimensions.

C) Distances between vertical slats or poles, where used, must be 3½ inches or less (to prevent head entrapment).

D) No opening shall form an angle of less than 55 degrees unless one leg of the angle is horizontal or slopes downward.

E) No openings shall be between ⅜ inch and one inch in size (to prevent finger entrapment).
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5) The use of a trampoline by children in care is prohibited.

6) Children shall be closely supervised by the caregiver when public parks or playgrounds are used for play, during play and while traveling to and from the area.

7) Supervision shall be provided during outdoor play by caregivers who meet the requirements of Section 406.9.

l) Operation of other business on the premises must not interfere with the care of children.

m) A day care home may not house bedridden or chronically ill persons except by permission of the supervising agency. The supervising agency shall grant such permission unless the person has a contagious or a reportable communicable disease or requires care that adversely affects the ability of the caregiver to supervise children.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.9 Characteristics and Qualifications of the Day Care Family

a) No individual may receive a license from the Department when the applicant, a member of the household age 13 and over, or any individual who has access to the children cared for in a day care home, or any employee of the day care home, has not authorized the background check required by 89 Ill. Adm. Code 385 (Background Checks) and been cleared in accordance with the requirements of Part 385.

b) Employees subject to background checks may begin employment on a conditional basis while awaiting the results of the background check. Such employees may not be alone with children until the results of the initial background check have been received.

c) Persons who have been the perpetrator of certain types of child abuse or neglect or who have committed or attempted to commit certain crimes may not be licensed to operate a day care home, be a member of the household of a family home in which a day care home operates, or be an employee or volunteer in a day care home. These allegations/criminal convictions are listed in Appendix C of
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this Part.

d) Day care homes shall be responsible for ensuring that persons subject to criminal background checks make themselves available for fingerprinting when scheduled by the Department or its authorized representatives. Failure of a person subject to criminal background checks to appear for scheduled fingerprinting may result in the denial of a license application or refusal to renew or revocation of an existing license unless the child care facility can demonstrate that it took reasonable measures to insure cooperation with the fingerprinting process. Adequate cause for failure to appear for fingerprinting includes, but is not limited to:

1) death in the family of the person;
2) serious illness of the person or illness in the person's immediate family; or
3) weather or transportation emergencies.

e) As a condition of licensure, each licensee or license applicant must certify under penalty of perjury that he or she is current or not more than 30 days delinquent in complying with a child support order. Failure to so certify may result in a denial of the license application, refusal to renew the license, or revocation of the license. (Section 10-65(c) of the Illinois Administrative Procedure Act [5 ILCS 100/10-65(c)])

f) If the licensees or license applicants acknowledge that they are more than 30 days delinquent in complying with an order for child support or, upon completion of the background check, the licensees or license applicants are found to be delinquent despite their certification, the Department shall deny the application for license, refuse to renew the license, or revoke the license unless the licensees or license applicants arrange for payment of past due and current child support and pay child support in accordance with that agreement.

g) Members of the household who have contact with the children in care shall treat them with respect, courtesy, and patience.

h) The caregiver is responsible for the day-to-day operation of the day care home in accordance with the standards prescribed in this Part.

i) The licensee shall be present in the home when day care children are in
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attendance unless a qualified substitute caregiver per Section 406.11 is present.

j) The licensee and other adult members of the household in contact with day care children shall be stable, law abiding, responsible, mature individuals.

k) The caregivers in a day care home shall be at least 18 years of age.

l) Caregivers licensed after January 1, 2011 shall have proof of a high school diploma or equivalent certificate.

m) The caregivers and all members of the household shall provide medical evidence as required by Section 406.24(ih) that they are free of reportable communicable disease, and, in the case of caregivers, free of physical or mental conditions that could interfere with the child care responsibilities.

n) The licensee who is the primary caregiver shall be certified in first aid, the Heimlich maneuver and infant/child cardiopulmonary resuscitation (CPR) by the American Red Cross, the American Heart Association or other entity approved by the Illinois Department of Public Health.

o) During the hours of operation of the day care home, there shall be at least one person on the premises certified in first aid, the Heimlich maneuver and infant/child cardiopulmonary resuscitation (CPR) by the American Red Cross or the American Heart Association, or other entity approved by the Illinois Department of Public Health. The caregivers shall have on file current certificates attesting to the training.

p) The caregiver shall successfully complete a Department approved basic training course of 6 or more clock hours in providing care to children with disabilities. Refer to Appendix D for basic course requirements. The licensee shall have on file a certificate attesting to the successful completion of the training.

1) Current license holders shall complete this training within 36 months from November 15, 2003.

2) New licensee shall complete this training within 36 months from the issue date of the initial license.

3) A licensee who has completed training prior to November 15, 2003 may
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have that training approved as meeting the provisions of this Section. A certificate of training completion and a description of the course content must be submitted to the Department for approval.

Through interaction with the licensing representative, children, parents or guardian of children in care and operation of the day care home in accordance with standards prescribed by this Part, caregivers shall exhibit competence in the following specific areas:

1) Knowledge of basic hygiene, safety, and nutrition.
2) The ability to relate comfortably with parents and to communicate with them on differences in caregiving methods, values, and goals.
3) The ability to communicate with children.
4) The ability to set realistic controls for children and to enforce these without harshness or physical abuse.
5) Knowledge of the child's need to explore and manipulate and the willingness to provide and maintain a home where children can enjoy living and learning.
6) Using developmentally appropriate behavior management techniques that do not constitute corporal punishment of children.

The caregivers may not work or be employed outside the home during the hours that child care is being provided. Outside employment during hours that child care is not being provided shall not interfere with child care.

The caregiver shall be awake, alert, and able to supervise the children when providing care, except as allowed by Section 406.23(h), night care.

The caregivers shall complete 15 clock hours of in-service training per licensing calendar year in accordance with the requirements in Appendix D.

1) Such training may be derived from programs offered by any of the entities identified in Appendix D.
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2) Courses or workshops to meet this requirement include, but are not limited to, those listed in Appendix D.

3) The records of the day care home shall document the training in which the caregiver has participated, and these records shall be available for review by the Department.

4) Caregivers obtaining clock hours in excess of the required 15 clock hours per year may apply up to 5 clock hours to the next year's training requirements.

Licensees or applicants shall not provide false or misleading information regarding their compliance with the applicable regulations.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.12 Admission and Discharge Procedures

a) No child served in a day care home shall remain on the premises for more than 12 hours in any 24-hour period, unless the parent's employment schedule requires more than 12 hours of day care. Regardless of the parent's work or training schedule, at no time shall children cared for in a day care facility remain on the premises for more than 18 consecutive hours.

b) Prior to acceptance of a child for care,

1) The caregiver shall require that the parent or guardian accompany the child to the home to become acquainted with the caregiver and with the service to be provided.

2) No child under 6 years of age may be admitted to the day care home unless the health examination, complete with lead risk assessment, if the child resides in an area defined as low risk by the Illinois Department of Public Health or a screening for lead poisoning, if the child resides in an area defined as high risk by the Illinois Department of Public Health (see 77 Ill. Adm. Code 845, Lead Poisoning Prevention Code), has been completed as required by Department of Public Health rules at 77 Ill. Adm. Code 665, Child Health Examination Code.
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3) The caregiver shall require that the parent or guardian provide a certified copy of the child's birth certificate. The caregiver:

A) Shall provide a written notice to the parent or guardian of a child to be enrolled for the first time that within 30 days after enrollment the parent or guardian shall provide a certified copy of the child's birth certificate or other reliable proof of identity and age of the child.

i) The caregiver shall promptly make a copy of the certified copy and return the original certified copy to the parent or guardian.

ii) If a certified copy of the birth certificate is not available, the parent or guardian must submit a passport, visa or other governmental documentation as proof of the child's identity and age and an affidavit or notarized letter explaining the inability to produce a certified copy of the birth certificate [325 ILCS 50/5].

iii) The notice to parent or guardian shall also indicate that the caregiver is required by law to notify the Illinois State Police or local law enforcement agency if the parent or guardian fails to submit proof of the child's identity within the 30 day time frame.

B) Shall notify the Illinois State Police or local law enforcement agency of the parent's or guardian's failure to submit a certified copy of the child's birth certificate or other reliable proof of identity. The caregiver shall also notify the parent or guardian in writing that the Illinois State Police or local law enforcement has been notified as required by law and that the parent or guardian has 10 additional days to comply by submitting the required documentation. [325 ILCS 50/5]

C) Shall report to the Illinois State Police or local law enforcement agency any affidavit received which appears inaccurate or suspicious in form or content. [325 ILCS 50/5]
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D) **Shall flag the record of a child enrolled at the day care who is reported by the Illinois State Police as a missing person, and shall immediately report to the Illinois State Police any request concerning flagged records or knowledge as to the whereabouts of any missing child. [325 ILCS 50/5]**

c) The parents or guardian shall be permitted to visit the home, without prior notice, during the hours their children are in care.

d) A child shall be discharged from the facility only to the child's parents or guardian or to a person designated in writing by the parents or guardian to receive the child.

e) The caregiver shall refuse to release a child to any person, whether related or unrelated to the child, who has not been authorized, in writing, by the parents or guardian to receive the child. Persons not known to the caregiver shall be required to provide a driver's license (with photo) or photo identification card issued by the Illinois Secretary of State to establish their identity prior to a child's release to them.

f) The facility shall maintain a list of persons designated, in writing, by the parents, or guardian to whom the facility can be expected to discharge the child at least once per week. These persons, in addition to the parents or guardian, shall constitute the primary list of persons to whom the child may be released. In addition, the facility shall maintain a contingency list of persons designated, in writing, by the parents or guardian to whom the child may be released less frequently than once per week. When the child is released to a person on the contingency list, the facility shall maintain a record of the person to whom the child was released, the date and time that the child was released, and the manner that the child left the facility (whether on foot, by passenger car, by taxicab or other means of transportation).

g) Other discharge provisions of this Section notwithstanding, a child leaving the day care home to attend school shall be released in accordance with the written authorization of the parents or guardian. The authorization shall include the time that the child is to be released and the means of transportation the child is to use.

h) All day care homes shall have a written policy that explains the actions the provider will take if a parent or guardian does not retrieve, or arrange to have someone retrieve, his or her child at the designated, agreed upon time. The policy
shall consist of the provider's expectations, clearly presented to the parent or guardian, in the form of a written agreement that shall be signed by the parent or guardian, and shall include at least the following elements:

1) The consequences of not picking up the child on time, including:
   A) Amount of late fee, if any, and when those fees begin to accrue;
   B) The degree of diligence the provider will use to reach emergency contacts, e.g., number of attempted phone calls to parents and emergency contacts, requests for police assistance in finding emergency contacts; and
   C) Length of time the facility will keep the child beyond the pick-up time before contacting outside authorities, such as the child abuse hotline or police.

2) Emphasis on the importance of having up-to-date emergency contact numbers on file.

3) Acknowledgement of the provider's responsibility for the child's protection and well-being until the parent or outside authorities arrive.

4) A reminder to the day care provider that the child is not responsible for the situation. All discussions regarding these situations shall be with the parent or guardian, never the child.

i) The daily list of children in care shall be readily accessible in case of emergency evacuations and fire drills.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.16 Activity Requirements

a) The caregiver and parent shall discuss the child's health, development, behavior and activities to ensure consistency in planning for the child.

b) The daily activities shall be well-balanced and geared to the needs of the children served.
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1) The activities shall be informal, providing a family atmosphere that promotes the physical and emotional well-being of the individual.

2) Children shall be encouraged to participate in age appropriate household routines such as preparing food, setting tables, and cleaning up.

3) Regularity in routines such as, but not limited to, eating, napping, and toileting, with sufficient flexibility to respond to the needs of the individual shall be provided.

4) A balance of active and quiet play shall be provided.

5) There shall be activities, both indoors and outdoors, in which children make use of both large and small muscles.

6) There shall be a variety of chores and activities at the child's developmental level.

7) Each child's individuality shall be respected and a sense of self and development of self esteem shall be encouraged.

8) Children shall not be left unattended and supervision shall be provided at all times.

c) The materials and equipment and their arrangements and use must be appropriate to the developmental needs of the children in care. The day care home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).

1) Simple play equipment, suitable to the age and developmental needs of the children, shall be available for use indoors and outdoors.

2) Materials and toys shall be kept clean, orderly, attractive, and accessible to the children.

3) There shall be stimulating play and learning materials; these may include household items used creatively.
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4) Materials and equipment must be of sufficient quantity to provide for a variety of experiences and to appeal to the individual interests of the children under care.

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)

Section 406.24 Records and Reports

a) Records as required by this Part shall be maintained and available for review on forms supplied by the Department.

b) Information about the child and family shall be confidential as required by Section 406.25.

c) There shall be a record of identifying information as required in Section 406.12(b)(3) on each child received at the time the child is accepted into the home.

d) A medical report for each child, on forms provided by the Department, shall be maintained at the facility, dated no earlier than 6 months prior to enrollment, and signed by the examining physician, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advance practice nurse to perform health examinations, or a physician assistant who has been delegated the performance of health examinations by the supervising physician; or certified by a recognized health facility.

1) The medical report shall be valid for 2 years except that subsequent exams for school age children shall be in accordance with the Illinois School Code requirements, provided that copies of the exam are on file at the facility.

2) If a child is in a high risk group, as determined by the examining physician, a tuberculin test shall be included in the initial exam and when the child enters elementary and secondary school.

3) The reports shall indicate that the child has been immunized as required by Rules and Regulations of the Illinois Department of Public Health for immunizations. These required immunizations are poliomyelitis, measles,
rubella, diphtheria, mumps, pertussis, tetanus, hepatitis B, haemophilus influenza B, and varicella (chickenpox) or provide proof of immunity in accordance to requirements in 77 Ill. Adm. Code 695.50 of the Department of Public Health.

4) The report shall include a statement on any physical limitations.

5) Exceptions made for children who for medical reasons should not be subjected to immunizations or a tuberculin test shall be so indicated by the physician on the child's medical form.

e) There shall be signed consent forms from the parent or guardian including:

1) Permission for emergency medical care and treatment if the parent is not readily available.

2) Permission to administer medication, if applicable.

3) Permission for someone other than parent or guardian to pick up child if necessary.

4) Visits, trips or excursions off the premises.

5) Transportation provided by caregiver and caregiver assistant, if applicable.

6) Permission to use the facility's swimming pool, if applicable.

f) The caregiver shall distribute a summary of the licensing standards, provided by the Department, to the parents or guardian of each child at the time that the child is accepted for care in the home. In addition, consumer information materials provided by the Department, including, but not limited to, information on reporting and prevention of child abuse and neglect and preventing and reporting communicable disease, shall be distributed to the parents or guardian of each child cared for when designated for such distribution by the Department. Each child's record shall contain a statement signed by the child's parents or guardian, indicating that they have received a summary of licensing standards and other materials designated by the Department for such distribution.

g) When the licensed day care home is cited for one or more substantiated violations
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of licensing standards by the supervising agency, the caregiver shall prominently display in the home the list of violations and the corrective plan, on a form provided by the supervising agency. The caregiver shall keep the form posted until a licensing representative has verified in writing that every violation on that form has been corrected.

he) In accordance with the Child Care Act of 1969, a parent may request that immunizations, physical examinations, and/or medical treatment be waived on religious grounds. A request for waiver shall be in writing, signed by the parent, and kept in the child's record.

jh) Members of the household, regular substitutes, and assistants shall have a complete physical examination. The medical reports shall be submitted on forms provided by the Department.

1) The report shall be based on an examination that occurred no earlier than 6 months prior to application, with a tuberculin test to be included in the initial exam only. If the skin test is positive, a chest x-ray is required.

2) Immunizations and the tuberculin test for an infant shall be given at the discretion of the physician.

3) The caregivers and assistants shall be found free of communicable diseases and shall be physically and emotionally fit to care for young children.

ji) The medical report for caregivers, regular substitutes, and assistants shall be valid for 3 years.

kj) Evidence of freedom from communicable disease or illness may be required at any time for members of the household, regular substitutes and assistants.

lk) Suspected child abuse and/or neglect shall be reported immediately to the Child Abuse/Neglect Hotline as required by the Abused and Neglected Child Reporting Act. The telephone number for the reporting hotline is 1-800-252-2873.

ml) The licensee and each staff person shall sign a statement prescribed by the Department acknowledging his or her status as a mandated reporter of child abuse or neglect under the Abused and Neglected Child Reporting Act and
acknowledging he or she has knowledge and understanding of the reporting requirements under that Act. The statement shall be signed and dated by the staff person prior to employment, and shall be maintained by the licensee.

The supervising agency shall be notified immediately by telephone, and in writing within one week, if any of the following situations involving children occurs at the facility:

1) Accident or injury resulting in death or requiring emergency medical care;
2) A child is missing from the day care home; or
3) Notice is received of legal action against the facility.

The facility shall promptly report any known or suspected case or carrier of communicable disease to the supervising agency and to local health authorities, and shall comply with the Illinois Department of Public Health's rules for the Control of Communicable Diseases (77 Ill. Adm. Code 690).

The supervising agency shall be notified immediately by telephone, and in writing within one week, of fires or other incidents resulting in structural damage to the day care home. A supervisory visit will be conducted by the supervising agency to determine the safety of the licensed premises in conformance with the other provisions of this Part.

The licensee shall notify the supervising agency within one week, in writing, of any changes to the household composition. Changes that require notification include the addition of any new person into the home, the return of any former household member, or the departure of any household member.

The licensee shall keep a record of dates and hours worked by the substitute caregiver while the licensee is absent from the day care home per Section 406.11(a).

The licensee shall maintain records required for fire safety in accordance with Section 406.8. Fire safety records include monthly fire drill reports, monthly fire safety inspections conducted by the licensee, and the log of daily inspections by the licensee to ensure that exit routes are kept clear.
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(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)
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Section 406. APPENDIX D Pre-Service and In-Service Training

a) Entities that may provide pre-service and in-service training to meet the requirements of this Part Section 406.9(s) include, but are not limited to:

1) colleges and universities
2) child care resource and referral agencies
3) Illinois Department of Public Health or local health departments
4) Office of the State Fire Marshal or local fire department
5) Illinois Department of Children and Family Services
6) Illinois Department of Human Services
7) state or national child care or child advocacy organizations
8) national, state or local family day care home associations
9) Child and Adult Care Food Program sponsors
10) Healthy Child Care Illinois nurses
11) American Red Cross, American Heart Association and other providers of first aid and CPR training that have been approved by the Illinois Department of Public Health

b) Topics or courses to meet the in-service training requirements include, but are not limited to:

1) child care and child development
2) guidance and discipline
3) first aid and CPR
4) symptoms of common childhood illness
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5) food preparation and nutrition
6) health and sanitation
7) small business management
8) child abuse and neglect
9) working with parents and families
10) caring for children with disabilities
11) information about asthma and its management
12) SIDS education
13) service obligations under the federal Americans With Disabilities Act (ADA)
14) Shaken Baby Syndrome
15) Mandated Reporter Training

c) Pre-service and in-service training may be acquired through the following:

1) attending college or university or vocational school classes (Clock hours spent in the classroom are counted.)
2) attending conferences or workshops (Certificate or other proof of attendance, clock hours and subject matter is required.)
3) attending state or local child care association meetings when a specific training program is provided by a guest speaker or group member (Documentation of attendance, subject matter and clock hours is required.)
4) in-home training by a Child and Adult Care Food Program sponsor
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representative, nurse or other trainer (Documentation must include the topic and the clock hours.)

5) self-study materials provided by a child care resource and referral (CCR&R) agency (Certification of clock hours must be secured from the CCR&R.)

6) internet home study programs if the internet site provides documentation of use and number of clock hours

7) mandated reporter training may be acquired through the Department's website at https://www.dcfstraining.org/manrep/index.jsp

8) viewing of the approved video offered by the National Institutes of Health Back to Sleep Campaign for SIDS and sleeping position of infants

The training instructor, speaker or president of the child care organization sponsoring the training may sign the documentation of completion. The child care resource and referral (CCR&R) agency must sign and provide documentation of completion for self-study materials, and the internet site must provide documentation for home study programs.

d) Licensed providers shall complete 15 clock hours of in-service training per period of the licensing calendar year. Caregivers obtaining clock hours in excess of the required 15 clock hours per year may apply up to 5 clock hours to the next year's training requirements.

e) For newly licensed providers, required annual in-service training hours are prorated based on the month of the effective date of license.

For newly licensed providers in 2003 and thereafter

<table>
<thead>
<tr>
<th>Month of License</th>
<th>Training Hours Required</th>
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<tbody>
<tr>
<td>January</td>
<td>15 Hrs.</td>
</tr>
<tr>
<td>February</td>
<td>13 Hrs.–45 Min.</td>
</tr>
<tr>
<td>March</td>
<td>12 Hrs.–30 Min.</td>
</tr>
<tr>
<td>April</td>
<td>11 Hrs.–15 Min.</td>
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<tr>
<td>May</td>
<td>10 Hrs.</td>
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<table>
<thead>
<tr>
<th>Month</th>
<th>Time</th>
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<tbody>
<tr>
<td>June</td>
<td>8 Hrs. 45 Min.</td>
</tr>
<tr>
<td>July</td>
<td>7 Hrs. 30 Min</td>
</tr>
<tr>
<td>August</td>
<td>6 Hrs. 15 Min.</td>
</tr>
<tr>
<td>September</td>
<td>5 Hrs.</td>
</tr>
<tr>
<td>October</td>
<td>3 Hrs. 45 Min.</td>
</tr>
<tr>
<td>November</td>
<td>1 Hr. 30 Min.</td>
</tr>
<tr>
<td>December</td>
<td>1 Hr. 15 Min.</td>
</tr>
</tbody>
</table>

Courses/training approved by the Department in caring for children with disabilities must include the following components:

- Introduction to Inclusive Child Care
- Understanding Child Development in Relation to Disabilities
- Building Relationships with Families
- Preparing for and Including Young Children in the Child Care Setting
- Community Services for Young Children with Disabilities (including Early Intervention services)

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)
NOTICE OF ADOPTED AMENDMENTS

Section 406. APPENDIX E   List of Items for Fire Safety Prevention Inspection

The Department shall notify the Office of the State Fire Marshal (OSFM), local fire prevention authority in the area where the applicant resides, of the name and address of a day care home licensure applicant. Notification about a new applicant shall be on a form prescribed by the Department and shall include a space for comments and recommendations by the local fire prevention authority, the Department's or supervising agency's return address, and the following list of items shall be inspected by OSFM, or by a Department or supervising agency licensing representative trained by OSFM to conduct fire safety inspections for license renewal or annual monitoring visits:

1. The paths of escape, including doors and escape windows from the home, are kept operable and clear from obstruction (see Section 406.8(a)(22)(A))
   - Number of smoke detectors on each level of the home (see Section 406.8(a)(4))

2. Smoke detectors are provided on each level of the home (including basements and second floors even if they are not used for child care) and in any room where children are allowed to nap or sleep (see Section 406.8(a)(4)(A))
   - Smoke detectors within 15' of each sleeping area

3. All smoke detectors are less than 10 years old and functioning properly (detected by pushing the test button) (see Section 406.8(a)(4)(A))

4. Locks and deadbolts on exit doors are operable without the use of a key, tool or special knowledge to open the door from inside the home to exit to the outside (see Section 406.8(a)(22)(F))
   - Secondary means of escape provided from all levels utilized for the home (i.e., windows/doors) (see Section 406.8(a)(7))

5. Occupants shall be able to escape the home without having to activate more than 2 releasing devices (e.g., door knobs, deadbolts, thumb-turn lock) on any exit door (see Section 406.8(a)(22)(F))
   - All exits are unobstructed (see Section 406.8(a)(17))

6. Bathroom doors shall be able to be opened by a caregiver from outside the room if necessary (see Section 406.8(a)(22)(D))
   - Emergency contingency plan and properly posted emergency floor plan (see Section 406.8(a)(16))

7. Closet doors shall be able to open from inside the closet without the use of a key (see Section 406.8(a)(22)(E))
   - An available operational telephone with proper emergency numbers displayed (see Section 406.8(a)(19))
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8. Paths of escape from the home shall have operable lighting if needed (light bulbs are in place and functioning) (see Section 406.8(a)(22)(C) Proper all purpose portable fire extinguishers are functional and located in the kitchen (see Section 406.8(a)(2))

9. Protective covers for all electrical receptacles are provided in areas used by children (see Section 406.8(a)(3)) First aid kit with prescribed contents (see Section 406.8(a)(1))

10. Heating sources in spaces occupied by children is separated by partitions, screens or other means to protect children from hot surfaces and open flames (see Section 406.8(a)(8)) Displayed CPR/first aid certificate for home child care provider and assistant (if applicable) (see Section 406.9(m))

11. Carbon monoxide detectors are installed and operable in areas occupied by children (see Section 406.8(a)(5)) All electrical outlets have protective covers (see Section 406.8(a)(3))

Operating Requirements (renewal and subsequent monitoring visits)

12. There is a comprehensive written fire emergency response plan in the home (see Section 406.8(a)(18)) No exposed or damaged wiring (see Section 406.8(a)(3))

13. There are monthly tornado and fire drills conducted by the caregiver with participation by children (see Section 406.8(a)(19) and (20)) No space heaters used during hours of daycare operation (see Section 406.8(a)(5))

14. Monthly basic fire safety inspections of the home are conducted by the caregiver or staff members in the home (see Section 406.8(a)(23)) Written operations plan for the use of wood burning fireplace (if applicable) (see Section 406.8(a)(6))

15. Daily fire safety inspections are done by the caregiver to ensure that escape paths are clear and exit doors and escape windows are operable (see Section 406.8(a)(22)) All medicines, cleaning supplies and chemicals are contained in a locked cabinet (see Section 406.8(a)(11))

Additional Items for Inspection at Renewal of Licensure
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16. Corridors are clear of clothing and personal effects (see Section 406.8(a)(22)(A)) Fire drills conducted monthly (and properly posted) (see Section 406.8(a)(16))

17. Flammable and combustible artwork and teaching materials attached directly to the walls are limited to no more than 20% of the wall area (see Section 406.8(a)(11)) Tornado drills conducted monthly (see Section 406.8(a)(16))

18. Caregivers are awake and alert when children are present in the home (see Section 406.9(s)) No evidence of smoking during the hours of daycare operation (see Section 406.8(j))

19. Number of children licensed for daycare operation is prominently displayed during hours of operation (see Section 406.6(i))

20. Actual number of children present at time of inspection (see Section 406.13).

(Source: Amended at 34 Ill. Reg. 18358, effective December 15, 2010)
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

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

2) **Code Citation:** 89 Ill. Adm. Code 408

3) **Section Numbers:**

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<tr>
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4) **Statutory Authority:** Child Care Act of 1969 [225 ILCS 10], the Child Product Safety Act [430 ILCS 125], and the Abused and Neglected Child Reporting Act [325 ILCS 5/3]

5) **Effective Date of Rulemaking:** December 15, 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:** 33 Ill. Reg. 16947; December 18, 2009

10) **Has JCAR issued a Statement of Objection to these amendments?** No

11) **Differences between proposal and final version:** In addition to editing and formatting corrections, the following amendments were made:
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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In Sections 408.10 and 408.25, the requirement of 15 hours of pre-service training for initial applicants now states that it must include training topics on sudden infant death syndrome, shaken baby syndrome and Department-approved mandated reporter training.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: In addition to formatting and grammatical corrections, the Department is amending Part 406 as follows:

Section 408.5 Add the definition of "Substantiated violation" as mentioned in Section 408.120.

Section 408.10 Requires 15 hours of pre-service training for new applicants. Fire safety prevention inspections are to be done by the Office of the State Fire Marshal for multi-level or unusual or complex homes; for single-floor homes, the inspections shall be done by a trained licensing representative. Clarifies the provisions of when a new license is required.

Section 408.15 Clarifies language for how a renewal application is to be considered timely and sufficient. Adds the requirement that prior to license renewal, the licensee must complete the required 15 hours of annual training. Requires the licensing representative to review the group day care home's emergency, tornado and hazard protection plans prior to renewal. Fire safety prevention inspections are to be done by the Office of the State Fire Marshal or a trained licensing representative.

Section 408.30 Requires smoke detectors to be installed in each room where children nap or sleep as required by State Fire Code, and not just within 15 feet of these rooms. Moves forward the carbon monoxide detector provision of this Section. Requires that the home be maintained in good repair and provide a safe environment for children. In addition, it requires a range of ambient temperatures during summer and winter months. Improves fire safety standards in the home as required by the State Fire Code and the Department's agreement with the Office of the State Fire Marshal.
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Section 408.35 Amends to comply with the Smoke Free Illinois Act [PA 95-0017 and 225 ILCS 10/5.5] requiring that no person shall smoke in the home or vehicle when children are in care. Adds the conditions, similar to day care homes, of counting children who are being home schooled when considering capacity of the group day care home unless another parent or caregiver is providing the schooling apart from the day care area and the caregiver has no responsibility for the care or supervision or schooling of the children during the hours home day care is provided.

Section 408.45 Adds the provision for caregivers who obtain clock hours of training in excess of the required 15 clock hours per year that they may apply up to 5 clock hours to the next year's training requirements.

Section 408.60 Amended to comply with the Missing Children Records Act [325 ILCS 50/5] that requires that the parent or guardian of a child to be enrolled for the first time in a group day care home must provide a certified copy of the child's birth certificate within 30 days after enrollment. The licensee shall report to the Illinois State Police any request concerning flagged records or knowledge as to the whereabouts of any missing child.

Section 408.85 Deletes the obsolete date to start complying with 89 Ill. Adm. Code 386 (Children's Product Safety).

Section 408.120 Requires that substantiated licensing violations be posted in a prominent area of the home until all violations have been corrected. Fire safety and related records shall be maintained in the home for inspection.

Section Appendix G Adds the pre-service requirement mentioned in previous Sections. Sets the time frame for completing the 15 hours of in-service training to the period of the licensing year instead of calendar year and deletes the requirement to prorate hours of training in each calendar year.

Section Appendix I Revises the List of Items for Fire Safety Prevention Inspection in accordance with revised provisions in Part 408.

Information and questions regarding these adopted amendments shall be directed to:

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

NOTICE OF ADOPTED AMENDMENTS

Springfield, Illinois 62701-1498

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

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

NOTICE OF ADOPTED AMENDMENTS  

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE  

PART 408  
LICENSING STANDARDS FOR GROUP DAY CARE HOMES  

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408.APPENDIX C  Minimum Equipment and Supplies – Preschool Programs
408.APPENDIX D  Minimum Equipment and Supplies – Infant and Toddler Programs
408.APPENDIX E  Background of Abuse, Neglect, or Criminal History Which May Prevent Licensure or Employment in a Group Day Care Home
408.APPENDIX F  Early Childhood Teacher Credentialing Programs
408.APPENDIX G  Pre-Service and In-Service Training
408.APPENDIX H  Chart of Number and Ages of Children Served
408.APPENDIX I  List of Items for Fire Safety Prevention Inspection

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10], the Children's Product Safety Act [430 ILCS 125], Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/3], and Sections 1 and 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/1 and 2], and Section 5 of The Missing Children Records Act [325 ILCS 50/5].


Section 408.5 Definitions

"Access to children" means an employee's job duties require that the employee be present in a licensed child care facility during the hours that children are present in the facility. In addition, any person who is permitted to be alone outside the visual or auditory supervision of facility staff with children receiving care in a licensed child care facility is subject to the background check requirements of this Part.

"Accredited college or university" means a college or university that has been accredited by a regional or national institutional accrediting association recognized by the U.S. Department of Education or a non-governmental recognition counterpart.
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"Adult" means a person who is 18 years of age or older.

"Applicant" means a person living in the residence to be licensed who will be the primary caregiver in the group day care home.

"Approved smoke detector" or "detector" means a smoke detector of the ionization or photoelectric type which complies with all the requirements of the rules and regulations of the Illinois State Fire Marshal. (Section 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/2])

"Assistant" or "child care assistant" means a person (whether a volunteer or an employee) who assists a licensed home caregiver in the operation of the group day care home.

"Attendance" means the total number of children under the age of 12 present at any one time.

"Authorized representative of the Department" means the licensing representative or any person acting on behalf of the Director of the Department.

"Background check" means:

• a criminal history check via fingerprints of persons age 18 and over that are submitted to the Illinois State Police and the Federal Bureau of Investigation (FBI) for comparison to their criminal history records, as appropriate; and

• a check of the Statewide Automated Child Welfare Information System (SACWIS) and other state child protection systems, as appropriate, to determine whether an individual is currently alleged or has been indicated as a perpetrator of child abuse or neglect; and

• a check of the Statewide Child Sex Offender Registry.

"Basement" means the story below the street floor where occupants must traverse a full set of stairs, 8 or more risers, to access the street floor.

"CANTS" means the Child Abuse and Neglect Tracking System operated and maintained by the Department. This system is being replaced by the Statewide
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"Caregiver" means the individual directly responsible for child care.

"Children with special needs" means children who exhibit one or more of the following characteristics, confirmed by clinical evaluation:

- **Visual impairment:** the child's visual impairment is such that development to full potential without special services cannot be achieved.

- **Hearing impairment:** the child's residual hearing is not sufficient to enable him or her to understand the spoken word and to develop language, thus causing extreme deprivation in learning and communication, or a hearing loss is exhibited that prevents full awareness of environmental sounds and spoken language, limiting normal language acquisition and learning.

- **Physical or health impairment:** the child exhibits a physical or health impairment that requires adaptation of the physical plant.

- **Speech and/or language impairment:** the child exhibits deviations of speech and/or language processes that are outside the range of acceptable variation within a given environment and prevent full social development.

- **Learning disability:** the child exhibits one or more deficits in the essential processes of perception, conceptualization, language, memory, attention, impulse control or motor function.

- **Behavioral disability:** the child exhibits an effective disability and/or maladaptive behavior that significantly interferes with learning and/or social functioning.

- **Mental impairment:** the child's intellectual development, mental capacity, and/or adaptive behavior are markedly delayed. Such mental impairment may be mild, moderate, severe or profound.

"Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.  (Section 2-5 of the Criminal Code of 1961 [720 ILCS 5/2-5])
"Corporal punishment" means hitting, spanking, swatting, beating, shaking, pinching, excessive exercise, exposure to extreme temperatures, and other measures that produce physical pain.

"Cot" means a comfortable, safe and child-sized alternative bed made of resilient, fire retardant, sanitizable fabric that is on legs or otherwise above the floor and can be stored to allow for air flow.

"Department" means the Illinois Department of Children and Family Services. (Section 2.18 of the Child Care Act of 1969 [225 ILCS 10/2.18])

"Discipline" means the process of helping children to develop inner controls so that they can manage their own behavior in socially acceptable ways.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents (e.g., heat). In the child care environment, a solution of ¼ cup household liquid chlorine bleach added to one gallon of water (or one tablespoon bleach to one quart of water) and prepared fresh daily is an effective disinfectant for environmental surfaces and other objects. A weaker solution of 1 tablespoon bleach to 1 gallon of cool water is effective for use on toys, eating utensils, etc. Commercial products may also be used.

"Extended capacity" means an addition of 4 school age children who may be accepted in accordance with 408.65(c). This allows the maximum capacity in a group day care home to reach 16.

"Family home" or "family residence" means the location or portion of a location where the applicant and his or her family reside, and may include basements and attics. It does not include other structures that are separate from the home but are considered part of the overall premises, such as adjacent apartments, unattached basements in multi-unit buildings, unattached garages, and other unattached buildings.

"Ground level" means that a child can step directly from the exit onto the ground, a sidewalk, a patio, or any other surface that is not above or below the ground.

"Group day care home" means a family home which receives more than 3 up to
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16 children for less than 24 hours per day. The number counted includes the family's natural, foster, or adopted children and all other persons under the age of 12. (Section 2.20 of the Child Care Act of 1969 [225 ILCS 10/2.20])

"Guardian" means the guardian of the person of a minor. (Section 2.03 of the Child Care Act of 1969 [225 ILCS 10/2.03])

"Infant" means a child through 12 months of age.

"Initial background check" means fingerprints have been obtained for a criminal history check, and the individual has cleared a check of the Statewide Automated Child Welfare Information System (SACWIS) and the Illinois Sex Offender Registry.

"License" means a document issued by the Department that authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act of 1969.

"License applicant", for purposes of background checks, means the operator or persons with direct responsibility for daily operation of the facility to be licensed. (Section 4.4 of the Child Care Act of 1969 [225 ILCS 10/4.4])

"License study" means the review of an application for license, on-site visits, interviews, and the collection and review of supporting documents to determine compliance with the Child Care Act of 1969 and the standards prescribed by this Part.

"Licensed capacity" means the number of children the Department has determined the group day care home can care for at any one time, in addition to any children living in the home who are under the age of 12 years. Children age 12 and over on the premises are not considered in determining licensed capacity.

"Licensing representative" means a person authorized by the Department under Section 5 of the Child Care Act of 1969 to examine facilities for licensure.

"Licensing year", often called the anniversary year, means the period of time from the date a group day care home license is issued until the same date of the following year.
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"Member of the household" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, or receiving mail at the household address, or using identification with the household address.

"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority therein or another state or municipal authority that is punishable solely as a petty offense. (See Section 6-601 of the Illinois Driver Licensing Law [625 ILCS 5/6-601].)

"Parents", as used in this Part, means those persons assuming legal responsibility for care and protection of the child on a 24-hour basis; includes guardian or legal custodian.

"Permit" means a one-time only document issued by the Department of Children and Family Services for a 6-month period to allow the individuals to become eligible for a license.

"Persons subject to background checks" means:

- the operators of the child care facility;
- all current and conditional employees of the child care facility;
- any person who is used to replace or supplement staff; and
- any person who has access to children, as defined in this Section.

If the child care facility operates in a family home, the license applicants and all members of the household age 13 and over are subject to background checks, as appropriate, even if these members of the household are not usually present in the home during the hours the child care facility is in operation.

"Physician" means a person licensed to practice medicine in the State of Illinois or a contiguous state.

"Premises" means the location of the group day care home wherein the family resides and includes the attached yard, garage, basement and any other outbuildings.
"Preschool age" means children under 5 years of age and children 5 years old who do not attend full day kindergarten.

"Program" means all activities provided for the children during their hours of attendance in the group day care home.

"Protected exit from a basement" means an exit that is separated from the remainder of the group day care home by barriers (such as walls, floors, or solid doors) providing one-hour fire resistance. The separation must be designed to limit the spread of fire and restrict the movement of smoke.

"Resource personnel" means physicians, nurses, psychologists, social workers, speech therapists, physical and occupational therapists, educators and other technical and professional persons whose expertise is utilized in providing specialized services to children with special needs.

"SACWIS" means the Statewide Automated Child Welfare Information System operated by the Illinois Department of Children and Family Services that is replacing the Child Abuse and Neglect Tracking System (CANTS).

"School age" means children 6 to 12 years of age and 5 year olds who are in full-day kindergarten.

"Special use areas" means areas of the home that may not be included in the measurement of the area used for child care. Special use areas include, but are not limited to, laundry rooms, furnace rooms, bathrooms, hazardous areas, and areas off-limits to children.

"Story" means that level of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

"Street floor" means a story or floor level accessible from the street or from outside a building at ground level, with the floor level at the main entrance located not more than 4 risers above or below the ground level and arranged and utilized to qualify as the main floor.
"Substantiated violation" means that the licensing representative has determined, during a licensing complaint investigation or a monitoring or renewal visit, that the licensee has violated a licensing standard of this Part or the Child Care Act.

"Swimming pool" means any natural or artificial basin of water intended for public swimming or recreational bathing which exceeds 2'6" in depth as specified in the Illinois Swimming Pool and Bathing Beach Act and Code (77 Ill. Adm. Code 820). The term includes bathing beaches and pools at private clubs, health clubs, or private residences when used for children enrolled in a child care facility.

"Wading pool" means any natural or artificial basin of water less than 2'6" in depth that is intended for recreational bathing, water play or similar activity. The term includes recessed areas less than 2'6" in depth in swimming pools that are designated primarily for children.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.10 Application For License

a) A complete application shall be filed with the Department of Children and Family Services on forms prescribed and provided by the Department.

b) Contents of Application

1) A complete application shall include:

A1) a completed, signed and dated Application for Home License;

B2) a list of persons who will be working in the group day care home, including any substitutes and assistants, and members of the household age 13 and over;

C3) completed, signed and dated authorizations to conduct the background check for the applicant, each employee or person used to replace or supplement staff, and each member of the household age 13 and over;

D4) a completed, signed and dated Child Support Certification form;
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E5) documentation that the applicant meets the qualifications for a caregiver in Section 408.45(e);

F6) the names, addresses and telephone numbers of at least 3 adults not related to the applicants, nor living in the household, who can attest to their character and suitability to provide child care; and

G7) a written hazard protection plan identifying potential hazards within the home and outdoor area accessible to the children in care. The written plan shall address the specific hazards and the adult supervision and physical means required to minimize the risks to children. Conditions to be addressed include, but are not limited to, traffic, construction, bodies of water accessible to the children, open stairwells, and neighborhood dogs; and

H) a copy of high school diploma or equivalent certificate.

2) For initial applications submitted after January 1, 2011, the applicant shall have completed, not more than one year prior to application date, at least 15 hours of pre-service training, listed in Appendix G, which shall include:

A) Sudden Infant Death Syndrome (SIDS);

B) Shaken Baby Syndrome;

C) Department approved Mandated Reporter training.

c) Fire Safety Inspection

1) For initial applications of group day care homes in multi-housing units, or single family dwellings in which care will be provided on other than grade level, the Department shall request a fire safety inspection from the Office of the State Fire Marshal (OSFM). OSFM shall submit its written recommendation to the supervising agency of the group day care home and to the applicant;
2) The fire safety inspection on single floor homes at grade with no unusual or complex code considerations shall be completed following the list of items for fire safety inspection in Appendix I by a licensing representative trained by OSFM to conduct that fire prevention inspection;

3) Prior to Department issuance of a permit or a license, the group day care home shall have written approval by OSFM or staff trained by OSFM, indicating the home meets fire safety requirements.

1) In order for a home to be licensed as a group day care home, a fire inspection report (Appendix I) must be completed using forms provided by the Department indicating that the home is safe.

2) The fire inspection may be conducted by the licensing representative conducting the licensure study, staff of the private agency that supervises the group day care home, the local fire department or the Office of the State Fire Marshal.

A) For each new application received, the Department's Central Office of Licensing will notify the local fire prevention authorities and give them the opportunity to inspect the home applying for licensure and make recommendations on its suitability based on the standards prescribed by this Part.

B) Department licensing staff supervising licensed group day care homes shall keep a list of fire departments that receive this notification. For license applicants residing in areas not covered by a participating fire department, Department staff shall notify the Office of the State Fire Marshal.

C) Once notified, the fire prevention authority shall have 15 working days to return its recommendations to the Department. Any comments received by the Department shall be considered in the licensing study. Applicants must comply with all requirements of this Part, whether or not recommendations are received.

D) If the local fire prevention authority or OSFM does not conduct a fire inspection, the fire inspection report shall be completed by the Department licensing representative supervising the home.
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3) All fire inspection reports must be completed on forms prescribed and provided by the Department.

d4) Licensed group day care homes that fail to comply with all applicable local, municipal and State regulations may be prohibited from operating.

ed) The license shall be issued when the standards prescribed by this Part have been met. Upon receipt of an application for a license, the Department shall conduct a license study to determine if the group day care home meets licensing standards. The licensing study shall be in writing and shall be reviewed and signed by the licensing supervisor and the licensing representative performing the study. A license may not be recommended without the receipt of at least three positive, written references, and a written study signed by the licensing representative and supervisor. The applicant shall receive a copy of the results of the on-site compliance review upon request.

e) New Applications

1) A new application shall be filed when any of the following occurs:

A4) When an applicant or licensee seeks to reapply application for a license after it has been withdrawn, surrendered or denied and the applicant or licensee seeks to reapply;

B2) When there is a failure to submit a completed application within 14 days after a change of residence or change in the name of the licensee or the location of the group day care home; 3) When there is a change in the status of joint licensees, such as separation, divorce or death; or

C4) When 12 months have elapsed and the applicant seeks to reapply for a license after:

i) the Department has revoked or refused to renew a license; and a new license is sought,

ii) the previous license has been surrendered with cause; or


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iii) The Department has refused to issue a full license to a permit holder.

2) For the application to be considered timely and sufficient, a new application shall be completed, signed by the licensee and submitted to the supervising agency within 30 days after the following changes:

A) When there is a change in the name of the licensee, the supervising agency or the legal status from a social security number to Federal Employer Identification Number (FEIN); or

B) When there is a change in the status of joint licensees, such as separation, divorce or death.

f) Written approval of the Department is required to effect changes in the license capacity, the area of the home used for child care, or the ages of children served in conformance with the requirements of Section 408.65. Approval will not be granted unless the day care home’s current operation is in compliance with the standards prescribed by this Part.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.15 Application for Renewal of License

a) Application forms for license renewal shall be mailed to group day care home licensees by the Department 6 months prior to the expiration date of the license.

b) The completed application shall be signed by the licensees and submitted to the Department at least 3 months prior to expiration of the current license, in order to be considered timely and sufficient.

c) When a licensed group day care home seeks to change its name or location, a new application reflecting the changes must be completed, signed by the licensees and submitted to the Department at least 30 days prior to the effective date of the changes for the application to be considered timely and sufficient.

d) When a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any activity of a continuing nature and
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the Department fails to render a decision on the application for renewal of the license prior to the expiration date of the license, the existing license shall continue in full force and effect for up to 30 days until the final Department decision has been made. The Department may further extend the period in which such decision must be made in individual cases for up to 30 days, if good cause is shown. [225 ILCS 10/5(d)]

e) Prior to renewal, the licensee shall be current with the annual 15 hours of required training in accordance with Appendix G.

f) At the time of license renewal, the supervising agency shall review the fire emergency, tornado/severe weather emergency, and hazard protection written plans. Any revision or enhancement shall be part of the licensing renewal process. Licensed homes that do not have a written hazard plan (see Section 408.10(b)(7)) shall develop a plan and submit it to the supervising agency prior to renewal.

g) Fire Safety Inspection

1) Fire safety inspections of homes licensed for multi-housing units or single family dwelling in which care will be provided on other than grade level shall be completed by OSFM or its designee;

2) Fire safety inspection of homes licensed for a single floor with no unusual or complex code considerations shall be completed by a licensing representative trained by OSFM;

3) The fire safety inspection shall be conducted in accordance with the requirements of Appendix I.

1) In order for a home to be licensed as a group day care home, a fire inspection report (Appendix I) must be completed using forms provided by the Department indicating that the home is safe.

2) The fire inspection may be conducted by the licensing representative conducting the licensure study, staff of the private agency that supervises the group day care home, the local fire department or the Office of the State Fire Marshal.
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A) For each renewal application received, the Department's Central Office of Licensing will notify the local fire prevention authorities and give them the opportunity to inspect the home applying for licensure and make recommendations on its suitability based on the standards prescribed by this Part.

B) Department licensing staff supervising licensed group day care homes shall keep a list of fire departments that receive this notification. For license applicants residing in areas not covered by a participating fire department, Department staff shall notify the Office of the State Fire Marshal.

C) Once notified, the fire prevention authority shall have 15 working days to return its recommendations to the Department. Any comments received by the Department shall be considered in the licensing study. Applicants must comply with all requirements of this Part, whether or not recommendations are received.

D) If the local fire prevention authority or OSFM does not conduct a fire inspection, the fire inspection report shall be completed by the Department licensing representative supervising the home.

3) All fire inspection reports must be completed on forms prescribed and provided by the Department.

4) Licensed day care homes that fail to comply with all applicable local, municipal and State regulations may be prohibited from operating.

hf) Upon receipt of the application for license renewal, the Department shall conduct a license study in order to determine that the group day care home continues to meet licensing standards. The licensing study shall be in writing and shall be reviewed and signed by the licensing supervisor and the licensing representative performing the study. The licensees shall receive a copy of the results of the on-site compliance review upon request.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.20 Provisions Pertaining to the License
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a) The licensees shall be a primary caregiver or caregivers who reside in the family home and meet the requirements of this Part. Further, the licensees shall be an individual, a man and woman married to each other or 2 persons related by blood, marriage, or adoption who reside in the family home.

b) A group day care home license is valid for three years unless revoked by the Department or voluntarily surrendered by the licensee.

c) The number and ages of children under age 12 cared for in the group day care home at any one time shall be in compliance with provisions in Section 408.65. Increases in the license capacity or the ages of children served shall be with written approval of the supervising agency.

d) The age limits specified on the license shall be observed, unless the licensee has submitted a transition plan to the Department in accordance with Section 408.65(e) in order to keep members of a sibling group together, and the Department has approved the plan.

e) Child care may be provided only in those areas specified on the license.

f) The license is valid only for the family residence of the licensee and shall not be transferred to another person or other legal entity.

g) The license shall not be valid for a name or an address other than the name and address on the license.

h) No group day care home provider shall be licensed to provide care for more than 18 hours within a 24-hour period.

i) The license shall be prominently displayed in the home at all times.

j) There shall be no fee or charge for the license.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.25 Provisions Pertaining to Permits

a) A permit shall not be issued until:
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1) The application for license has been completed and signed by the applicants and submitted to the Department;

2) The background checks required by Section 408.40 have been completed and the results of the background check have been received for the operator of the group day care home;

3) Character references have been requested regarding the primary caregivers, and at least 2 favorable references have been received;

4) Medical reports as required in Section 408.35(jd) have been received by the Department for all caregivers and assistants;

5) For initial applications submitted after January 1, 2011, the applicant shall have completed, not more than one year prior to the application date, at least 15 hours of pre-service training listed in Appendix G, which shall include:

   A) Sudden Infant Death Syndrome (SIDS);

   B) Shaken Baby Syndrome; and

   C) Department approved Mandated Reporter training;

6) The applicant who is the primary caregiver has been certified in first-aid, the Heimlich maneuver, and infant/child cardiopulmonary resuscitation (CPR) in accordance with Section 408.35(ie);

7) A personal visit to the home by a licensing representative has been completed. The purpose of this visit is to determine compliance with all the licensing requirements except the requirements for remaining character references, medical examination reports, and well water tests compliance that may be complied with within the 6 month period covered by the permit. However, when well water tests are required, applicants must agree to boil all drinking and cooking water and to provide only bottled water for children under 15 months of age until the test results are received;

8) Proof of public liability insurance as required by Section 408.35(jh) (such
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proof may consist of, but is not limited to, a copy of an insurance policy, binder or certificate; or a letter from the insurance carrier);

98) Plan developed for emergency medical care as required by Section 408.70;

109) Furnishings and equipment have been acquired for the number of children to be served during the 6 month permit period in accordance with Appendix C and D;

1140) Medical reports and character references are on file for employed staff at the home; and

12) A written fire safety inspection and approval has been completed in accordance with Section 408.10(c); and

1344) A written plan has been submitted to the licensing representative that indicates that requirements for a license shall be met within the 6 month permit period.

b) A permit shall not be issued retroactively.

c) A permit shall not be transferred to another person or other legal entity.

d) A permit shall not be valid for a name or address different from the name and address shown on the issued permit.

e) A permit shall not be renewable.

f) A current permit shall be prominently displayed available in the group day care home at all times while the home is operating under a permit.

g) A license shall be issued at any time within the 6 month period covered by the permit provided that the group day care home achieves and maintains compliance with the Department's licensing standards.

h) The group day care home shall adhere to the provisions or restrictions specified on the permit.

i) There shall be no fee or charge for the permit.
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(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.30 General Requirements for Group Day Care Homes

a) The physical facilities of the home, both indoors and outdoors, shall meet the following requirements for safety to children.

1) The home shall have a first aid kit consisting of adhesive bandages, scissors, non-permeable gloves, Poison Control Center telephone number (1-800-222-1222 or 1-800-942-5969), thermometer, sterile gauze pads, adhesive tape, tweezers, first aid cream and mild soap.

2) The kitchen shall be equipped with a readily accessible and operable fire extinguisher rated for Class A, B, and C fires and a flashlight in working order.

3) All electrical outlets that are in areas used by the day care children within reach of children under 5 years of age shall have protective coverings. There shall be no exposed or uninsulated wiring.

4) The home shall be equipped with a minimum of one approved smoke detector in operating condition on every floor level, including basements and occupied attics.

A) A smoke detector in operating condition shall be within each room 15 feet of rooms where day care children nap or sleep. The detector shall be installed on the ceiling and at least 6 inches from any wall, or on a wall located between 4 and 6 inches from the ceiling. In addition, there shall be at least one detector at the beginning and end of each separate corridor or hallway 200 feet or more in length in any occupied story.

B) In any facility constructed after December 31, 1987, or which undergoes substantial remodeling of its structure or wiring system after that date, the smoke detectors shall be permanently wired into the structure's AC power line, and, if more than one detector is required to be installed, the detectors shall be wired so that the activation of one detector will activate all the detectors in the
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facility unit. For purposes of this subsection (a)(4), "substantial remodeling" represents more than 15 percent of the replacement cost of the group day care home.

C) Compliance with any applicable federal, State or local law, rule or building code which requires the installation and maintenance of smoke detectors in a manner different from this Section, but providing a level of safety for occupants which is equal to or greater than that provided by this Section, shall be deemed to be compliance with this Section. (Section 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/2])

5) Carbon Monoxide Detector
   A) A home that has an attached garage and/or relies on combustion of fossil fuel for heating, ventilation, or hot water shall be equipped with a minimum of one approved carbon monoxide detector in operating condition within 15 feet of rooms where children nap or sleep.
   B) The carbon monoxide detector may be combined with smoke detector devices, provided that the combined unit complies with subsection (a)(4) and this subsection (a)(5). [430 ILCS 135/10]

6) The home and indoor space shall be maintained in good repair and shall provide a safe, comfortable environment for the children.

7) A draft-free temperature of 65°F to 75°F shall be maintained during the winter months or heating season. For infants and toddlers, a temperature of 68°F to 82°F shall be maintained during the summer or air-conditioning months. When the temperature in the home exceeds 78°F, measures shall be taken to cool the children. Temperatures shall be measured at least 3 feet above the floor.

85) Fixed space heaters, fireplaces, radiators, and other heating sources in areas occupied by children shall be separated by partitions or a sturdy barrier to prevent contact. Portable space heaters may not be used in a group day care home during the hours that child care is provided.
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96) A facility, in which a wood-burning stove or fireplace has been installed and that is used during the hours that child care is provided, shall provide a written plan of how the stove or fireplace will be used and what actions will be taken to ensure the children's safety when in use.

107) In one and 2 family dwellings, children under 30 months of age shall be housed and cared for on the second floor or below. In other residential buildings, children under 30 months of age shall be housed and cared for only in areas in which OSFM states that the Office of the State Fire Marshal or local agencies authorized by the Office of the State Fire Marshal to conduct inspections on its behalf state, in writing, that the combination of remote exits, fire detection, fire suppression, and/or automatic sprinkler systems render the residence safe for the care of infants and toddlers.

118) No area accessible only by a ladder or folding stairs or through a trap door shall be used for sleeping or napping.

129) When the basement area may be used for child care, 2 exits shall be provided.

A) At least one exit shall be a basement exit via a door directly to the outside (without traversing any other level of the home) or a protected exit from a basement via a door or stairway that allows unobstructed travel directly to the outside of the building at street or ground level. The stairway may not be more than 8 feet high.

B) A second exit may be a window.

i) The window shall be operable from the inside without the use of tools and provide a clear opening not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area.

ii) If the window is used as a second exit, the bottom of the window opening shall be no more than 44 inches above the floor.

iii) When the bottom of the window opening used as a second
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exit is more than 24 inches from the floor, there shall be a permanently affixed, sturdy ramp or stairs located below the window to allow speedy access in the event of an emergency.

C) If the basement area does not meet these existing requirements, the basement may be used for child care only with the prior written approval of OSFM the Office of the State Fire Marshal or local agencies authorized by the Office of the State Fire Marshal to conduct inspections on its behalf.

1340) All walls and surfaces shall be free from chipped or peeling paint.

1411) Walls of rooms that children use shall be maintained free of lead paint, carpeting, fabric or plastic products. Flammable or combustible artwork attached to the walls shall not exceed 20% of the wall area.

1542) Furniture and equipment shall be kept in safe repair.

1643) First aid supplies, medication, cleaning materials, poisons, sharp scissors, plastic bags, sharp knives, cigarettes, matches, lighters, flammable liquids, and other hazardous materials shall be stored in places inaccessible to children. Hazardous items for infants and toddlers also include items that can cause choking, including but not limited to: coins, balloons, safety pins, marbles, Styrofoam (trademark) and similar products, and sponge, soft rubber or soft plastic toys that can be bitten or broken into small pieces.

1744) Tools and gardening equipment shall be stored in locked cabinets, if possible, or in places inaccessible to all children.

1853) Exit doors shall be kept clear of equipment and debris at all times.

1846) There shall be an operable telephone available on the premises of the licensee. The number of the Poison Control Center (1-800-222-1222 or 1-800-942-5969) and other emergency numbers shall be posted in an area that is readily available in an emergency.

1947) Free hanging cords on blinds, shades and drapes shall be tied or otherwise
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kept out of reach of children.

18) Carbon Monoxide Detector

A) A home that has an attached garage and/or relies on combustion of fossil fuel for heating, ventilation, or hot water shall be equipped with a minimum of one approved carbon monoxide detector in operating condition within 15 feet of rooms where children nap or sleep.

B) The carbon monoxide detector may be combined with smoke detector devices, provided that the combined unit complies with subsection (a)(4) and this subsection (a)(18). [430 ILCS 135/10]

b) Escape routes from the group day care home shall be designed and maintained for swift and safe exiting in the event of an emergency.

1) All corridors and escape routes from the group day care home shall be kept clear of obstructions.

2) Dead-end paths or corridors within the group day care home shall be a maximum of 20 feet in length.

3) All escape routes from the group day care home shall have operable lighting. The lighting shall be activated during any hours of operation when natural lighting is reduced to a level that prohibits visibility within the escape route.

4) Bathroom doors in areas accessible to day care children shall allow staff to open the door from the outside of the bathroom if necessary.

5) All closet doors shall be able to be opened from inside of the closet without the use of a key.

6) There shall be no more than 2 releasing devices (door knobs, hand-operated deadbolts, thumb-turn locks, etc.) on any exit door or exit window.
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7) Exit doors and exit windows shall be operable without the use of a key, a tool or special knowledge to open the door from the inside and exit to the outside.

8) Exit doors and exit windows shall be kept clear of equipment and debris at all times.

9) The licensee shall hold monthly fire safety inspections of the group day care home.

10) The licensee or staff in the home shall inspect the group day care home daily, prior to arrival of children, ensuring that escape routes are clear and that exit doors and exit windows are operable.

11) A log of these monthly and daily inspections shall be maintained for at least one year, and shall be available for review by the licensing representative. The log shall reflect, at minimum, the date and time of each inspection and the full name of the person who conducted it.

cb) The licensee shall identify those areas in the home used for child care. The identified areas minus any special use areas shall be measured to calculate the square footage available for child care. There shall be:

1) A minimum of 35 square feet of floor space for each child in care; and

2) An additional 20 square feet of floor space for each child under 30 months of age when the play area is the same as the sleep area. However, if portable bedding is used for napping, then removed, the licensing representative shall approve the use of only 35 square feet of space for each child if the applicant/licensee has adequate storage space for the bedding materials and the bedding materials are removed before and after nap time.

de) No person may smoke tobacco in any area of the group day care home in which day care services are being provided to children, while those children are present on the premises. In addition, no person may smoke tobacco while providing transportation, in either an open or enclosed vehicle, to children who are receiving child care services. Nothing in this subsection prohibits smoking in the home in the presence of a person’s own children or in the presence of children to whom
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day care services are not then being provided. [225 ILCS 10/5.5]

ed) Indoor space shall consist of a clean, comfortable environment for children.

1) The group day care home shall be well-ventilated, free from observable hazards, properly lighted and heated, and free of fire hazards.

2) The dwelling shall be kept clean, sanitary, and in good repair.

3) There shall be provision for isolating a child who becomes ill or who is suspected of having a communicable, infectious or contagious disease.

4) When used for child care, floors shall have protective covering such as, but not limited to, tile, carpet, linoleum. Paint or sealer alone is not acceptable as a protective covering.

5) When children under 30 months of age are in care, stairs leading to second levels, attics or basements shall be fitted with a sturdy gate, door or other barrier to prevent the children's access to the stairs without adult supervision. Such a barrier shall be moveable enough so as not to impede evacuation, if necessary.

fe) The kitchen shall be clean, equipped for the preservation, storage, preparation and serving of food, and reasonably safe from hazards.

gf) Garbage and refuse containers used to discard diapering supplies, food products or disposable meal service supplies in areas for child care shall be disinfected daily unless plastic liners are used and disposed of daily.

hg) A safe and sanitary water supply shall be maintained. If a private water supply is used instead of an approved public water supply, the applicant shall supply written records of current test results indicating the water supply is safe for drinking. New test results must be provided prior to renewal of relicensing. If nitrate content exceeds 10 parts per million, bottled water must be used for children under 15 months of age.

jh) Hot and cold running water shall be provided. When children under age 10 or who are developmentally disabled are cared for, the maximum hot water temperature from all faucets of sinks designated for children washing hands shall
be no more than 115° Fahrenheit. Caregivers shall always test the hot water before allowing children less than 5 years of age to use the water.

| j)  | The group day care home shall provide one toilet for each 10 persons or portion thereof who are present during the hours the group day care home is in operation. These 10 persons include caregivers, child care assistants, members of the household and children other than those under 30 months of age for whom a potty chair is provided. |

| k)  | There shall be a minimum of 75 square feet of outdoor space per child for the total number of children using the area at any one time. At least 25% of the required space shall be on the premises of the group day care home. The remainder may be a public park, playground or other outdoor recreation area within walking distance (1000 feet) of the group day care home provided the caregiver or an adult assistant accompanies children to this outdoor area. |

| l)  | There shall be safe outdoor space for active play. |

1) Space shall be provided for play in yards, nearby parks or playgrounds under adult supervision.

2) Space shall be protected by physical means (e.g., fence, tree line, chairs, ropes, etc.) against all water hazards, including, but not limited to, pools, ponds, standing water, ornamental bodies of water, and retention ponds, regardless of the depth of the water, and by adult caregiver supervision at times when children in care are present. Other hazards, such as, but not limited to, heavy traffic and construction, shall be inaccessible to children in care through a physical barrier and adult supervision. Further, outdoor space shall be partitioned or supervised in such a manner that young children are not endangered by the activities of older children.

3) Play areas shall be well drained and safely maintained.

4) All pieces of outdoor equipment used by children 5 years of age and younger on the day care premises that is purchased or installed on or after April 1, 2001 shall meet the following standards to guard against entrapment or situations that may cause strangulation.

A) Openings in exercise rings shall be smaller than 4½ inches or
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larger than 9 inches in diameter.

B) There shall be no openings in a play structure with a dimension between 3½ inches and 9 inches (except for exercise rings). Side railings, stairs and other locations that a child might slip or climb through shall be checked for appropriate dimensions.

C) Distances between vertical slats or poles, where used, must be 3½ inches or less (to prevent head entrapment).

D) No opening shall form an angle of less than 55 degrees unless one leg of the angle is horizontal or slopes downward.

E) No opening shall be between ⅜ inch and one inch in size (to prevent finger entrapment).

5) The use of a trampoline by children in care is prohibited.

6) In-ground swimming pools located in areas accessible to children shall be fenced. The fence shall be at least 5 feet in height and secured by a locked gate. Group day care homes that are licensed or have a permit on April 1, 2001 and are in compliance with the requirement for a 3½ foot fence shall be considered in compliance with the fence requirement.

7) All above-ground pools shall have non-climbable sidewalls that are at least 4 feet high or shall be enclosed with a 5 foot fence that is at least 36 inches away from the pool's side wall and secured with a locked gate. When the pool is not in use, steps shall be removed from the pool or otherwise protected to insure the pool cannot be accessed. Group day care homes that are licensed or have a permit on April 1, 2001 and are in compliance with the requirement for a 3½ foot fence shall be considered in compliance with the fence requirement.

8) Portable wading pools shall be emptied daily and disinfected before being air-dried.

9) All hot tubs shall have securely locked covers or otherwise be inaccessible to children.
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10) Children shall be closely supervised by the caregiver when public parks or playgrounds are used for play, during play and while traveling to and from the area.

11) Supervision shall be provided during outdoor play by caregivers who meet the requirements of Section 408.45 of this Part.

mj) A caregiver who relies upon outdoor space shared with other residents in a multiple family dwelling shall have a written agreement with the other residents or the owners of the outdoor area authorizing the use of the space by the group day care home and the children cared for.

nm) Insect and rodent control shall be maintained.

1) All outside doors except those with operable self-closing devices, operable windows, and other openings used for ventilation shall be screened.

2) Chemicals for insect and rodent control shall be applied in minimum amounts and shall not be used when children are present. Over-the-counter products may be used only according to package instructions. Commercial chemicals, if used, shall be applied by a licensed pest control operator and shall meet all standards of the Department of Public Health (Structural Pest Control Code, 77 Ill. Adm. Code 830). A record of any pesticides used shall be maintained.

o) Healthy household pets that present no danger to children are permitted.

1) A licensed veterinarian shall certify that the animals are free of diseases that could endanger the children's health and that dogs and cats have been inoculated for rabies.

2) If certification is not available, animals shall be confined at all times in an area inaccessible to children.

3) There shall be careful supervision of children who are permitted to handle and care for the animals.

4) Immediate treatment shall be available to any child who is bitten or scratched by an animal.
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5) The presence of monkeys, ferrets, turtles, iguanas, psittacine birds (birds of the parrot family) or any wild or dangerous animal is prohibited in areas accessible to children during the hours the group day care home is in operation. Wild and dangerous animals include, but are not limited to, venomous and constricting snakes, undomesticated cats and dogs, raccoons, and other animals determined to be dangerous by local public health authorities.

The Department shall request that the Illinois Department of Public Health or a local health department authorized by it and/or the Office of the State Fire Marshal or the local fire department authorized by it inspect the group day care home and its premises whenever the Department has reason to believe that conditions in the home or its premises pose potential health or safety hazards to the children cared for in the home.

There shall be written response plans for fire and tornado immediate evacuation in case of emergency. These plans shall be familiar to all caregivers and assistants in the group day care home.

1) The fire evacuation plan shall identify the exits from each area used for child care and shall specify the evacuation route.

2) The fire evacuation plan shall identify a safe assembly area outside of the home. It shall also identify a near-by indoor location for post-evacuation holding if needed.

3) The fire evacuation plan shall require that the home be evacuated before calling the local emergency number 911.

4) Fire drills shall be conducted monthly for the purpose of removing children from the group day care home as quickly as possible during an emergency.

5) Tornado drills shall be conducted monthly for the purpose of getting children accustomed to moving to a position of safety in event of a tornado. Records shall be maintained of the dates and times required drills are conducted. The alphabetic card file required by Section 408.120(a)(2) shall accompany the caregiver during the drills.
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6) The written tornado plan shall specify what actions will be taken in the event of tornado or other severe weather warning, including designation of those areas of the group day care home to be used as safe spots.

7) Fire and tornado drills shall be recorded on forms prescribed by the Department and maintained for a period of 3 years.

rq) In the event of a fire, the group day care home shall be evacuated immediately and the children's safety insured before calling the fire department or attempting to combat the fire.

sf) Handguns are prohibited on the premises of the group day care home except in the possession of peace officers or other adults who must possess a handgun as a condition of employment and who reside in the group day care home.

ts) Any firearm, other than a handgun in the possession of a peace officer or other person as provided in subsection (sf), shall be kept in a disassembled state, without ammunition, in locked storage in a closet, cabinet, or other locked storage facility inaccessible to children.

1) Ammunition for such firearms shall be kept in locked storage separate from that of the disassembled firearms, inaccessible to children.

2t) The operator of the group home shall notify the parents or guardian of any child accepted for care that firearms and ammunition are stored on the premises. The operator shall also notify the parents or guardian that such firearms and ammunition are in locked storage inaccessible to children (Section 7 of the Act). Such notification need not disclose the location where the firearms and ammunition are stored.

u) A group day care home operator relying upon a cooperative or lending arrangement to meet the equipment requirements of this Part shall provide a copy of a written agreement specifying which equipment required by this Part is covered by the agreement. Further, the operator shall demonstrate to the satisfaction of the Department that the equipment covered by the agreement is both available and utilized by the group day care home as required by this Part.

v) Operation of other business on the premises must not interfere with the care of
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children.

w) A group day care home may not house bedridden or chronically ill persons except by permission of the Department. The Department shall grant such permission unless the person has a reportable contagious or communicable disease or requires care that adversely affects the ability of the caregiver to supervise children.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.35 General Requirements for Group Day Care Home Family

a) Each person subject to background checks, as defined in Section 408.5, shall authorize the background check required by 89 Ill. Adm. Code 385 (Background Checks) and be cleared in accordance with the requirements of Part 385.

b) When notified by the Department that an employee, member of the household or other person in frequent contact with children at the facility is the subject of a formal investigation for child abuse or neglect pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5], the licensee shall take reasonable action to insure that the employee or other person is restricted from contact with children whose care has been entrusted to the facility during the pending investigation. Such reasonable action includes, but is not limited to, barring or removing the person from the facility or assuring that another adult is always present when the subject of the investigation is in contact with children.

c) The licensee shall be present in the home when children are in attendance unless a qualified substitute caregiver, per Section 408.55, is present.

d) Licensees and other adult members of the household in contact with group day care children shall be stable, law abiding, responsible, mature individuals.

e) Members of the household who have contact with the children in care shall treat them with respect, courtesy, and patience.

f) The caregivers and all members of the household shall provide medical evidence that they are free of communicable disease that may be transmitted while providing child care; and, in the case of caregivers, that they are free of physical or mental conditions that could interfere with child care responsibilities. The medical report for the caregivers shall be valid for 3 years.
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g) Caregivers and members of the household shall have a tuberculin skin test administered by the Mantoux method in accordance with the rules of the Department of Public Health (77 Ill. Adm. Code 690.720).

h) Should the caregivers or any member of the household be diagnosed as having a communicable disease for which isolation is required by the Department of Public Health (IDPH) or local health department, the group day care home shall not provide child care until notified by the public health agency that the infectious period has elapsed and that child care may resume. Further, if a child care assistant or substitute who does not reside in the group day care home has been diagnosed as having a communicable disease for which isolation is required, that person shall be barred from the home until the presence of such person is authorized by the IDPH or the local health department.

i) During hours of operation of the group day care home, there shall be at least one person on the premises certified in first aid, the Heimlich maneuver and cardiopulmonary resuscitation (CPR) by the American Red Cross, the American Heart Association or other entity approved by the Illinois Department of Public Health. CPR certification shall be for the age range of children in care. The caregivers shall have on file current certificates attesting to the training.

j) The operators of the group day care home shall carry public liability insurance in the single limit minimum amount of $100,000 per occurrence.

k) Persons, including members of the household, counted in the staff-to-child ratio required by Section 408.65 must be present, awake and free from responsibilities other than those directly related to the care and supervision of children when children are present, except as allowed by Section 408.115 for night care. Responsibilities that are directly related to the care and supervision of children may include light housekeeping to maintain the areas wherein child care is provided.

l) Caregivers, assistants and other persons shall not smoke or consume alcohol in the presence of children. A caregiver or child care assistant who appears to be under the influence of alcohol or other drug shall not have responsibility of the care of children.

m) If the group day care home receives children for night-time care, the caregiver
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may sleep while children are present if the caregiver and the children sleep on the same floor (level) of the residence and the children's bedrooms are within hearing distance of the caregiver's bedroom.

n) No person shall smoke tobacco in the group day care home while services are being provided to children. In addition, no person shall smoke tobacco while providing transportation, in either an open or enclosed motor vehicle, to children who are receiving child care services (see PA 95-17 and 225 ILCS 10/5.5).

o) The licensee shall successfully complete a Department approved basic course of 6 or more clock hours in providing care to children with disabilities. Refer to Appendix G for basic course requirements. The licensee shall have on file a certificate attesting to the successful completion of the training.

1) Current license holders shall complete this training within 36 months from November 15, 2003.

2) New licensees shall complete this training within 36 months from the issue date of the initial license.

3) A licensee who has completed training prior to November 15, 2003 may have that training approved as meeting the provisions of this Section. A certificate of training completion and a description of the course content must be submitted to the Department for approval.

o) Caregivers obtaining clock hours in excess of the required 15 clock hours per year may apply up to 5 clock hours to the next year's training requirements.

p) Any children under age 12 living in the home who are receiving home schooling shall be counted in the maximum of 12 children in Section 408.65(a) and (b), unless another parent or caregiver is providing the schooling apart from the day care area and the caregiver has no responsibility for the care or supervision or schooling of the children during the hours home day care is provided.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.45 Caregivers

a) The caregiver is responsible for the day-to-day operation of the group day care
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home in accordance with the standards prescribed in this Part.

b) The caregiver or a designated child care assistant meeting the requirements of this Section shall be at the group day care home at all times that the group day care home is in operation, except when transporting children or accompanying them on field trips.

c) The caregivers in a group day care home shall be at least 21 years of age.

d) The caregivers shall have a high school diploma or equivalency certificate.

e) In addition to meeting the requirements of Sections 408.35 and 408.40 the caregiver in a group day home shall have achieved:

1) One year (1560 clock hours) child development experience in a licensed day care home, nursery school, kindergarten, or licensed day care center plus 6 semester or equivalent quarter hours in courses related directly to child care and/or child development from an accredited college or university;

2) One year (30 semester hours or 45 quarter hours) of credit from an accredited college or university with 6 semester or equivalent quarter hours related directly to child care and/or child development; or

3) Completion of a credentialing program approved in accordance with Appendix F of this Part.

f) The caregivers shall complete 15 clock hours of in-service training per licensing calendar year in accordance with the requirements in Appendix G.

1) Such training may be derived from programs offered by any of the entities identified in Appendix G.

2) Courses or workshops to meet this requirement include, but are not limited to, those listed in Appendix G.

g) Caregivers obtaining clock hours of training in excess of the required 15 clock hours per year may apply up to 5 clock hours to the next year's training requirements.
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1) The records of the group day care home shall document the continuing education in which the caregiver has participated, and these records shall be available for review by the Department.

2) Through interaction with the licensing representative, children, parents or guardian of children in care and operation of the group day care home in accordance with standards prescribed by this Part, caregivers shall exhibit competence in the following specific areas:

1) Knowledge of basic hygiene, safety, and nutrition;

2) The ability to relate comfortably with parents and to communicate with them on differences in caregiving methods, values, and goals;

3) The ability to communicate with children;

4) The ability to set realistic controls for children and to enforce these without harshness or physical abuse;

5) Knowledge of the children's need to explore and manipulate and the willingness to provide and maintain a home where children can enjoy living and learning;

6) Using developmentally appropriate behavior management techniques that do not constitute corporal punishment of children.

The caregivers shall be responsible for the planning and supervision of the program and activities of the children; orienting child care assistants and substitutes to the operation of the group day care home; on-site supervision of child care assistants; and in-service training totaling a minimum of 15 clock hours per year for the child care assistants. Orientation and training may be provided by the primary caregivers or outside resource persons and shall include recognizing and reporting child abuse or neglect, licensing standards prescribed by this Part, first aid, health and sanitation, fire prevention and safety procedures, special health, developmental, or nutritional needs of children cared for in the group day care home.

The caregivers may not work or be employed outside the home during the hours
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that child care is being provided. This restriction does not apply to spouses qualifying as caregivers, provided one of them is in the home during the hours that child care is being provided. Outside employment during hours that child care is not being provided shall not interfere with child care.

lk) The caregiver shall be awake, alert, and able to supervise the children when providing care, except as allowed by Section 408.115 for night care.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.60 Admission and Discharge Procedures

a) No child served in a day care facility shall remain on the premises for more than 12 hours in any 24-hour period unless the parent's employment schedule requires more than 12 hours of day care. Regardless of the parent's employment, or training schedule, at no time shall children cared for in a day care facility remain on the premises for more than 18 consecutive hours.

b) Prior to acceptance of a child for care, the caregiver shall require that the parents or guardian accompany the child to the home to become acquainted with the caregiver and with the service to be provided.

c) No child under 6 years of age may be admitted to the group day care home unless the health examination, complete with lead risk assessment if the child resides in an area defined as low risk by the Illinois Department of Public Health, or a screening for lead poisoning if the child resides in an area defined as high risk by the Illinois Department of Public Health (see 77 Ill. Adm. Code 845, Lead Poisoning Prevention Code), has been completed as required by Department of Public Health rules at 77 Ill. Adm. Code 665, Child Health Examination Code.

d) The caregiver shall require that the parent or guardian provide a certified copy of the child's birth certificate. The caregiver:

1) Shall provide a written notice to the parent or guardian of a child to be enrolled for the first time that within 30 days after enrollment the parent or guardian shall provide a certified copy of the child's birth certificate or other reliable proof of identity and age of the child.
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A) The caregiver shall promptly make a copy of the certified copy and return the original certified copy to the parent or guardian.

B) If a certified copy of the birth certificate is not available, the parent or guardian must submit a passport, visa or other governmental documentation as proof of the child's identity and age and an affidavit or notarized letter explaining the inability to produce a certified copy of the birth certificate. [325 ILCS 50/5]

C) The notice to parent or guardian shall also indicate that the caregiver is required by law to notify the Illinois State Police or local law enforcement agency if the parent or guardian fails to submit proof of the child's identity within the 30 day time frame.

2) Shall notify the Illinois State Police or local law enforcement agency of the parent's failure to submit a certified copy of the child's birth certificate or other reliable proof of identity. The caregiver shall also notify the parent or guardian in writing that the Illinois State Police or local law enforcement agency has been notified as required by law and that the parent or guardian has 10 additional days to comply by submitting the required documentation. [325 ILCS 50/5]

3) Shall report to the Illinois State Police or local law enforcement agency any affidavit received which appears inaccurate or suspicious in form or content. [325 ILCS 50/5]

4) Shall flag the record of a child enrolled at the day care who is reported by the Illinois State Police as a missing person, and shall immediately report to the Illinois State Police any request concerning flagged records or knowledge as to the whereabouts of any missing child. [325 ILCS 50/5]

e) The parents or guardian shall be permitted to visit the home, without prior notice, during the hours their children are in care.

f) The caregivers shall conduct a daily, preadmissions screening to determine if the child has obvious symptoms of illness. If symptoms of illness are present, the caregiver shall determine whether or not to provide care for the child, depending upon the apparent degree of illness, other children present, and facilities available to provide care for the ill child in accordance with the requirements of Section
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ge) Children with diarrhea and those with rash combined with fever (oral temperature of 100 degrees Fahrenheit or higher) shall not be admitted to the group day care home while these symptoms persist, and shall be removed as soon as possible should these symptoms develop while the child is in care.

hf) A child shall be discharged from the facility only to the child's parents or guardian or to a person designated in writing by the parents or guardian to receive the child.

1) The caregiver shall refuse to release a child to any person, whether related or unrelated to the child, who has not been authorized, in writing, by the parents or guardian to receive the child.

2) Persons not known to the caregiver shall be required to provide a driver's license (with photo) or photo identification card issued by the Illinois Secretary of State to establish their identity prior to a child's release to them.

3) The facility shall maintain a list of persons designated, in writing, by the parents, or guardian to whom the facility can be expected to discharge the child at least once per week. These persons, in addition to the parents or guardian, shall constitute the primary list of persons to whom the child may be released.

4) In addition, the facility shall maintain a contingency list of persons designated, in writing, by the parents or guardian to whom the child may be released less frequently than once per week. When the child is released to a person on the contingency list, the facility shall maintain a record of the person to whom the child was released, the date and time that the child was released, and the manner that the child left the facility (whether on foot, by passenger car, by taxicab or other means of transportation).

i) Other discharge provisions of this Section notwithstanding, a child leaving the group day care home to attend school shall be released in accordance with the written authorization of the parents or guardian. Such authorization shall include the time that the child is to be released and the means of transportation the child is to use.
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j) All group day care homes shall have a written policy that explains the actions the provider will take if a parent or guardian does not retrieve, or arrange to have someone retrieve, his or her child at the designated, agreed upon time. The policy shall consist of the provider's expectations, clearly presented to the parent or guardian in the form of a written agreement that shall be signed by the parent or guardian, and shall include at least the following elements:

1) The consequences of not picking up the children on time, including:

   A) Amount of late fee, if any, and when those fees begin to accrue;

   B) The degree of diligence the provider will use to reach emergency contacts, e.g., number of attempted phone calls to parents and emergency contacts, requests for police assistance in finding emergency contacts; and

   C) Length of time the facility will keep the child beyond the pick-up time before contacting outside authorities, such as the child abuse hotline or police.

2) Emphasis on the importance of having up-to-date emergency contact numbers on file.

3) Acknowledgement of the provider's responsibility for the child's protection and well-being until the parent or outside authorities arrive.

4) A reminder to staff that the child is not responsible for the situation. All discussions regarding these situations shall be with the parent or guardian, never with the child.

k) The daily list of children in care shall be readily accessible in case of emergency evacuations and fire drills.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.85 Program

a) The caregiver and parent shall discuss the child's health, development, behavior and activities to ensure consistency in planning for the child.
b) The program shall include opportunities for a child to have free choice of activities to play alone, if desired, or with one or several chosen peers.

c) The facility shall provide a basic program of activities geared to the age levels and developmental needs of the children served. The daily program shall provide:

1) Informal activities, providing a family atmosphere that promotes the physical and emotional well-being of the individual;

2) Encouragement for children to participate in age appropriate household routines such as preparing food, setting tables, and cleaning up;

3) Regularity of such routines as eating, napping, and toileting with sufficient flexibility to respond to the needs of individual children;

4) A balance of active and quiet activity;

5) Daily indoor and outdoor activities in which children make use of both large and small muscles;

6) Occasional trips and activities away from the facility (frequency to be determined by the caregiver);

7) A supervised nap period for children under six years of age who remain five or more hours. This nap period for the group should not normally exceed two and one-half hours. Children who remain for as long as four consecutive hours shall have a supervised rest period.

d) The daily program of the facility shall provide experiences which promote the individual child's growth and well-being and the development of self-help and communication skills, social competence, and positive self-identity.

e) Program planning shall provide the following:

1) A variety of activities which takes into consideration individual differences in interest, attention span, and physical and intellectual maturity;
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2) Sufficient time for activities and routines, so that the children can manage them and progress at their own developmental rate;

3) Sufficient materials and equipment to avoid excessive competition and long waits;

4) Program planning so that the children are not always required to move from one activity to another as a total group;

5) A program that avoids long waiting periods between activities and prolonged periods during which the children must stand or sit;

6) Provision for privacy through arranging a small, quiet area that is easily accessible to the child who seeks or needs time to be alone; and

7) A variety of chores and activities at the child's developmental level.

f) Materials and toys shall be kept clean, orderly, attractive, and accessible to the children. The group day care home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).

g) There shall be stimulating play and learning materials; these may include household items used creatively.

h) Each child's individuality shall be respected and a sense of self and development of self esteem shall be encouraged.

i) Children shall not be left unattended and adult supervision shall be provided at all times.

j) The program shall take into account the stress and fatigue that result from constant pressures and stimulation of long hours in a group living situation.

k) Activity areas, equipment, and materials shall be arranged so that staff can be easily aware of the children's presence and activity at all times.

l) Equipment shall be arranged in orderly, clearly defined areas of interest, with sufficient space in each area for the children to see various activities available to
Section 408.115 Night Care

a) A group day care home receiving children for night care shall comply with the standards prescribed for group day care homes in addition to the special requirements prescribed in this Section.

b) A child shall be considered to be enrolled in evening and/or night care when a majority of his or her time at the group day care home occurs between 6:00 p.m. and 6:00 a.m.

c) The child shall be bathed, if needed.

d) No child under 5 years of age shall be left unattended while in the bathtub.

e) Each child must have individual sleeping garments that are clean and comfortable.

f) An individual bed, crib, or cot and individual linen and bedding shall be provided for each child except as provided in this subsection (f):

1) A double bed shall be the minimum size for sleeping 2 non-enuretic children of the same sex.

2) Rubber sheets or suitable substitutes shall be supplied when necessary.

3) If a crib is used there shall be no more than 1½ inches of space between the mattress and bed frame when the mattress is pushed flush at one corner of the crib.

4) Unrelated children over 4 years of age may not share a bedroom over night with children of the opposite sex.

g) Caregivers and children receiving night care shall sleep on the same floor (level) of the residence.

h) If the group day care home receives children for night-time care, the caregiver
may sleep while children are present if the caregiver and the children sleep on the same floor (level) of the residence and the children's bedrooms are within hearing distance of the caregiver's bedroom to provide for the needs of the children and to respond immediately in an emergency.

i) A basement area may be used for sleeping or napping if it has been approved in accordance with Section 408.30(a)(129).

j) A room above the first floor may be used for sleeping or napping if the room has 2 exits with one exit leading directly to the outside with means to safely reach the ground level.

k) There shall be a night light or other mechanism to illuminate hallways leading to stairs and/or the restroom.

l) A child who goes to school from a group day care home providing night care shall be clean and properly dressed according to the weather.

m) Each child shall have individual toilet articles such as comb, toothbrush, towel, and washcloth.

n) Health care routines at bedtime and/or upon rising shall include:
   1) Brushing teeth at bedtime and upon rising.
   2) Brushing or combing the hair upon rising.
   3) Establishing a routine for toileting at bedtime and upon rising.

o) When possible, children shall be left for care and picked up either before or after their normal sleeping period so that there is minimum disturbance of the children during sleep.

p) The group day care home shall serve meals and snacks that supplement food served at home as prescribed in Section 408.80.

   1) An evening meal that meets nutritional requirements shall be served at a regular time each evening and shall be available to children who may arrive without having first eaten.
2) A bedtime snack shall be served, unless contraindicated by parents or physician in accordance with Section 408.80.

3) Children who remain overnight and go to school directly from the group day care home shall have breakfast, including juice or fruit, unless they are receiving breakfast at school.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)

Section 408.120 Records and Reports

a) A facility shall maintain a record file on the children enrolled.

1) A written application for admission of each child shall be on file with the signature of the parent or guardian.

2) An alphabetic card file or register on each child shall be maintained and shall include:

   A) Name, date of birth, and sex;

   B) Date of admission and discharge;

   C) Scheduled days and hours of care;

   D) Names of parents or guardians, home address and business address and telephone numbers, marital status, and the working hours of the parents or guardians;

   E) Name, address and telephone number of child's physician (or other person designated by parents who object to medical treatment on religious grounds);

   F) Names, addresses and telephone numbers of others authorized to pick up the child; and

   G) Names, addresses, and telephone numbers of others to contact within the immediate area if parents or guardian cannot be
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contacted in case of emergency; and.

H) Information regarding the child's personal development, habits, medical needs, and other information critical to the child's well-being.

3) There shall be signed consent forms from the parent or guardian including:

A) Permission for emergency medical care and treatment if the parent is not readily available.

B)Permission to administer medication, if applicable.

C) Permission for someone other than parent or guardian to pick up child if necessary.

D) Visits, trips or excursions off the premises.

E) Transportation provided by caregiver.

F) Permission to use the facility's swimming pool, if applicable.

4) Accidents or illnesses which have occurred to the child at the facility shall be recorded in the file. When a child is not permitted to attend the facility because of an accident or illness, the date of readmission to the facility shall be recorded.

5) All required health and medical reports as required by Section 408.70.

6) A statement signed by the parents or guardian indicating receipt of a summary of licensing standards and other materials as required by subsection (c) shall be in the child's record file.

b) A facility shall maintain accurate daily attendance records on all children enrolled. If a child attends on a part-time or irregular basis, this shall be recorded in the attendance record.

c) The facility shall distribute a summary of the licensing standards, provided by the Department, to the parents or guardian of each child at the time that the child is
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accepted for care in the facility. In addition, consumer information materials provided by the Department including, but not limited to, information on reporting and prevention of child abuse and neglect and preventing and reporting communicable disease, shall be distributed to the parents or guardian of each child cared for when designated for such distribution by the Department. Each child's record shall contain a statement signed by the child's parent or guardian, indicating that they have received a summary of licensing standards and other materials designated by the Department for such distribution.

d) The group day care home shall enter in the child's record and orally report immediately to the child's parent, guardian, and the Department any serious occurrences involving children. Oral reports shall be confirmed in writing within 2 working days of the occurrence. If the home is unable to contact the parent, guardian or Department immediately, it shall document this fact in the child's record. These occurrences include serious accident or injury requiring extensive medical care or hospitalization; death; arrest; alleged abuse or neglect; major fire or other emergency situations.

e) Suspected child abuse or neglect shall be reported immediately to the Child Abuse/Neglect Hotline as required by the Abused and Neglected Child Reporting Act. The telephone number for the reporting hotline is 1-800-252-2873.

f) The caregiver shall immediately notify the Department of the death of any child at the facility; a child is missing from the group day care home; any illness or injury of a child resulting in medical treatment or hospitalization, and any known or suspected case or carrier or a reportable contagious, infectious, or communicable disease among children, staff or members of the household.

g) The caregiver shall immediately notify the Department of any natural disaster or other occurrence resulting in the loss of or damage to physical plant or equipment required to operate the group day care home in accordance with this Part.

h) Records shall be maintained on all staff and shall contain all pertinent information relative to character, suitability, and qualifications for the position; health; 3character references verified by the group day care home; history of employment for the previous 5 years; date of employment by the group day care home; and, if applicable, date and reasons for separation from the day care home.

i) The caregiver shall make available to staff a current and complete copy of the
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licensing standards in a location readily accessible to staff. Further, the licensee shall maintain a record signed by staff indicating that they have reviewed the licensing standards and any subsequent changes to those standards provided to the licensee by the Department. Records documenting compliance with this requirement shall be maintained by the licensee and available for licensing review.

j) When the licensed day care home is cited for one or more substantiated violations of licensing standards by the supervising agency, the caregiver shall prominently display in the home the list of violations and the corrective plan, on a form provided by the supervising agency. The caregiver shall keep the form posted until a licensing representative has verified in writing that every violation on that form has been corrected.

k) Each staff person shall sign a statement prescribed by the Department acknowledging his or her status as a mandated reporter of child abuse or neglect under the Abused and Neglected Child Reporting Act and acknowledging he or she has knowledge and understanding of the reporting requirements under that Act. Such statement shall be signed and dated by the staff person prior to employment, and shall be maintained by the licensee.

l) The facility shall maintain and submit reports on staff to the Department on forms provided by the Department.

1) An individual report on each new employee shall be filed with the Department; a copy of this report shall be kept at the facility.

2) All staff changes shall be reported to the Department immediately.

3) Copies of documentation of medical information, verification of educational achievement, and character references of employees shall be provided upon request by the Department.

m) The facility shall promptly report any known or suspected case or carrier of communicable disease to local health authorities, and shall comply with the Illinois Department of Public Health's rules for the Control of Communicable Diseases (77 Ill. Adm. Code 690).

n) Authorized Department licensing representatives or other Department
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representatives who have the Director's written authorization which specifies the statutory authority or administrative rule under which the access is granted shall have access to records and reports. All persons who have access to the records and reports shall respect their confidential nature.

- A medical record for each child, on forms provided by the Department, shall be maintained at the facility, dated no earlier than 6 months prior to enrollment, and signed by the examining physician, an advance practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advance practice nurse to perform health examinations, a physician assistant who has been delegated the performance of health examinations by the supervising physician; or the medical record is certified by a recognized health facility.

- The licensee shall notify the supervising agency within one week, in writing, of any changes to the household composition. Changes that require notification include the addition of any new person into the home, the return of any former household member, or the departure of any household member.

- The licensee shall keep a record of dates and hours worked by the substitute caregiver while the licensee is absent from the group day care home, as required in 89 Ill. Adm. Code 408.55(a).

- The licensee shall maintain records required for fire safety in accordance with Section 408.30. Fire safety records include monthly fire drill reports, monthly fire safety inspections conducted by the licensee, and the log of daily inspections by the licensee to ensure that exit routes are kept clear.

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)
Section 408.APPENDIX G   Pre-Service and In-Service Training

a) Entities that may provide pre-service and in-service training to meet the requirements of this Part Section 406.9(o) include, but are not limited to:

1) colleges and universities
2) child care resource and referral agencies
3) Illinois Department of Public Health or local health departments
4) Office of the State Fire Marshal or local fire department
5) Illinois Department of Children and Family Services
6) Illinois Department of Human Services
7) state or national child care or child advocacy organizations
8) national, state or local family day care home associations
9) Child and Adult Care Food Program sponsors
10) Healthy Child Care Illinois nurses
11) American Red Cross, American Heart Association and other providers of first aid and CPR training that have been approved by the Illinois Department of Public Health

b) Topics or courses to meet the in-service training requirements include, but are not limited to:

1) child care and child development
2) guidance and discipline
3) first aid and CPR
4) symptoms of common childhood illness
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5) food preparation and nutrition
6) health and sanitation
7) small business management
8) child abuse and neglect
9) working with parents and families
10) caring for children with disabilities
11) information about asthma and its management
12) SIDS education
13) service obligations under the federal Americans With Disabilities Act (ADA)
14) Shaken Baby Syndrome
15) Mandated Reporter Training
e) Pre-service and in-service training may be acquired through the following:
   1) attending college or university or vocational school classes (clock hours spent in the classroom are counted)
   2) attending conferences or workshops (Certificate or other proof of attendance, clock hours and subject matter is required.)
   3) attending state or local child care association meetings when a specific training program is provided by a guest speaker or group member (Documentation of attendance, subject matter and clock hours is required.)
   4) in-home training by a Child and Adult Care Food Program sponsor representative, nurse or other trainer (Documentation must include the
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5) self-study materials provided by a child care resource and referral (CCR&R) agency (Certification of clock hours must be secured from the CCR&R.)

6) internet home study programs if the internet site provides documentation of use and number of clock hours

7) mandated reporter training may be acquired through the Department's website at:https://www.dcfstraining.org/manrep/index.jsp

8) viewing of the approved video offered by the National Institutes of Health Back to Sleep Campaign for SIDS and sleeping position of infants

The training instructor, speaker or president of the child care organization sponsoring the training, may sign the documentation of completion. The child care resource and referral (CCR&R) agency must sign and provide documentation of completion for self-study materials, and the internet site must provide documentation for home study programs.

d) Licensed providers shall meet the 15 Hrs. clock hour requirements for in-service training per period of licensing calendar year. Caregivers obtaining clock hours in excess of the required 15 clock hours per year may apply up to 5 clock hours to the next year's training requirements.

e) For newly licensed providers, required annual in-service training hours are prorated based on the month of the effective date of license.

For newly licensed providers in 2003 and thereafter

<table>
<thead>
<tr>
<th>Monthly of License</th>
<th>Training Hours Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>15 Hrs.</td>
</tr>
<tr>
<td>February</td>
<td>13 Hrs. 45 Min.</td>
</tr>
<tr>
<td>March</td>
<td>12 Hrs. 30 Min.</td>
</tr>
<tr>
<td>April</td>
<td>11 Hrs. 15 Min.</td>
</tr>
<tr>
<td>May</td>
<td>10 Hrs</td>
</tr>
<tr>
<td>June</td>
<td>8 Hrs. 45 Min.</td>
</tr>
<tr>
<td>July</td>
<td>7 Hrs. 30 Min.</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Month</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>August</td>
<td>6 Hrs. 15 Min.</td>
</tr>
<tr>
<td>September</td>
<td>5 Hrs</td>
</tr>
<tr>
<td>October</td>
<td>3 Hrs 45 Min.</td>
</tr>
<tr>
<td>November</td>
<td>1 Hr. 30 Min.</td>
</tr>
<tr>
<td>December</td>
<td>1 Hr. 15 Min.</td>
</tr>
</tbody>
</table>

cf) Courses/training approved by the Department in carrying for children with disabilities must include the following component:

- Introduction to Inclusive Child Care
- Understanding Child Development in Relation to Disabilities
- Building Relationships with Families
- Preparing for and Including Young Children in the Child Care Setting
- Community Services for Young Children with Disabilities (including Early Intervention services)

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)
The Department shall notify the Office of the State Fire Marshal (OSFM) local fire prevention authority in the area where the applicant resides of the name and address of a group day care home initial licensure applicant. The notification about a new applicant shall be on a form prescribed by the Department and shall include a space for comments and recommendations by the local fire prevention authority, the Department's or supervising agency's return address, and the following list of items shall be inspected by OSFM, or by a supervising agency licensing representative trained by OSFM to conduct fire safety inspections for licensure, license renewal or annual monitoring for inspection:

1. The paths of escape, including doors and escape windows from the home, are kept operable and clear from obstruction (see Section 408.30(b)) Number of smoke detectors on each level of the home (see Section 408.30(a)(4))

2. Smoke detectors are provided on each level of the home (including basements and second floors even if they are not used for child care) and in any room where children are allowed to nap or sleep (see Section 408.30(a)(4)(A)) Smoke detectors within 15' of each sleeping area (see Section 408.30(a)(4)(A))

3. Smoke detectors are functioning (detected by pushing the test button) (see Section 408.30(a)(4)(A)) All smoke detectors are less than 10 years old and functioning properly (see Section 408.30(a)(4)(A))

4. Locks and deadbolts to exterior doors are operable without the use of a key, tool or special knowledge to open the door from inside the home to exit to the outside (see Section 408.30(b)(7)) Secondary means of escape provided from all levels utilized for the home (i.e., windows/doors) (see Section 408.30(a)(7) (9))

5. Occupants shall be able to escape the home without having to activate more than 2 releasing devices (e.g., door knobs, deadbolts, thumb-turn lock) on any door to the outside (see Section 408.30(b)(6)) All exits are unobstructed (see Section 408.30(a)(15))

6. Bathroom doors shall be able to be opened by staff from outside the room if necessary (see Section 408.30(b)(4)) Emergency contingency plan and properly posted emergency floor plan (see Section 408.30(p))
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7. Closet doors shall be able to open from inside the closet without the use of a key (see Section 408.30(b)(5)) An available operational telephone with proper emergency numbers displayed (see Section 408.30(a)(16))

8. Paths of escape from the home have operable lighting (light bulbs are in place and functioning) (see Section 408.30(b)(3)) Proper all purpose portable fire extinguishers are functional and located in the kitchen (see Section 408.30(a)(2))

9. Protective covers for all electrical receptacles are provided in areas occupied by children (see Section 408.30(a)(3)) First aid kit with prescribed contents (see Section 408.30(a)(1))

10. Heating equipment in spaces occupied by children are separated by partitions, screens or other means to protect children from hot surfaces and open flames (see Section 408.30(a)(8)) Displayed CPR/first aid certificate for group home child care provider and assistant (if applicable) (see Section 408.35(i))

11. Carbon monoxide detectors are installed and operable in areas occupied by children (see Section 408.30(a)(5)) All electrical outlets have protective covers (see Section 408.30(a)(3))

Operating Requirements (renewal and subsequent monitoring visits)

12. There is a comprehensive written fire emergency response plan in the home (see Section 408.30(q)) No exposed or damaged wiring (see Section 408.30(a)(3))

13. There are emergency egress and relocation monthly drills conducted by the caregiver with children participation (see Section 408.30(q)(4)) No space heaters used during hours of daycare operation (see Section 408.30(a)(5))

14. Monthly basic fire safety inspections of the home are conducted by the caregiver or staff members in the home (see Section 408.30(b)(9)) Written operations plan for the use of wood burning fireplace (if applicable) (see Section 408.30(a)(6))

15. Daily fire safety inspections are done by the caregiver or staff to ensure that escape paths are clear and exit doors and escape windows are operable (see Section 408.30(b)(10)) All medicines, cleaning supplies and chemicals are contained in a locked cabinet (see Section 408.30(a)(13))
Additional Items for Inspection at Renewal of Licensure

16. Corridors are clear of clothing and personal effects (see Section 408.30(b)(1)) Fire drills conducted monthly (and properly posted) (see Section 408.30(p))

17. Flammable and combustible artwork and teaching materials attached directly to the walls are limited to no more than 20% of the wall area (see Section 408.30(a)(14)) Tornado drills conducted monthly (see Section 408.30(p))

18. Caregiver and staff are awake and alert when children are present in the home (see Section 408.35(k)) No evidence of smoking during the hours of daycare operation (see Section 408.30(c))

19. Number of children licensed for daycare operation is prominently displayed during hours of operation (see Section 408.20(i))

20. Actual number of children present at time of inspection (see Section 408.65).

(Source: Amended at 34 Ill. Reg. 18411, effective December 15, 2010)
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1) **Heading of the Part**: Relocation Towing

2) **Code Citation**: 92 Ill. Adm. Code 1710

3) **Section Numbers**: Adopted Action:
   - 1710.10    Amend
   - 1710.22    Amend
   - 1710.33    Amend
   - 1710.34    New Section
   - 1710.35    New Section
   - 1710.36    New Section
   - 1710.40    Amend
   - 1710.44    Amend
   - 1710.46    Amend
   - 1710.47    Amend
   - 1710.52    Amend
   - 1710.60    Amend
   - 1710.80    Amend
   - 1710.91    Amend
   - 1710.94    New Section
   - 1710.122   Amend
   - 1710.123   Amend
   - 1710.131   Amend
   - 1710.147   New Section
   - 1710.150   Amend
   - 1710.152   Amend
   - 1710.170   Amend
   - 1710.190   New Section
   - 1710.191   New Section
   - 1710.192   New Section

4) **Statutory Authority**: Implementing Section 18a-101 and authorized by Section 18a-200 of the Illinois Commercial Relocation of Trespassing Vehicles Law [625 ILCS 5/18a-101 and 18a-200]

5) **Effective Date of Amendments**: January 1, 2011

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

7) **Does this amendment contain incorporations by reference?** No
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8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Illinois Commerce Commission's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 12, 2010; 34 Ill. Reg. 3182

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version: The proposed 10,000-pound and 40,000-pound weight breaks for defining medium-duty and heavy-duty vehicles were adjusted in the final version to 8,000 pounds and 26,000 pounds. These changes can be found at Section 1710.10 in the definitions of "Heavy Duty Tow Equipment" and "Medium Duty Tow Equipment". The final version also provides an administrative simplification for the applicability of the light-duty, medium-duty, and heavy-duty rates. This administrative simplification was included in the final version of Section 1710.190.

The final version further provides an exception in Section 1710.191(a) to the requirement to separate multi-unit tows where it would be impossible or unsafe to do so. The proposed prohibition on driving away trespassing vehicles was changed in the final version; under the final version of Section 1710.192, medium-duty and heavy-duty vehicles may be driven away where towing would be unsafe or impossible. Nevertheless, under the final version, it is expected that relocators will need to utilize medium-duty and heavy-duty tow equipment on a more regular basis. Thus, to better effectuate the intent of Section 1710.192 (which requires relocators to utilize tow equipment unless it is unsafe or impossible to do so), the final version amends Section 1710.152 to provide for the leasing of medium-duty tow equipment and heavy-duty tow equipment by more than one relocator simultaneously.

Under the final version of Section 1710.22(b)(6), spotters will be able to work with either an operator's or dispatcher's employment permit, rather than only a dispatcher's employment permit as originally proposed. The proposed rule at Section 1710.46(c) to prohibit anti-spotting activities was withdrawn from the final version.

The proposed rule at Section 1710.34 providing for reasonable continuation of a relocator license upon the death of a business owner was changed to take into account possible corporate ownership of stocks and LLCs. The 5-day time period to report death contained at Section 1710.34(c)(1) was extended to 30 days in the final version. The proposed 365-day limit to continuation of operations after the death of a business owner contained at Section 1710.34(c)(2) was also extended. Because the proposal to add Section 1710.34
resulted in the potential continuation of a relocator's license issued to a corporation or LLC, the final version of the rules adds Section 1710.36, which allows license numbers, employment permits and relocation towing contracts to remain in effect as long as the corporation or LLC continues in existence, despite a change in ownership.

The proposed rule at Section 1710.91(g) requiring relocation towing contracts to expire every two years was changed in the final version into a requirement that relocators take and document steps to update contract information every three years. The final version of the rules adds Section 1710.91(h) providing that relocation towing contracts continue in effect until cancelled regardless of a change in property ownership.

The proposed exemption contained at Section 1710.40(c) for relocating law enforcement vehicles was limited in the final version to marked law enforcement vehicles, and subsection (d) was added to that Section to cover vehicles used in bona fide covert operations. The final version amends Section 1710.80 to allow law enforcement agencies to prescribe a preferred method of notification of relocation tows; this was done at the request of the industry to improve compliance with this requirement since the proposed amendment to Section 1710.147 could result in the issuance of refunds due to a relocator's non-compliance with Section 1710.80.

The proposed rule at Section 1710.94 requiring a separate call log was changed in the final version; a dispatch log containing information regarding calls for relocation services can fulfill the call log requirement under the final version, and relocators will not need to document passwords or phrases as originally proposed.

The proposal to require relocated vehicles to be stored in a secured manner, separate from other stored vehicles was changed in the final version of Section 1710.131(b) to a requirement that relocators mark vehicles to distinguish vehicles being stored under the authority of a relocation towing license from other stored vehicles. The proposal at Section 1710.131(c) to limit access to relocated vehicles to only employees of the relocator was expanded in the final version to include individuals who may lawfully access relocated vehicles and storage lots; the final version of Section 1710.131(c) also permits individuals to enter the storage lot under the electronic surveillance of the relocator.

The final version updates the maximum storage charge contained in Section 1710.122(d) to 8 days of storage at the appropriate rate for the type of relocation tow. The final version of Section 1710.170(b) further grants relocators 30 minutes to complete a
relocation tow record form for each tow, and Section 1710.170(c) provides an exception to the completeness requirement where information is not available to relocators.

The proposal in Section 1710.170(e) to increase from $7.50 to $10.00 the Commission's fee per Relocation Tow Record Form was modified in the final version; the final version permits relocators to pass along the $2.50 increase to vehicle owners in light-duty relocation tows. To ensure this pass along provision did not result in a relocator unintentionally violating the Commission's prohibitions at Section 1710.47 against charging fees not posted on relocation towing signs, the final version amends Section 1710.47 to clarify that relocators can charge vehicle owners the $2.50 invoice fee without having to change their relocation towing signage.

Definitions for "operated under authority of a relocator's license" and "public property" were added to the final version of Section 1710.10.

Minor wording and grammatical changes were also included in the final version.

11) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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

13) Are there any amendments pending on this Part? No

14) **Summary and Purpose of Amendments:** The adopted amendments are intended to implement Public Acts 95-407 and 95-562, both of which expanded the Illinois Commerce Commission's regulation of relocation towing to include vehicles weighing in excess of 10,000 pounds. The amendments also improve the Commission's regulatory oversight of the relocation towing industry by resolving several enforcement issues that have arisen since the last time these rules were amended.

15) **Information and questions regarding this adopted rulemaking shall be directed to:**

   Wil Nagel  
   Office of Transportation Counsel  
   Illinois Commerce Commission  
   160 N. LaSalle Street, Suite C-800  
   Chicago, Illinois 60601  
   312/814-1934  
   wnagel@icc.illinois.gov

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

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TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER d: RELOCATION TOWING

PART 1710
RELOCATION TOWING

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Section 1710.10 Definitions

SUBPART B: APPLICATIONS FOR RELOCATOR'S, OPERATOR'S AND DISPATCHER'S LICENSES

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1710.20 Application Forms
1710.21 Notice of Applications
1710.22 Policy on Applications

SUBPART C: RELOCATOR'S LICENSES, OPERATOR'S AND DISPATCHER'S EMPLOYMENT PERMITS

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1710.31 Licenses To Be Carried by Holder
1710.32 Alteration of Licenses
1710.33 Relocator's Endorsement of Operator's and Dispatcher's Employment License
1710.34 Status of License Upon Death of Business Owner
1710.35 Status of License Upon Application for Renewal
1710.36 Retention of Relocator License and Permit Numbers and Contracts

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1710.42 Relocation of Vehicles Not in Accordance with Proper Posting
1710.43 Relocating Vehicles Where Owner or Driver is Present
1710.44 Unsafe Operation of Unsafe Vehicles Prohibited
1710.45 Transacting Business at Unauthorized Locations
1710.46 Operations at Posting Signs At Locations Where the Relocator Is Not Authorized to Operate
1710.47 Certain Types of Compensation to Relocators Prohibited
1710.48 Compensation to Property Owners and Others

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1710.50 Posting Requirements
1710.51 Sign Specifications
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SUBPART F: VEHICLE IDENTIFICATION

Section
1710.60 Vehicle Identification Requirement

SUBPART G: INSURANCE REQUIREMENTS

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1710.70 Licenses Conditioned Upon Compliance With Insurance Requirements
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1710.90 Records of Individual Relocation Tows (Repealed)
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SUBPART K: INFORMATION PROVIDED TO THE PUBLIC BY RELOCATORS

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1710.110 Public Information Pamphlets
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SUBPART S: MEDIUM DUTY AND HEAVY DUTY TOWING

Section
1710.190 Establishing Vehicle Weights
1710.191 Relocating Multi-Unit Vehicles
1710.192 Medium Duty or Heavy Duty Towing Equipment Necessary

AUTHORITY: Implementing Section 18a-101 and authorized by Section 18a-200 of the Illinois Commercial Relocation of Trespassing Vehicles Law [625 ILCS 5/18a-101 and 18a-200].
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SUBPART A: MISCELLANEOUS PROVISIONS

Section 1710.10 Definitions

The following terms, when used in this Part, shall have the meanings ascribed to them in this Section.

"Addendum". A supplement to an existing lease.

"Air Mile". A distance of 5,280 feet as depicted on the Official Illinois Highway Map, by reference to the distance scale shown on that map, without regard to roads, streets or routes.

"Commission". The Illinois Commerce Commission.

"Equipment". Any truck designed or altered and equipped for and used to push, tow or draw vehicles by means of a crane, hoist, tow bar, towline or auxiliary axle, and rollback carriers when used to transport vehicles.

"Heavy Duty Relocation". The relocation of a vehicle that, if towed, would require use of heavy duty tow equipment for safe removal and transportation, in compliance with applicable law, and without undue risk of damage to the vehicle being relocated or the property from which the vehicle is relocated.

"Heavy Duty Tow Equipment". A tow truck or truck tractor designed to safely transport vehicles weighing more than 26,000 pounds.

"Law". The Illinois Commercial Relocation of Trespassing Vehicles Law [625 ILCS 5/Ch. 18a].
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"Lease". A written document vesting possession, use, control and responsibility in the lessee during the periods the vehicle is operated by or for the lessee.

"Lessee". In a lease, the party acquiring the use of equipment, with or without driver, from another.

"Lessor". In a lease, the party granting the use of equipment, with or without driver, to another.

"Medium Duty Relocation". The relocation of a vehicle that, if towed, would require use of medium duty tow equipment for safe removal and transportation, in compliance with applicable law and without undue risk of damage to the vehicle being relocated or the property from which the vehicle is relocated.

"Medium Duty Tow Equipment". A tow truck or truck tractor designed to safely transport vehicles weighing more than 8,000 pounds but not more than 26,000 pounds.

"Operated under Authority of a Relocator's License". A vehicle is being operated under authority of a relocator's license while:

- on patrol;
- from the time the vehicle is dispatched to perform a call tow until it arrives on the property from which a trespassing vehicle is to be relocated;
- while towing a trespassing vehicle from the property where it was trespassing to the relocator's storage lot;
- while at the relocator's storage lot until the vehicle is dropped; and
- while transporting a driver to the property where a vehicle is trespassing, awaiting removal of the vehicle from such property by driving, and accompanying the trespassing vehicle as it is driven back to the relocator's storage lot.

"Owner". A person to whom title to equipment has been issued, or who, without title, has the right to exclusive use of equipment, for a period longer than 30 days, or who has lawful possession of equipment, registered and licensed in any state in
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the name of that person.

"Public Property". Property that is publicly funded through tax revenues and that is accessible to the public.

"Relocated", "Relocating", and "Relocation". Refer to the towing of trespassing vehicle from private property. A tow from public property is not a relocation tow. A tow from private property pursuant to explicit authorization from the vehicle owner or owner's agent is not a relocation tow.

"Spotter". Any person who, as an employee or agent of a commercial vehicle relocator, observes vehicles and drivers entering a parking lot to identify trespassing vehicles and then contacts the relocator or an operator to remove the trespassing vehicle.

"Truck Tractor". Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn. [625 ILCS 5/1-2 12]

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART B: APPLICATIONS FOR RELOCATOR'S, OPERATOR'S, AND DISPATCHER'S LICENSES

Section 1710.22 Policy on Applications

a) Relocator's Licenses.

1) The Commission shall consider, with regard to applications for new or renewed relocator's licenses, the criminal conviction records (see Section 1710.22(b)(1)) of the applicant, its owners or controllers, directors, officers, members, managers, employees and agents; the safety record of those persons; the compliance record of those persons; the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license applied for.

2) The Fitness Test.

   A) No person shall be deemed fit to hold a relocator's license unless
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the person:

i) Owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that which meets the requirements of Subpart M;

ii) Employs sufficient full-time employees at each storage lot to comply with Section 1710.123;

iii) Owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocator's license; and

iv) Employs at least 2 individuals who will work as the relocator's operators; and

v) Is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4].

B) If the person is an applicant for a new relocator's license or the extension of a relocator's license, the requirements of subsection (a)(2)(A) must be met at the time of the hearing.

C) If the person is an applicant for renewal of a relocator's license, the requirements of subsection (a)(2)(A) must have been met throughout the previous year.

D) Each applicant for a relocator's license shall have the burden of proving its fitness by clear and convincing evidence.

b) Operator's and Dispatcher's Employment Permits Licenses.

1) The Commission shall consider, with regard to applications for new or renewed operator's and dispatcher's employment permits licenses, any record of the applicant of convictions involving injury or death to persons, use of a deadly weapon, injury to property, or unlawful taking of property; crimes relevant to the determination of the credibility of a witness; or of violation of the Law or this Part.

2) No provisional employment permits licenses shall be issued to persons
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who have been convicted of such crimes specified in subsection (b)(1) within the 5 year period preceding filing of the application, or to persons who are defendants in pending criminal proceedings involving those crimes. The Commission may deny a provisional employment permit to any person with a record of violations of the Law or this Part. In determining whether to deny a provisional employment permit on the basis of violations of the Law or this Part, the Commission will consider such factors as the type of violation, when the violation occurred, and the age of the applicant at the time of the violation. The Commission may also deny a provisional employment permit on the basis of the applicant's criminal or driving record, in the case of an application for a provisional operator's employment permit, or on the basis of the applicant's criminal record, in the case of an application for a provisional dispatcher's employment permit. In determining whether to deny a provisional employment permit on the basis of a criminal or driving record, the Commission will consider such factors as the type of crime, when the crime occurred, and the age of the applicant at the time of the incident.

3) Where the applicant has a record of convictions for such crimes specified in subsection (b)(1), or where the applicant was convicted for those crimes, or where the applicant was convicted more than 5 years prior to filing the application, or where the applicant has a record of violations of the Law or this Part, the application for a permanent employment permit shall be set for hearing.

4) Applications for operator's employment permits shall be accompanied by written proof from the Secretary of State that the applicant has a valid driver's license.

5) No person under the age of 18 years shall be issued an operator's employment permit.

6) A spotter must obtain a dispatcher's or operator's employment permit prior to performing spotting services for a relocator.

c) In making the finding that an applicant previously convicted constitutes no threat to public safety (see 625 ILCS 5/18a-404(c)), the Commission will consider such factors as the findings of the convicting court, the sentence imposed, the age of
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the applicant at the time of conviction, the age at the time of application, the nature of the arrest, and the length of time since the arrest that resulted in the conviction.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART C: RELOCATOR'S LICENSES, OPERATOR'S AND DISPATCHER'S EMPLOYMENT PERMITS

Section 1710.33 Relocator's Endorsement of Operator's and Dispatcher's Employment Permits

a) Operators and dispatchers are authorized licensed to operate only under authority of a relocator's license. As evidence that operations are under authority of a relocator's license, an owner or officer of the relocator must endorse the employment permit license by completing a form showing:

1) The name and employment permit license number of the operator or dispatcher as they appear on the operator's or dispatcher's employment permit license;

2) The name and employment permit license number of the relocator, as they appear on the relocator's license; and

3) A statement that "the referenced employment permit operator's license is endorsed by the referenced relocator," followed by the signature of the owner or officer and a statement of the capacity of the signatory.

b) Endorsements of an operator's or dispatcher's employment permit license, once made by a relocator, shall become effective only when a copy is filed with the Commission. The endorsement shall remain in effect until written notice of cancellation is filed with the Commission.

c) Operation under an operator's or dispatcher's employment permit license that which does not have a valid, current endorsement by a licensed relocator is not authorized by the relocator's license and shall constitute relocating without a license in violation of Section 18a-300(1) of the Law [625 ILCS 5/18a-300(1)].

d) Employment or use of any operator who does not have a valid, current
endorsement by the relocator shall constitute the employment or use of an unlicensed operator in violation of Section 18a-300(2) of the Law [625 ILCS 5/18a-300(2)].

e) Employment or use of any dispatcher who does not have a valid, current endorsement by the relocator shall constitute the employment or use of an unlicensed dispatcher in violation of Section 18a-300(3) of the Law [625 ILCS 5/18a-300(3)].

f) A valid, current endorsement shall be affixed to and carried in the vehicle with the operator's employment permit at all times when the vehicle is being operated under authority of the relocator's license.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.34 Status of License Upon Death of Business Owner

a) The death of a sole proprietor immediately terminates the relocator's license issued to the sole proprietorship.

b) The death, dissolution or termination of one partner immediately terminates the relocator's license issued to the partnership.

c) The death, dissolution or termination of a sole shareholder immediately terminates the relocator's license issued to the corporation except when:

1) The deceased shareholder's heirs at law, legatees under a valid will, or a successor entity acquire all of the deceased shareholder's shares of stock of the corporation; and

2) The corporation, within 30 days after the sole shareholder's death, dissolution or termination, applies for a new relocator's license identifying the new shareholder or shareholders identified in subsection (c)(1).

d) A corporation with an application filed pursuant to subsection (c) may not operate under its original relocator's license for a period greater than 365 days after the date of the sole shareholder's death, dissolution or termination, unless the application has been fully prosecuted and the record marked "heard and taken" in accordance with the Commission's Rules of Practice (83 Ill. Adm. Code 200.870)
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and 200.875) or when granted permission by the administrative law judge presiding over the licensing proceeding.

e) When a corporation holding a relocator's license has multiple shareholders, the death, dissolution or termination of a shareholder immediately terminates the relocator's license issued to the corporation except when:

1) The remaining shareholder or shareholders acquire all of the deceased shareholder's interests in the corporation; and

2) The corporation, within 30 days after the death, dissolution or termination of the shareholder, notifies the Commission in writing of the death, dissolution or termination of the shareholder and the manner in which the heirs, legatees or successor will acquire the share of the corporation.

f) If the Commission does not receive the appropriate filings under subsections (c) and (e) within the 30 day limit, the Commission shall immediately terminate the relocator's license and the corporation shall cease its relocation towing operations.

g) The death of a member of a limited liability company shall be treated in the same manner as the death of a shareholder of a corporation.

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.35 Status of License Upon Application for Renewal

a) Applications for renewal of a relocator's license shall be filed with the Commission no earlier than 90 days and no later than 45 days prior to the license expiration date.

b) Relocators that file an application for renewal within the time frame set forth in subsection (a) may continue their relocation towing operations until the Commission enters a final order regarding the renewal application.

c) Relocators that fail to file an application for renewal within the time frame set forth in subsection (a) must cease relocation towing operations on the license expiration date and may not conduct relocation towing operations until the Commission enters a final order regarding the renewal application or the relocator demonstrates to the Commission good cause for why it should be permitted to
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continue operating while the late-filed application is pending.

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.36 Retention of Relocator License and Permit Numbers and Contracts

Upon the issuance of a new relocator's license to a corporation or limited liability company that already holds a relocator's license, but that has applied for a new relocator's license due to the death, dissolution or termination of a shareholder or member:

a) The corporation or limited liability company may, upon request, retain its relocator's license (RTV) number;

b) Operator's and dispatcher's employment permits endorsed by the corporation or limited liability company under the existing relocator's license shall remain valid under the new relocator's license; and

c) Contracts executed by the corporation or limited liability company under the existing relocator's license shall be deemed to be contracts under the new relocator's license, and contract summary forms filed under the existing relocator's license shall be deemed to be filings under the new relocator's license.

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART D: PROHIBITED ACTIVITIES

Section 1710.40 Relocating Vehicles From Authorized Spaces

a) No vehicle shall be relocated if it is parked in a space on private property where it is authorized to be parked.

b) Relocated vehicles must be towed directly from the initial point of the tow to the relocator's facility that is indicated on the relocator's signs posted on the property in conformance with Section 1710.51.

c) No vehicle owned by a law enforcement agency, the name of which is clearly marked on the exterior of the vehicle or on a placard displayed on the dashboard, shall be relocated if it is parked on private property for a law enforcement purpose.
d) Law enforcement owned vehicles that are relocated while being utilized in an undercover manner for investigative purposes shall be released without the assessment of any storage or towing fees when the relocator is provided written confirmation from the agency's commanding officer on law enforcement agency letterhead verifying that the agency's vehicle was on private property in an official capacity.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.44 Unsafe Operation of Unsafe Vehicles Prohibited

a) No relocator shall operate any vehicle that does not conform to the applicable requirements of display a valid Illinois Safety Test Inspection Sticker and conform to the requirements of 625 ILCS 5/12-606.

1) 625 ILCS 5/13-111 and 13-114, regarding safety inspections and display of Certificates of Safety; and

2) 625 ILCS 5/12-606, regarding identification, equipment and insurance of tow trucks.

b) No one other than the holder of a valid operator's employment permit endorsed by the relocator shall ride in the cab of a vehicle being operated under authority of a relocator's license.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.46 Operations Posting Signs at Locations Where the Relocator Is Not Authorized to Operate

a) No relocator shall post a sign at a location in an incorporated area more than 10 air miles from a storage lot to which the relocator can relocate vehicles in compliance with this Part.

b) No relocator shall post a sign at a location in an unincorporated area more than 15 air miles from a storage lot to which the relocator can relocate vehicles in compliance with this Part.
c) **No relocator shall tow a vehicle from public property under the authority of its relocator's license.**

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.47 Certain Types of Compensation to Relocators Prohibited

a) Except as provided in subsection (b) of this Section, no relocator shall demand, collect, or receive anything of value or compensation for or in relation to its relocation business:

1) From the property owner, lessee, or their agents, or from any person other than the relocated vehicle's owner or the owner's agent, except according to terms in the contract entered into between the property owner or lessee and the relocator;

2) From the vehicle owner, lessee, or their agents:

   A) Greater than the amount indicated posted on the signs posted on the private property from which the vehicle was relocated;

   B) Greater than or other than the rates prescribed by the Commission; or

   C) If Where the relocation was not performed in compliance with the Law and this Part.

b) Storage fees prescribed by the Commission need not be posted on signs at locations from which vehicles are towed, but must be posted at locations at which vehicles may be reclaimed.

c) **The amount of any increase in the price charged by the Commission for a Relocation Tow Record Form or Relocation Tow Record Number that the relocator is permitted by Section 1710.170(e) to add to the otherwise applicable rate need not be posted on signs at locations from which vehicles are towed, but must be posted at locations at which vehicles may be reclaimed.**

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)
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SUBPART E: POSTING OF SIGNS

Section 1710.52 Removal of Signs

a) The relocator must remove all signs from private property within 10 days after:
   1a) the relocator receives notice of termination of the contract; or
   2b) the contract with property owner, lessee or agent expires; or
   3c) authorization from the property owner, lessee or agent is withdrawn.

b) Only the following persons are permitted to remove relocation towing signage:
   1) The relocator whose name appears on the signage;
   2) The property owner, lessee or agent; or
   3) Another relocator if:
      A) The relocation contract pursuant to which the signage was posted has been terminated and the 10 day period in subsection (a) has expired; and
      B) The relocator is requested, in writing, by the property owner, lessee or agent to remove the signage, and the relocator retains that request as part of its business records.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART F: VEHICLE IDENTIFICATION

Section 1710.60 Vehicle Identification Requirement

Except as provided in this Section, each vehicle operated under authority of a relocator's license must bear the full legal name of the relocator, as it appears on the relocator's license, together with the address and telephone number of the relocator. ThisSuch information shall be in characters not less than 2 inches in height, and in colors contrasting with the color of the background against which the information is painted or printed. All identification must be
painted or firmly affixed to both sides of the cab of the vehicle. No other name, address or telephone number of a relocation service shall be visible to the public while the vehicle is being operated under authority of the relocator's license.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART H: REQUIRED NOTIFICATIONS

Section 1710.80 Notification of Law Enforcement Agencies

a) Not later than 1 hour after a vehicle is relocated, the relocator shall notify the law enforcement agency having jurisdiction in the area from which the vehicle was relocated. The notification shall be confirmed in writing by first class U.S. mail within 24 hours after the vehicle is relocated and shall include all information set forth in subsection (c). Law enforcement agencies may prescribe a method of notification other than U.S. mail. Relocators must maintain records documenting the notification, the method of notification used, and the law enforcement agency's request to use a method of notification other than U.S. mail.

b) Any relocator in possession of a vehicle that has remained unclaimed for a period of 15 days after having been towed shall, within 5 days after the expiration of that period, report the vehicle as unclaimed. The report shall be made to the municipal police having jurisdiction over the location from which the vehicle was towed if the vehicle was towed from a location within the corporate limits of any city, village or incorporated town. The report shall be made to the County Sheriff or State Police having jurisdiction over the location from which the vehicle was towed if the vehicle was towed from a location that is outside of the corporate limits of a city, village or incorporated town.

c) Notification shall include:

1) The name, address, and telephone number of the relocator;
2) The license number of the relocator;
3) The color, make, model, and license number of the vehicle relocated;
4) The date and time of the relocation;
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5) The address of the property from which the vehicle was relocated, and the address to which the vehicle was relocated; and

6) the Vehicle Identification Number (VIN).

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART I: BOOKS AND RECORDS

Section 1710.91 Written Authorizations to Relocate/Contracts

a) Each relocator shall maintain a file of all written authorizations to relocate vehicles, and of contracts relating to the relocation of vehicles thereto.

b) Each contract between a relocator and one or more property owners, lessees, or agents shall state:

1) The name of the relocator and all other parties to the contract;

2) The location of each property to which the contract applies;

3) A description of all services to be provided by the relocator; and

4) A description of all compensation to be received by the relocator.

c) Each contract shall also provide that:

1) Signs posted on the property in compliance with this Part are the property of the relocator;

2) The relocator has the right to enter the property for purposes of posting and removing signs;

3) The contract shall not be terminated except on 10 days notice; and

4) The contract is the exclusive statement of terms between the parties.

d) The provisions required under subsection (c) shall be implied if not expressly stated in the contract.
e) The provisions of subsections (c)(1) and (c)(2) shall remain in effect until all signs have been removed by the relocator, notwithstanding the termination of the contract for other purposes.

f) Contract Summary.

1) No authorization to tow or contract shall be effective until a completed copy of the Commission's Relocator Contract Summary form covering the authorization or contract has been electronically filed with the Commission.

2) Only one authorization to tow or contract shall be in effect for any lot at any time. No other authorization or contract shall become effective until the prior authorization has been cancelled and notice of cancellation is filed with the Commission.

3) Relocator Contract Summaries shall be filed electronically with the Commission. Summaries shall state whether trespassing vehicles will be removed from the property on a patrol basis or only when contacted by the property owner, lessee or agent. When a contract permits removal of trespassing vehicles by both a property owner's request and a patrol basis, the relocator shall file that contract as a patrol contract. When one authorization to tow applies to multiple parking lot locations, each address shall be filed electronically with the Commission.

4) Notices of cancellation shall be filed with the Commission, by first class U.S. mail or hand delivery, at the following address:

   Illinois Commerce Commission Police
   9511 West Harrison Street
   Des Plaines, Illinois 60016

   

   Relocators shall, at least once prior to December 31, 2013 and once during each 3 year period thereafter, attempt to contact the property owners, lessees and agents under contract with the relocator to update their contract files, and shall update information on file with the Commission if updated information is obtained through this process. Relocators shall document their efforts to contact property
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owners, lessees and agents.

3) Relocator Contract Summaries and notices of cancellation shall be filed with the Commission at the following address:

   Illinois Commerce Commission
   Transportation Division
   477 South River Road
   Des Plaines, Illinois 60016

   h) Written authorization to relocate vehicles shall continue in effect, notwithstanding a change in ownership or management of the property, until the contract is cancelled by filing a Notice of Cancellation in accordance with Section 1710.91(f)(4). Any authorization to tow or contract entered into with a property owner, lessee or agent after November 1, 2010 shall contain a printed statement that:

   "This authorization to relocate vehicles shall continue in effect notwithstanding a change in ownership or management of the property until the contract is cancelled by filing a Notice of Cancellation in accordance with Section 1710.91(f)(4)."

   (Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.94 Call Logs

Relocators shall retain a Call Log for tows conducted pursuant to a written authorization that specifies that trespassing vehicles will be removed from the property only when contacted by the property owner, lessee or agent. The Call Log shall contain:

   a) The date and time of the request to tow a trespassing vehicle;

   b) The address of the property from which the vehicle is to be relocated;

   c) The color, make, model and license number or the vehicle identification number (VIN) of the vehicle requested to be relocated, to the extent that information is available to the requestor or relocator from an examination of the exterior of the vehicle at the time of the request or relocation;
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d) The date and time that law enforcement notification was made;

e) The star number, ID number, or name of the individual contacted at the law
    enforcement agency; and

f) A Dispatch Log including all relocation tows or all tows made by a relocator, in
    lieu of a separate Call Log, if the Dispatch Log indicates which relocations were
    patrol and which were call and contains the information set forth in subsections
    (a) through (e).

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART L: RECLAIMING RELOCATED VEHICLES

Section 1710.122 Payment of Fees and Charges

a) Form of Payment. Relocators shall accept any of the following methods of
   payment for lawful fees and charges:

   1) United States currency;
   2) Commonly recognized travelers checks;
   3) Money orders;
   4) Cashier's checks;
   5) Certified checks; and
   6) Commonly accepted credit cards and debit cards.

b) No storage charge shall be assessed for storage of the vehicle after the vehicle is
   claimed, proper identification is produced, and payment is tendered in the amount
   and form authorized by this Section.

c) No storage charges shall be assessed for storage of the vehicle on days or hours,
   as noted on signs posted pursuant to Section 1710.51, when the relocator is closed
   to the public.
d) No storage charges greater than 8 days storage at the applicable daily rate $200 shall be assessed for storage of the vehicle if the vehicle had been reported as stolen prior to its relocation.

e) No relocator shall assess, demand, accept, or receive any charge other than the lesser of:

1) The rate set by the Commission pursuant to Section 18a-200(6)(4) of the Law [625 ILCS 5/18a-200(6)(4)]; or

2) The rate posted on the relocator's sign as required by Section 1710.51(b).

f) A relocator shall not assess, demand, accept, or receive any charge unless the relocator has complied with Sections 1710.50 and 1710.51 of this Part.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.123 Hours During Which Vehicles May Be Reclaimed

Relocators shall maintain business hours permitting the public to reclaim relocated vehicles during all hours that relocation operations are conducted and for 2 hours after the termination of relocation operations, and shall not impose storage charges for any days or hours during which the relocator is not open to the public for reclaiming vehicles as noted on sign posted pursuant to Section 1710.51.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART M: STORAGE LOTS

Section 1710.131 Security of Storage Lots

a) Each lot to which vehicles may be transported or at which vehicles may be stored must be secured by fencing with locking gates, to prevent unauthorized access to relocated vehicles.

b) If a relocator commingles vehicles stored pursuant to its relocator's license with other vehicles, the relocator shall mark the upper driver's side windshield of the stored vehicles with glass chalk or other non-permanent windshield marker in characters at least 2 inches high and ½ inch wide:
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1) All relocated vehicles with the relocation towing invoice number for that vehicle; and

2) All non-relocated vehicles stored in its secure storage lot with the letters "N/R".

c) Only the following individuals may have access to relocated vehicle while they are being stored by the relocator:

1) Persons employed by the relocator and agents of the relocator;

2) Vehicle owners or operators and agents of vehicle owners or operators, while either:

   A) accompanied by an employee or agent of the relocator; or

   B) under electronic surveillance by an employee or agent of the relocator; and

3) Other persons lawfully entitled to access to a relocated vehicle or to the storage lot.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART N: ENFORCEMENT

Section 1710.147 Refunding Fees to Vehicle Owners

a) A relocator shall refund to a vehicle owner any tow and storage fees paid to the relocator in excess of the rate posted on the relocator's sign as required by Section 1710.51(b).

b) A relocator may be ordered by the Commission to refund towing or storage fees to the payor, after proper notice and hearing, when the Commission has determined that the relocated vehicle was:

1) relocated from private property that did not have, at the time of the relocation and for at least 24 hours prior, signs posted in compliance with
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Sections 1710.50 and 1710.51;

2) relocated from a space on private property where it was authorized to be parked;

3) relocated from private property in violation of Section 1710.43;

4) relocated from private property in violation of the written authorization entered into with the property owner, lessee or agent;

5) relocated from private property for which there was no valid, written authorization in effect and on file with the Commission at the time of the relocation;

6) relocated by an operator who did not have, at the time of the relocation, a valid operator's employment permit and a valid Illinois Driver's License with proper endorsements for the type of relocation performed; or

7) relocated by a relocator that did not hold a relocated license, or while the relocator's license was suspended or revoked.

c) In addition to any refund under subsection (b), a relocator may be ordered by the Commission to refund any portion of storage fees to the payor when the Commission has determined that failure of the relocator to notify law enforcement within 1 hour, as required by Section 1710.80, resulted in accrual of additional storage fees.

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART O: LEASING

Section 1710.150 Leasing Requirements

Licensed relocators may perform relocation towing with equipment they do not own only in accordance with the provisions of this Subpart.

a) Each lease must be executed on the lease form provided by the Commission.

b) A lease subject to this Part must be between the owner of the equipment (the
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lessee) and the relocator to which the equipment is leased (the lessee). The lease must be signed by each party or its authorized representative.

c) The original and 2 copies of each completed (signed and dated) lease to which this Part applies must be filed with the Commission's Transportation Division at the following address:

Illinois Commerce Commission
Transportation Division
9511 West Harrison Street
477 South River Road
Des Plaines, Illinois 60016

d) A filing fee as prescribed in Section 1710.160 of this Part shall be remitted with each lease.

e) No operations shall be conducted under a lease to which this Part applies until a copy of the completed lease has been filed with Commission at the address specified in subsection (c) above.

f) When the lessee takes or relinquishes possession of the equipment, the relocator shall give the owner of the equipment a receipt stating the date and time of day possession is transferred.

g) During the period of the lease, the lessee shall identify the equipment by attaching a placard with the identification of the lessee in compliance with Section 1710.60 of this Part. A copy of the approved executed lease shall be carried in each piece of equipment covered by the lease thereupon.

h) A copy of the completed written lease shall be retained as part of the lessee's records.

i) The term of the lease shall not exceed 3 years. In the event that a relocator wishes to cancel a lease prior to the expiration date, the relocator may file a notice of cancellation with the Commission at the address in subsection (c) above. Otherwise, the lease shall remain in effect until the expiration date stated in the lease or at the end of 3 years, whichever occurs first.

j) In the event that the license held by the lessee is revoked, the lease shall no longer be valid.
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k) In the event that the lessee undergoes a name change, the lease shall be void from the date of the name change unless the lessee files an amendment to the lease showing the changes.

l) Any term of a lease that conflicts with the Illinois Commercial Transportation Law, Commission rules, or Commission orders is void.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.152 Relocation Tow Equipment Leases to be Exclusive

a) Leased equipment and drivers must be within the exclusive use and control of the relocator when operated under authority of the relocator's license.

b) No relocator may lease light duty tow equipment or drivers that are the subject of a lawfully effective lease to another relocator.

c) Medium duty and heavy duty tow equipment and drivers may be simultaneously leased to more than one relocator.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART Q: RECORDS OF INDIVIDUAL RELOCATION TOWS

Section 1710.170 Relocation Tow Record Form

a) Relocation Tow Record Forms or Relocation Tow Record Numbers must be purchased from the Commission.

b) A Relocation Tow Record Form or a form identified with a Relocation Tow Record Number and conforming to a Relocation Tow Record Form purchased from the Commission must be completed within 30 minutes after a relocated vehicle enters the relocator's facility at the time of relocation for each relocation a relocator performs, whether or not the relocated vehicle is subsequently reclaimed. The form will consist of an original and two copies. Each form will be identified by a serial number, which will also be printed on the copies.

c) At the time a relocated vehicle is released, all data fields of the Relocation Tow
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Record Form must be accurately completed to the extent the information needed to complete the data fields is available to the relocator. Where applicable, relocators shall provide on the Relocation Tow Record Form the reason why a particular data field is not available.

d) The Relocation Tow Record Forms and Relocation Tow Record Numbers will be available only at the Commission's office at 9511 West Harrison Street, 477 South River Road, Des Plaines, Illinois 60016, (847)294-4326. The forms and numbers may be ordered from the Commission by sending a written request specifying the number of forms or numbers desired along with payment, or may be obtained in person during normal business hours.

e) The price charged for the Relocation Tow Record Forms and the Relocation Tow Record Numbers shall be $10.00 per form or number. Relocators shall be permitted to add $2.50 to the otherwise applicable rate for light duty relocations.

(Source: Amended at 34 Ill. Reg. 18470, effective January 1, 2010)

SUBPART S: MEDIUM DUTY AND HEAVY DUTY TOWING

Section 1710.190 Establishing Vehicle Weights

a) The Commission will prescribe relocation tow rates for light duty tows, medium duty tows and heavy duty tows.

b) The applicability of light duty, medium duty and heavy duty relocation rates will be determined in the following manner:

1) Passenger vehicles designed to carry not more than 10 persons are:
   A) Light duty relocations; or
   B) Medium duty relocations, if the manufacturer's gross vehicle weight rating displayed on the vehicle is in excess of 8,000 pounds and the relocator utilizes medium duty tow equipment to relocate the vehicle.

2) Stretch limousines are medium duty relocations.
3) Truck-tractors are:
   A) Medium duty relocations; or
   B) Heavy duty relocations, if the truck tractor is equipped with a double rear axle and the relocator utilizes heavy duty tow equipment to relocate the vehicle.

4) Truck-trailers, scrap containers, bottle trailers and other trailers are:
   A) Medium duty relocations, if:
      i) the registered weight and the manufacturer's gross vehicle weight rating are 26,000 pounds or less but more than 8,000 pounds; or
      ii) the trailer or container, regardless of registered weight or gross vehicle weight rating, is driven away by a relocator in combination with the vehicle pulling the trailer or container;
   B) Heavy duty relocations, if:
      i) either the registered weight or the manufacturer's gross vehicle weight rating is in excess of 26,000 pounds; or
      ii) the trailer or container, regardless of registered weight or gross vehicle weight rating, is separated from the vehicle pulling it and the relocator utilizes appropriate tow equipment to relocate the trailer or container.

5) Trucks, straight trucks and other vehicles are:
   A) Light duty relocations, if the registered weight and the manufacturer's gross vehicle weight rating are 8,000 pounds or less;
   B) Medium duty relocations, if:
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i) the registered weight and the manufacturer's gross vehicle weight rating are 26,000 pounds or less but more than 8,000 pounds; and

ii) the vehicle cannot be safely relocated with the use of light duty tow equipment;

C) Heavy duty relocations, if:

i) either the registered weight or the manufacturer's gross vehicle weight rating is in excess of 26,000 pounds; and

ii) the vehicle cannot be safely relocated with the use of medium duty tow equipment.

6) When it is uncertain whether a vehicle should be considered light duty or medium duty because its gross vehicle weight rating exceeds its registered weight, the relocator shall charge a rate appropriate to the type of equipment actually utilized to relocate the vehicle.

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.191 Relocating Multi-Unit Vehicles

a) When practicable, relocators shall separate truck tractors from their trailers, on the property from which the multi-unit vehicle is relocated, and shall then relocate the units separately. Relocators shall not be required to separate trucks from their trailers when:

1) Doing so would be impracticable because of spacial limitations on the property from which the vehicle is to be relocated;

2) Separating the truck from its trailer may cause an increased risk of damage to the truck tractor, the trailer, the lot from which the vehicle is to be relocated, or the general public; or

3) The multi-unit vehicle will be driven away from the property from which it is to be relocated.
b) Multi-unit vehicles that are relocated in combination by one piece of tow equipment or by being driven away constitute one tow. Relocators shall only charge one tow fee, based upon the gross combined weight rating, to multi-unit vehicles relocated in combination. Relocation Tow Record Forms shall be prepared for each unit.

c) When a multi-unit vehicle is separated for relocation purposes into separate units, relocators shall charge separate towing fees based upon the registered weight or gross vehicle weight rating of the individual units as set forth in Section 1710.190. Relocation Tow Record Forms shall be prepared for each unit.

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)

Section 1710.192 Medium Duty or Heavy Duty Towing Equipment Necessary

a) Relocators shall conduct medium duty or heavy duty relocation only if:

1) The relocator owns or holds, under a lease filed with the Commission prior to the relocation, medium duty tow equipment for the performance of a medium duty relocation, or heavy duty tow equipment for the performance of a heavy duty relocation;

2) The relocator employs an operator licensed by the Illinois Secretary of State to operate the medium duty or heavy duty tow equipment, or to drive the vehicle to be relocated and that operator possess an operator's permit from the Illinois Commerce Commission to conduct the relocation; and

3) The relocator's insurance coverage extends to drive-away relocation of medium duty and heavy duty vehicles, as evidenced by documentation that:

i) is issued on the letterhead of the insurance agency or carrier;

ii) is signed by an authorized agent of the insurance agency or carrier;

iii) includes the insurance policy number and its effective dates; and
iv) is maintained at the relocator's principal place of business and carried in the cab of the vehicle dispatched to the property from which a vehicle is to be relocated.

b) Relocators shall utilize medium duty and heavy duty tow equipment whenever possible. A medium duty or heavy duty vehicle may only be driven away from the property where it is trespassing when towing would be unsafe or when the trespassing vehicle cannot be removed by towing. When a medium duty or heavy duty vehicle is driven away, the relocator must document with specificity the circumstances that rendered towing unsafe or impossible on the Relocation Tow Record Form.

(Source: Added at 34 Ill. Reg. 18470, effective January 1, 2010)
NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part:** RCRA Permit Program

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

3) **Section Number:** 703.APPENDIX A

   **Adopted action:** Amended

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

5) **Effective date of amendment:** November 12, 2010

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

7) **Does this amendment 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.

8) **Statement of availability:** The adopted amendments, a copy of the Board’s opinion and order adopted October 7, 2010 in docket R09-16/R10-4 (consolidated), and all materials incorporated by reference are on file at the Board’s principal office and are available for public inspection and copying.

9) **Notice of proposal published in the Illinois Register:** August 6, 2010; 34 Ill. Reg. 10991

10) **Has JCAR issued a statement of objection to this rulemaking?** No. Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) **Differences between the proposal and the final version:** A table that appears in the Board’s opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated) summarizes the differences between the amendments adopted in that order and those proposed by the Board in an opinion and order dated June 17, 2010, in docket R09-16/R10-4 (consolidated). Many of the differences are explained in greater detail in the Board’s opinion and order adopting the amendments.

   The differences are limited to minor corrections without significant substantive effect.
POLLUTION CONTROL BOARD

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The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the August 6, 2010 issue of the Illinois Register, the Board received a number of suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated), as indicated in item 11 above. See the October 7, 2010 opinion and order in docket R09-16/R10-4 (consolidated) for additional details on the JCAR suggestions and the Board actions with regard to each. One table in that opinion itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

13) Will this amendment replace an emergency amendment currently in effect? No

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

15) Summary and purpose of amendment: 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. The Board’s discussion in the opinion and order of October 7, 2010 supplements the discussion of June 17, 2010.

This proceeding updates the Illinois hazardous waste rules to correspond with amendments adopted by the United States Environmental Protection Agency (USEPA) pursuant to Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). This proceeding involves two consolidated dockets spanning two different update time periods, as follows:
POLLUTION CONTROL BOARD

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R09-16  Federal RCRA Subtitle C hazardous waste amendments that occurred during the period July 1, 2008 through December 31, 2008 and June 15, 2010.

R10-4  Federal RCRA Subtitle C hazardous waste amendments that occurred during the period January 1, 2009 through June 30, 2009.

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>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 30, 2008</td>
<td>USEPA amended the definition of “solid waste” rule to exclude certain reclaimed “hazardous secondary materials” (HSMs) from regulation as hazardous waste.</td>
</tr>
<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 an exclusion for emission-comparable fuel (ECF) to its existing excluded fuels rule, which previously excluded only “comparable fuels” and “synthesis gas fuels” 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 “syngas/comparable fuels” rule, and which is now called the as the “excluded fuels” rule.</td>
</tr>
<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>

In addition to the federal actions that fell 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.

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 “Office of Solid Waste” to the new name, “Office of Resource Conservation and Recovery.”</td>
</tr>
<tr>
<td>October 30, 2008</td>
<td>Amendments to the definition of “solid waste” rule.</td>
</tr>
<tr>
<td>December 1, 2008</td>
<td>Adoption of optional alternative hazardous waste generator requirements for college and university laboratories.</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 (“syngas/comparable fuels” rule), which is now called the “excluded fuels” rule.</td>
</tr>
<tr>
<td>June 25, 2009</td>
<td>Changed the name “Office of Solid Waste” to “Office of Resource Conservation and Recovery.”</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>
</tbody>
</table>

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

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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) Information and questions regarding this adopted amendment shall be directed to: Please reference consolidated docket R09-16/R10-4 (consolidated) and direct inquiries to the following person:

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

   312/814-6924

Request copies of the Board’s opinion and order of October 7, 2010 at 312-814-3620. Alternatively, you may obtain a copy of the Board’s opinion and order from the Internet at http://www.ipcb.state.il.us.

The full text of the Adopted Amendment begins on the next page:
### POLLUTION CONTROL BOARD

**NOTICE OF ADOPTED AMENDMENT**

**TITLE 35: ENVIRONMENTAL PROTECTION**  
**SUBTITLE G: WASTE DISPOSAL**  
**CHAPTER I: POLLUTION CONTROL BOARD**  
**SUBCHAPTER b: PERMITS**

**PART 703**  
**RCRA PERMIT PROGRAM**

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</thead>
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<td>Scope and Relation to Other Parts</td>
</tr>
<tr>
<td>703.101</td>
<td>Purpose</td>
</tr>
<tr>
<td>703.102</td>
<td>Electronic Reporting</td>
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<tr>
<td>703.110</td>
<td>References</td>
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<td>Specific Inclusions in Permit Program</td>
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<tr>
<td>703.123</td>
<td>Specific Exclusions from Permit Program</td>
</tr>
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<td>703.124</td>
<td>Discharges of Hazardous Waste</td>
</tr>
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<td>703.125</td>
<td>Reapplying for a Permit</td>
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<td>703.126</td>
<td>Initial Applications</td>
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<td>703.127</td>
<td>Federal Permits (Repealed)</td>
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</table>

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<td>Permits by Rule</td>
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703.191 Public Participation: Pre-Application Public Notice and Meeting
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703.201 Containers
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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].

SOURCE: Adopted in R82-19 at 7 Ill. Reg. 14289, effective October 12, 1983; amended in
R83-24 at 8 Ill. Reg. 206, effective December 27, 1983; amended in R84-9 at 9 Ill. Reg. 11899,
effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 1110, effective January 2, 1986;
amended in R85-23 at 10 Ill. Reg. 13284, effective July 28, 1986; amended in R86-1 at 10 Ill.
Reg. 14093, effective August 12, 1986; amended in R86-19 at 10 Ill. Reg. 20702, effective
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Section 703. **APPENDIX Appendix A**  Classification of Permit Modifications

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<th>Class</th>
<th>Modifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. General Permit Provisions</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1. Administrative and informational changes.</td>
</tr>
<tr>
<td>1</td>
<td>2. Correction of typographical errors.</td>
</tr>
<tr>
<td>1</td>
<td>3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).</td>
</tr>
<tr>
<td>4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>a. To provide for more frequent monitoring, reporting, or maintenance.</td>
</tr>
<tr>
<td>2</td>
<td>b. Other changes.</td>
</tr>
<tr>
<td>5. Schedule of compliance:</td>
<td></td>
</tr>
<tr>
<td>1*</td>
<td>a. Changes in interim compliance dates, with prior approval of the Agency.</td>
</tr>
<tr>
<td>3</td>
<td>b. Extension of final compliance date.</td>
</tr>
<tr>
<td>1*</td>
<td>6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Agency.</td>
</tr>
<tr>
<td>1*</td>
<td>7. Changes in ownership or operational control of a facility, provided the procedures of Section 703.260(b) are followed.</td>
</tr>
<tr>
<td>1*</td>
<td>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).</td>
</tr>
<tr>
<td>1*</td>
<td>9. Changes to remove permit conditions applicable to a unit excluded pursuant to the provisions of 35 Ill. Adm. Code 721.104.</td>
</tr>
</tbody>
</table>
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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1. Procedures:
   a. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.
   b. Removal of equipment from emergency equipment list.
   c. 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:
   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.
   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:
   a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system.
   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)):

   a. As specified in the groundwater protection standard.

   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:

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

   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:

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

   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
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. 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.


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).
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. |


5. Management of different wastes in tanks:

3 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).

2 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.
H. Surface Impoundments

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

3  2. Replacement of a surface impoundment unit.

2  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:

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

2   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.

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 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:

   a. Increase in action leakage rate.

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

   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:

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

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

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

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:

3   a. That require additional or different management practices or different design of the unit.

2   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.

2 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

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

3 2. Replacement of a landfill.

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

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

2 5. Modification of a landfill management practice.

6. Landfill different wastes:

3   a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate
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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 used for the management of newly listed or identified wastes.
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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.

3 9. Modification of operating practice due to detection of releases from the
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land treatment unit pursuant to 35 Ill. Adm. Code 724.378(g)(2).

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, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.
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18. Changes in vegetative cover requirements for closure.

L. Incinerators, Boilers and Industrial Furnaces

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. 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. 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.

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.

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

2 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:

1 a. The unit capacity is not increased.

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


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

3 a. That require additional or different management practices.

2 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. 18505, effective November 12, 2010)
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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:**

   - 720.110 Amended
   - 720.111 Amended
   - 720.122 Amended
   - 720.130 Amended
   - 720.133 Amended
   - 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) **Effective date of amendments:** November 12, 2010

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

7) **Do these amendments 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 of 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.

8) **Statement of availability:** The adopted amendments, a copy of the Board's opinion and order adopted October 7, 2010 in docket R09-16/R10-4 (consolidated), and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) **Notice of proposal published in the Illinois Register:** August 6, 2010; 34 Ill. Reg. 11021

10) **Has JCAR issued a statement of objection to this rulemaking?** No. Section 22.4(a) of the
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Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between the proposal and the final version: A table that appears in the Board's opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated) summarizes the differences between the amendments adopted in that order and those proposed by the Board in an opinion and order dated June 17, 2010, in docket R09-16/R10-4 (consolidated). Many of the differences are explained in greater detail in the Board's opinion and order adopting the amendments.

The differences are limited to minor corrections without significant substantive effect. The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the August 6, 2010 issue of the Illinois Register, the Board received a number of suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated), as indicated in item 11 above. See the October 7, 2010 opinion and order in docket R09-16/R10-4 (consolidated) for additional details on the JCAR suggestions and the Board actions with regard to each. One table in that opinion itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any other amendments pending on this Part? No
15) **Summary and purpose of amendments:** 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. A separate table of changes and corrections in the text since June 17, 2010 appears in the October 7, 2010. The preponderance of those changes and corrections are not based on current federal amendments. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 and October 7, 2010 opinions and orders 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) **Information and questions regarding these adopted amendments must be directed to:**

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

Michael J. McCambridge  
Staff Attorney  
Illinois Pollution Control Board  
100 W. Randolph 11-500
POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Chicago, IL  60601

312/814-6924

Request copies of the Board's opinion and order of October 7, 2010 at 312-814-3620. Alternatively, you may obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

The full text of the Adopted Amendments begins on the next page:
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE 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

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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;
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 runoff 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
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
A material that is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and which 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 which 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
acquaintance 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
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
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
"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
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. 18535, effective November 12, 2010)

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:


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: 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: 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.


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BOARD NOTE: Also 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. 18535, effective November 12, 2010)

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
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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. 18535, effective November 12, 2010)

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. 18535, effective November 12, 2010)

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. 18535, effective November 12, 2010)

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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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 which determines 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.

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 which demonstrate 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
5) Other relevant factors which demonstrate 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)(B) 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. 18535, effective November 12, 2010)

Section 720.142 Notification Requirement for Hazardous Secondary Materials

a) A hazardous secondary material generator, a tolling contractor, a toll manufacturer, a reclamer, or an intermediate facility that manages hazardous secondary materials which 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));
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 material 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. 18535, effective November 12, 2010)
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 which 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 subsections (c)(1) and (c)(2) of this Section, in the way described in subsection (c)(3) of this Section:

1) The demonstration must show whether 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 which is not immediately recovered is discarded material, which is solid waste; and

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

A) 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;

B) 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

C) 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.

3) 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
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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 subsections (c)(1) and (c)(2) 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 subsections (c)(1) and (c)(2) 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 subsections (c)(1) and (c)(2) 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). The 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. 18535, effective November 12, 2010)
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1) Heading of the Part: Identification and Listing of Hazardous Waste


3) Section Numbers: Adopted action:
   721.101    Amended
   721.102    Amended
   721.103    Amended
   721.104    Amended
   721.105    Amended
   721.106    Amended
   721.133    Amended
   721.138    Amended
   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 Amended
   721.APPENDIX Z Amended

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

5) Effective date of amendments: November 12, 2010

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

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8) Statement of availability: The adopted amendments, a copy of the Board's opinion and order adopted October 7, 2010 in docket R09-16/R10-4 (consolidated), and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of proposal published in the Illinois Register: August 6, 2010; 34 Ill. Reg. 11096

10) Has JCAR issued a statement of objection to this rulemaking? No

Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between the proposal and the final version: A table that appears in the Board's opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated) summarizes the differences between the amendments adopted in that order and those proposed by the Board in an opinion and order dated June 17, 2010, in docket R09-16/R10-4 (consolidated). Many of the differences are explained in greater detail in the Board's opinion and order adopting the amendments.

The differences are limited to minor corrections without significant substantive effect. The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based. One revision is the addition of Section 721.106 for correction of a cross-reference in subsection (c)(1) in response to a public inquiry that the Board has entered into the docket as a public comment.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR?

Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the August 6, 2010 issue of the Illinois Register, the Board received a number of suggestions for revisions from JCAR.
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The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated), as indicated in item 11 above. See the October 7, 2010 opinion and order in docket R09-16/R10-4 (consolidated) for additional details on the JCAR suggestions and the Board actions with regard to each. One table in that opinion itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

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

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

15) Summary and purpose of amendments: 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.


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. A separate table of changes and corrections in the text since June 17, 2010 appears in the October 7, 2010. The preponderance of those changes and corrections are not based on current federal amendments. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 and October 7, 2010 opinions and orders 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) Information and questions regarding these adopted amendments must be directed to:
Please reference consolidated docket R09-16/R10-4 (consolidated) and direct inquiries to the following person:

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

    312/814-6924

Request copies of the Board's opinion and order of October 7, 2010 at 312-814-3620. Alternatively, you may obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

The full text of the Adopted Amendments begins on the next page:
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE 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
Section 721.102 Definition of Solid Waste
Section 721.103 Definition of Hazardous Waste
Section 721.104 Exclusions
Section 721.105 Special Requirements for Hazardous Waste Generated by Small Quantity Generators
Section 721.106 Requirements for Recyclable Materials
Section 721.107 Residues of Hazardous Waste in Empty Containers
Section 721.108 PCB Wastes Regulated under TSCA
Section 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
Section 721.111 Criteria for Listing Hazardous Waste

SUBPART C: CHARACTERISTICS OF HAZARDOUS WASTE

Section 721.120 General
Section 721.121 Characteristic of Ignitability
Section 721.122 Characteristic of Corrosivity
Section 721.123 Characteristic of Reactivity
Section 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].

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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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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).

"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.

A material is "recycled" if it is used, reused, or reclaimed. 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
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. 18611, effective November 12, 2010)
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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;
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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
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. 18611, effective November 12, 2010)

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
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
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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.
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) 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
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Ill. Adm. Code 720.120 and 720.122.

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:

<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>
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<td>Chromium (total)</td>
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<td>Lead</td>
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<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>
<td>0.30</td>
</tr>
<tr>
<td>Thallium</td>
<td>0.020</td>
</tr>
<tr>
<td>Vanadium</td>
<td>1.26</td>
</tr>
<tr>
<td>Zinc</td>
<td>70</td>
</tr>
</tbody>
</table>

Generic exclusion levels for F006 nonwastewater HTMR residues:

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Maximum for any single composite sample (mg/ℓ)</th>
</tr>
</thead>
</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. 18611, effective November 12, 2010)

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.
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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-earthen materials that provide structural support, and it
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(c)(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:
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C) The material is not speculatively accumulated, as defined in Section 721.101(c)(8);

D) 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;

E) The reclamation of the material is legitimate, as determined pursuant to 35 Ill. Adm. Code 720.143; and

F) 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)).

24) 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 721.110).

B) No person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility, or a reclaimer manages 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 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) 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:
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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 reclamer 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 reclamer and intermediate facility to which its hazardous secondary materials were sent. Each confirmation of receipt must include the name and address of the reclamer (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 which 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 (a)(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 which indicates that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not
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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/finalerp1203.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 subsections (a)(24)(A) through (a)(24)(E) of this Section, except that the requirements of subsection (a)(24)(H)(ii) 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
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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
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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
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 reclamer, intermediate facility or the alternate reclamer 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 reclamer 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 (where 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; and

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; and

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
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
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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 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:

A) The sample is being collected and prepared for transportation by
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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 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
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(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 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 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;

   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

G) The final disposition of residues and unused sample from each
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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. 18611, effective November 12, 2010)

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 which exhibits one or more characteristics in Subpart C of 35 Ill. Adm. Code 721) that is generated 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 disposal of hazardous waste in a landfill regulated under those
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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 reclaims 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 conditionally 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 conditionally 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;
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. 18611, effective November 12, 2010)

Section 721.106 Requirements for Recyclable Materials

a) Recyclable materials:

1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (b) and (c) of this Section, except for the materials listed in subsections (a)(2) and (a)(3) of this Section. Hazardous wastes that are recycled will be known as “recyclable materials.”

2) The following recyclable materials are not subject to the requirements of this Section but are regulated under Subparts C through H of 35 Ill. Adm. Code 726 and all applicable provisions in 35 Ill. Adm. Code 702 and 703.
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A) Recyclable materials used in a manner constituting disposal (Subpart C of 35 Ill. Adm. Code 726);

B) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subpart O of 35 Ill. Adm. Code 724 or Subpart O of this Part (Subpart H of 35 Ill. Adm. Code 726);

C) Recyclable materials from which precious metals are reclaimed (Subpart F of 35 Ill. Adm. Code 726); and

D) Spent lead-acid batteries that are being reclaimed (Subpart G of 35 Ill. Adm. Code 726).

3) The following recyclable materials are not subject to regulation under 35 Ill. Adm. Code 722 through 726, 728, or 702 and 703 and are not subject to the notification requirements of section 3010 of the Resource Conservation and Recovery Act:

A) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 35 Ill. Adm. Code 722.158, the following requirements continue to apply:

i) A person initiating a shipment for reclamation in a foreign country and any intermediary arranging for the shipment must comply with the requirements applicable to a primary exporter in 35 Ill. Adm. Code 722.153; 722.156(a)(1) through (a)(4), (a)(6), and (b); and 722.157; must export such materials only upon consent of the receiving country and in conformance with the USEPA Acknowledgment of Consent, as defined in Subpart E of 35 Ill. Adm. Code 722; and must provide a copy of the USEPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export; and

ii) Transporters transporting a shipment for export must not accept a shipment if the transporter knows that the shipment does not conform to the USEPA
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Acknowledgement of Consent, must ensure that a copy of the USEPA Acknowledgement of Consent accompanies the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment;

B) Scrap metal that is not excluded under Section 721.104(a)(13);

C) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste where such recovered oil is already excluded under Section 721.104(a)(12));

D) Petroleum refining wastes.

i) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil, so long as the resulting fuel meets the used oil specification under 35 Ill. Adm. Code 739.111 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

ii) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 35 Ill. Adm. Code 739.111; and

iii) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the
reclaimed oil meets the used oil fuel specification under 35 Ill. Adm. Code 739.111.

4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of 35 Ill. Adm. Code 720 through 728, but it is regulated under 35 Ill. Adm. Code 739. Used oil that is recycled includes any used oil that is reused for any purpose following its original use (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil that is re-refined, reclaimed, burned for energy recovery, or reprocessed.

5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in Section 722.158(a)(1), for the purpose of recovery is subject to the requirements of Subpart H of 35 Ill. Adm. Code 722 if it is subject to either the hazardous waste manifesting requirements of 35 Ill. Adm. Code 722 or the universal waste management standards of 35 Ill. Adm. Code 733.

b) Generators and transporters of recyclable materials are subject to the applicable requirements of 35 Ill. Adm. Code 722 and 723 and the notification requirements under section 3010 of the Resource Conservation and Recovery Act, except as provided in subsection (a) of this Section.

c) Storage and recycling.

1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L, AA, BB, and CC of 35 Ill. Adm. Code 724 and 725 and 35 Ill. Adm. Code 702, 703, 705, 724, 726, and 728; and the notification requirement under section 3010 of the Resource Conservation and Recovery Act, except as provided in subsection (a) of this Section. (The recycling process itself is exempt from regulation, except as provided in subsection (d) of this Section.)

2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection (a) of this Section, the following requirements continue to apply:
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A) Notification requirements under section 3010 of the Resource Conservation and Recovery Act,

B) 35 Ill. Adm. Code 725.171 and 725.172 (dealing with the use of the manifest and manifest discrepancies), and

C) Subsection (d) of this Section.

d) Owners or operators of facilities required to have a RCRA permit pursuant to 35 Ill. Adm. Code 703 with hazardous waste management units that recycle hazardous wastes are subject to Subparts AA and BB of 35 Ill. Adm. Code 724 and Subparts AA and BB of 35 Ill. Adm. Code 725.

(Source: Amended at 35 Ill. Reg. 18611, effective November 12, 2010)

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.

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,
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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
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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>Ammonium vanadate</td>
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<td>692-42-2</td>
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<td>P036</td>
<td>696-28-6</td>
<td>Arsonous dichloride, phenyl-</td>
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### POLLUTION CONTROL BOARD

**NOTICE OF ADOPTED AMENDMENTS**

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<td>106-47-8</td>
<td>Benzenamine, 4-chloro-</td>
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<td>P077</td>
<td>100-01-6</td>
<td>Benzenamine, 4-nitro-</td>
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<td>100-44-7</td>
<td>Benzene, (chloromethyl)-</td>
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<td>51-43-4</td>
<td>1,2-Benzenedi, 4-(1-hydroxy-2-(methylamino)ethyl) - (R)-</td>
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<td>P046</td>
<td>122-09-8</td>
<td>Benzeneethanamine, α,α-dimethyl-</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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| P188  | 57-64-7 | Benzoic acid, 2-hydroxy-, compound with (3aS-cis)-1,2,3,3a,8a-hexahydro-2,3a,8a-hx-
|       |         | trimethylpyrrolo(2,3-b) indol-5-yl methylcarbamate ester (1:1)               |
| P001  | 81-81-2*| 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3 percent |
| P028  | 100-44-7| Benzyl chloride                                                              |
| P015  | 7440-41-7| Beryllium powder                                                            |
| P017  | 598-31-2| Bromoacetone                                                                |
| P018  | 357-57-3| Brucine                                                                      |
| P045  | 39196-18-6| 2-Butanone,3,3-dimethyl-1-(methylthio)-, O-((methylamino)carbonyl) oxime    |
| P021  | 592-01-8| Calcium cyanide                                                             |
| P021  | 592-01-8| Calcium cyanide Ca(CN)₂                                                     |
| P189  | 55285-14-8| Carbamic acid, ((dibutylamino)thio)methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofurananyl ester |
| P191  | 644-64-4| Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl) -5-methyl-1H-pyrazol-3-yl ester |
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<td>628-86-4</td>
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P050  115-29-7  6,9-Methano-2,4,3-benzodioxathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide

P059  76-44-8  4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-

P066  16752-77-5  Methomyl

P068  60-34-4  Methyl hydrazine

P064  624-83-9  Methyl isocyanate

P069  75-86-5  2-Methylisocyanitride

P071  298-00-0  Methyl parathion

P190  1129-41-5  Metolcarb

P128  315-18-4  Mexacarbate

P072  86-88-4  α-Naphthylthiourea

P073  13463-39-3  Nickel carbonyl

P073  13463-39-3  Nickel carbonyl Ni(CO)₄, (T-4)-

P074  557-19-7  Nickel cyanide

P074  557-19-7  Nickel cyanide Ni(CN)₂

P075  54-11-5*  Nicotine, and salts

P076  10102-43-9  Nitric oxide

P077  100-01-6  p-Nitroaniline

P078  10102-44-0  Nitrogen dioxide

P076  10102-43-9  Nitrogen oxide NO

P078  10102-44-0  Nitrogen oxide NO₂

P081  55-63-0  Nitroglycerine (R)

P082  62-75-9  N-Nitrosodimethylamine

P084  4549-40-0  N-Nitrosomethylvinylamine

P085  152-16-9  Octamethylpyrophosphoramide

P087  20816-12-0  Osmium oxide OsO₄, (T-4)-

P087  20816-12-0  Osmium tetroxide

P088  145-73-3  7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid

P194  23135-22-0  Oxamyl

P089  56-38-2  Parathion

P034  131-89-5  Phenol, 2-cyclohexyl-4,6-dinitro-

P128  315-18-4  Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
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<td>Phenol, 2-methyl-4,6-dinitro-, and salts</td>
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<td>P204</td>
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<td>Physostigmine</td>
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POLLUTION CONTROL BOARD

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P118  75-70-7  Trichloromethanethiol
P119  7803-55-6  Ammonium vanadate
P119  7803-55-6  Vanadic acid, ammonium salt
P120  1314-62-1  Vanadium oxide V$_2$O$_5$
P120  1314-62-1  Vanadium pentoxide
P121  557-21-1  Zinc cyanide
P121  557-21-1  Zinc cyanide Zn(CN)$_2$
P122  1314-84-7  Zinc phosphide Zn$_3$P$_2$, when present at concentrations greater than 10 percent (R, T)

P123  8001-35-2  Toxaphene
P127  1563-66-2  7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate
P127  1563-66-2  Carbofuran
P128  315-18-4  Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P128  315-18-4  Mexacarbate
P185  26419-73-8  1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-((methylamino)carbonyl)oxime
P185  26419-73-8  Tirpate
P188  57-64-7  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)
P188  57-64-7  Physostigmine salicylate
P189  55285-14-8  Carbamic acid, ((dibutylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P189  55285-14-8  Carbosulfan
P190  1129-41-5  Carbamic acid, methyl-, 3-methylphenyl ester
P190  1129-41-5  Metolcarb
P191  644-64-4  Carbamic acid, dimethyl-, 1-((dimethylamino)carbonyl)-5-methyl-1H-pyrazol-3-yl ester
P191  644-64-4  Dimetilan
P192  119-38-0  Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
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<td>Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-((methylamino)carbonyl) oxime</td>
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<td>Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-</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.
POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

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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### POLLUTION CONTROL BOARD

**NOTICE OF ADOPTED AMENDMENTS**

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<td>U015</td>
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<td>Azaserine</td>
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| U010  | 50-07-7| Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-
|       |        | ((aminocarbonyl)oxy)methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-,
|       |        | (1a-S-(1aα,8β,8αα,8bα))-                                                  |
| U280  | 101-27-9| Barban                                                                      |
| U278  | 22781-23-3| Bendiocarb                                                                |
| U364  | 22961-82-6| Bendiocarb phenol                                                          |
| U271  | 17804-35-2| Benomyl                                                                    |
| U157  | 56-49-5| Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-                                 |
| U016  | 225-51-4| Benz(c)acridine                                                            |
| U017  | 98-87-3| Benzal chloride                                                             |
| U192  | 23950-58-5| Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-                         |
| U018  | 56-55-3| Benz(a)anthracene                                                           |
| U094  | 57-97-6| Benz(a)anthracene, 7,12-dimethyl-                                           |
| U012  | 62-53-3| Benzenamine (I, T)                                                         |
| U014  | 492-80-8| Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-                           |
| U049  | 3165-93-3| Benzenamine, 4-chloro-2-methyl-, hydrochloride                             |
| U093  | 60-11-7| Benzenamine, N,N-dimethyl-4-(phenylazo)-                                   |
| U328  | 95-53-4| Benzenamine, 2-methyl-                                                     |
| U353  | 106-49-0| Benzenamine, 4-methyl-                                                     |
| U158  | 101-14-4| Benzenamine, 4,4'-methylenebis(2-chloro-                                   |
| U222  | 636-21-5| Benzenamine, 2-methyl-, hydrochloride                                      |
| U181  | 99-55-8| Benzenamine, 2-methyl-5-nitro-                                             |
| U019  | 71-43-2| Benzene (I, T)                                                             |
| U038  | 510-15-6| Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester |
| U030  | 101-55-3| Benzene, 1-bromo-4-phenoxy-                                                |
| U035  | 305-03-3| Benzenebutanoic acid, 4-(bis(2-chloroethyl)amino)-                         |
| U037  | 108-90-7| Benzene, chloro-                                                          |
### POLLUTION CONTROL BOARD

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## NOTICE OF ADOPTED AMENDMENTS

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### POLLUTION CONTROL BOARD

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(C, T) = Chemicals of concern (C) and Toxicological (T) significance
(I) = Impact of adverse health effects
## POLLUTION CONTROL BOARD

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Numerical Listing

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### POLLUTION CONTROL BOARD

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## ILLINOIS REGISTER

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<td>Phenol, 2-chloro-</td>
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<td>3165-93-3</td>
<td>Benzenamine, 4-chloro-2-methyl-, hydrochloride</td>
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<td>3165-93-3</td>
<td>4-Chloro-o-toluidine, hydrochloride</td>
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### POLLUTION CONTROL BOARD

**NOTICE OF ADOPTED AMENDMENTS**

<p>| U050 | 218-01-9 | Chrysene |
| U051 |          | Creosote |
| U052 | 1319-77-3 | Cresol (Cresylic acid) |
| U052 | 1319-77-3 | Phenol, methyl- |
| U053 | 4170-30-3 | 2-Butenal |
| U053 | 4170-30-3 | Crotonaldehyde |
| U055 | 98-82-8 | Benzene, (1-methylethyl)- (I) |
| U055 | 98-82-8 | Cumene (I) |
| U056 | 110-82-7 | Benzene, hexahydro- (I) |
| U056 | 110-82-7 | Cyclohexane (I) |
| U057 | 108-94-1 | Cyclohexanone (I) |
| U058 | 50-18-0 | Cyclophosphamide |
| U058 | 50-18-0 | 2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide |
| U059 | 20830-81-3 | Daunomycin |
| U059 | 20830-81-3 | 5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-α-L-lyxohexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)- |
| U060 | 72-54-8 | Benzene, 1,1′-(2,2-dichloroethylidene)bis(4-chloro-DDD) |
| U060 | 72-54-8 | 1,2-Dibromo-3-chloropropane |
| U061 | 50-29-3 | Benzene, 1,1′-(2,2,2-trichloroethylidene)bis(4-chloro-DDT) |
| U061 | 50-29-3 | Ethane, 1,2-dibromo- |
| U062 | 2303-16-4 | Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester |
| U062 | 2303-16-4 | Diallyle |
| U063 | 53-70-3 | Dibenz(a,h)anthracene |
| U064 | 189-55-9 | Benzo(rst)pentaphene |
| U064 | 189-55-9 | Dibenz(o,i)pyrene |
| U066 | 96-12-8 | 1,2-Dibromo-3-chloropropane |
| U066 | 96-12-8 | Propane, 1,2-dibromo-3-chloro- |
| U067 | 106-93-4 | Ethane, 1,2-dibromo- |
| U067 | 106-93-4 | Ethylene dibromide |
| U068 | 74-95-3 | Methane, dibromo- |
| U068 | 74-95-3 | Methylene bromide |</p>
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<td>O,O-Diethyl S-methyl dithiophosphate</td>
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POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

| U087 | 3288-58-2 | Phosphorodithioic acid, O,O-diethyl S-methyl ester |
| U088 | 84-66-2   | 1,2-Benzenedicarboxylic acid, diethyl ester |
| U088 | 84-66-2   | Diethyl phthalate |
| U089 | 56-53-1   | Diethylstilbestrol |
| U089 | 56-53-1   | Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyli)bisis-, (E)- |
| U090 | 94-58-6   | 1,3-Benzodioxole, 5-propyl- |
| U090 | 94-58-6   | Dihydrosafrole |
| U091 | 119-90-4  | (1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy- |
| U091 | 119-90-4  | 3,3'-Dimethoxybenzidine |
| U092 | 124-40-3  | Dimethylamine (I) |
| U092 | 124-40-3  | Methanamine, N-methyl- (I) |
| U093 | 60-11-7   | Benzenamine, N,N-dimethyl-4-(phenylazo)- |
| U093 | 60-11-7   | p-Dimethylaminoazobenzene |
| U094 | 57-97-6   | Benz(a)anthracene, 7,12-dimethyl- |
| U094 | 57-97-6   | 7,12-Dimethylbenz(a)anthracene |
| U095 | 119-93-7  | (1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl- |
| U095 | 119-93-7  | 3,3'-Dimethylbenzidine |
| U096 | 80-15-9   | α,α-Dimethylbenzylhydroperoxide (R) |
| U096 | 80-15-9   | Hydroperoxide, 1-methyl-1-phenylethyl- (R) |
| U097 | 79-44-7   | Carbamic chloride, dimethyl- |
| U097 | 79-44-7   | Dimethylcarbamoyl chloride |
| U098 | 57-14-7   | 1,1-Dimethylhydrazine |
| U098 | 57-14-7   | Hydrazine, 1,1-dimethyl- |
| U099 | 540-73-8  | 1,2-Dimethylhydrazine |
| U099 | 540-73-8  | Hydrazine, 1,2-dimethyl- |
| U101 | 105-67-9  | 2,4-Dimethylphenol |
| U101 | 105-67-9  | Phenol, 2,4-dimethyl- |
| U102 | 131-11-3  | 1,2-Benzenedicarboxylic acid, dimethyl ester |
| U102 | 131-11-3  | Dimethyl phthalate |
| U103 | 77-78-1   | Dimethyl sulfate |
| U103 | 77-78-1   | Sulfuric acid, dimethyl ester |
**POLLUTION CONTROL BOARD**

**NOTICE OF ADOPTED AMENDMENTS**

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<td>2,4-Dinitrotoluene</td>
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<td>606-20-2</td>
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<td>Di-n-propyl nitrosamine</td>
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<td>1-Propanamine, N-nitroso-N-propyl-</td>
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<td>Carbamodithioic acid, 1,2-ethanediylbis-, salts and esters</td>
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| U178 | 615-53-2 | N-Nitroso-N-methylurethane |
| U179 | 100-75-4 | N-Nitrosopiperidine |
| U179 | 100-75-4 | Piperidine, 1-nitroso- |
| U180 | 930-55-2 | N-Nitrosopyrrolidine |
| U180 | 930-55-2 | Pyrrolidine, 1-nitroso- |
| U181 | 99-55-8 | Benzenamine, 2-methyl-5-nitro- |
| U181 | 99-55-8 | 5-Nitro-o-toluidine |
| U182 | 123-63-7 | Paraldehyde |
| U182 | 123-63-7 | 1,3,5-Trioxane, 2,4,6-trimethyl- |
| U183 | 608-93-5 | Benzene, pentachloro- |
| U183 | 608-93-5 | Pentachlorobenzene |
| U184 | 76-01-7 | Ethane, pentachloro- |
| U184 | 76-01-7 | Pentachloroethane |
| U185 | 82-68-8 | Benzene, pentachloronitro- |
| U185 | 82-68-8 | Pentachloronitrobenzene (PCNB) |
| U186 | 504-60-9 | 1-Methylbutadiene (I) |
| U186 | 504-60-9 | 1,3-Pentadiene (I) |
| U187 | 62-44-2 | Acetamide, N-(4-ethoxyphenyl)- |
| U187 | 62-44-2 | Phenacetin |
| U188 | 108-95-2 | Phenol |
| U189 | 1314-80-3 | Phosphorus sulfide (R) |
| U189 | 1314-80-3 | Sulfur phosphide (R) |
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| U190 | 85-44-9 | Phthalic anhydride |
| U191 | 109-06-8 | 2-Picoline |
| U191 | 109-06-8 | Pyridine, 2-methyl- |
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| U194 | 107-10-8 | 1-Propanamine (I, T) |
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| U196 | 110-86-1 | Pyridine |
| U197 | 106-51-4 | p-Benzquinone |
| U197 | 106-51-4 | 2,5-Cyclohexadiene-1,4-dione |
| U200 | 50-55-5 | Reserpine |
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| U200 | 50-55-5 | Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3β,16β,17α,18β,20α)-  |
| U201 | 108-46-3 | 1,3-Benzenediol  |
| U201 | 108-46-3 | Resorcinol  |
| U202 | P 81-07-2 | 1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, and salts  |
| U202 | P 81-07-2 | Saccharin and salts  |
| U203 | 94-59-7 | 1,3-Benzodioxole, 5-(2-propenyl)-  |
| U203 | 94-59-7 | Safrole  |
| U204 | 7783-00-8 | Selenious acid  |
| U204 | 7783-00-8 | Selenium dioxide  |
| U205 | 7488-56-4 | Selenium sulfide  |
| U205 | 7488-56-4 | Selenium sulfide SeS$_2$ (R, T)  |
| U206 | 18883-66-4 | Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-  |
| U206 | 18883-66-4 | D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl)amino)-  |
| U206 | 18883-66-4 | Streptozotocin  |
| U207 | 95-94-3 | Benzene, 1,2,4,5-tetrachloro-  |
| U207 | 95-94-3 | 1,2,4,5-Tetrachlorobenzene  |
| U208 | 630-20-6 | Ethane, 1,1,1,2-tetrachloro-  |
| U208 | 630-20-6 | 1,1,1,2-Tetrachloroethane  |
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| U213 | 109-99-9 | Furan, tetrahydro- (l)  |
| U213 | 109-99-9 | Tetrahydrofuran (l)  |
| U214 | 563-68-8 | Acetic acid, thallium (1+) salt  |
| U214 | 563-68-8 | Thallium (I) acetate  |
| U215 | 6533-73-9 | Carbonic acid, dithallium (1+) salt  |
| 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  |
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| U217 | 10102-45-1 | Thallium (I) nitrate |
| U218 | 62-55-5   | Ethanethioamide      |
| U218 | 62-55-5   | Thioacetamide        |
| U219 | 62-56-6   | Thiourea             |
| U220 | 108-88-3  | Benzene, methyl-     |
| U220 | 108-88-3  | Toluene              |
| U221 | 25376-45-8| Benzenediamine, ar-methyl- |
| U221 | 25376-45-8| Toluenediamine       |
| U222 | 636-21-5  | Benzenamine, 2-methyl-, hydrochloride |
| U222 | 636-21-5  | o-Toluidine hydrochloride |
| U223 | 26471-62-5| Benzene, 1,3-diisocyanatomethyl- (R, T) (R, T) |
| U223 | 26471-62-5| Toluene diisocyanate (R, T) (R, T) |
| U225 | 75-25-2   | Bromoform            |
| U225 | 75-25-2   | Methane, tribromo-   |
| U226 | 71-55-6   | Ethane, 1,1,1-trichloro- |
| U226 | 71-55-6   | Methylchloroform     |
| U227 | 79-00-5   | Ethane, 1,1,2-trichloro- |
| U227 | 79-00-5   | 1,1,2-Trichloroethane |
| U228 | 79-01-6   | Ethene, trichloro-   |
| U228 | 79-01-6   | Trichloroethylene    |
| U234 | 99-35-4   | Benzene, 1,3,5-trinitro- (R, T) |
| 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'-diyl)bis(azo)bis(5-amino-4-hydroxy)-, tetraysodium 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 |
| U238 | 51-79-6   | Ethyl carbamate (urethane) |
| U239 | 1330-20-7 | Benzene, dimethyl- (I, T) |
| U239 | 1330-20-7 | Xylene (I) (I, T) |
| U240 | P 94-75-7 | Acetic acid, (2,4-dichlorophenoxy)-, salts and esters |
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<td>Phenol, 2-(1-methylethoxy)-, methylcarbamate</td>
</tr>
<tr>
<td>U411</td>
<td>114-26-1</td>
<td>Propoxur</td>
</tr>
</tbody>
</table>

(Source: Amended at 34 Ill. Reg. 18611, effective November 12, 2010)

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.

A1) 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:

A1) 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

E5) It must contain less than 1 ppmv of each hazardous constituent in the target list of constituents listed in Appendix H of this Part.
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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

   iii) The treatment does not violate the dilution prohibition of subsection (a)(6) of this Section.
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 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."
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 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)(i)(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
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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 exclusion.

C) The one-time notice required by subsection (b)(2)(A)(i) of this Section must certify compliance with the conditions of the
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exclusion and provide documentation, as follows:

- Required content of comparable or syngas notification to the Agency:

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

v) 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); 721.138(c)(10) 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 penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
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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 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
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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 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 requirements:

i) The processing destroys or removes the constituent listed in the specification or raises the heating value by removing or
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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(e); 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.

42) Fuel analysis plan for generators. The generator of an excluded a comparable or syngas fuel must develop and follow a written fuel analysis plan that describes the procedures for sampling and analysis of the material 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 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 to be analyzed;
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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
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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

Syngas fuel generators 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 Comparable 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 waste code in 35 Ill. Adm. Code 728.140;

ii) A constituent detected in previous analysis of the waste;
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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 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
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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)(e)(7) of this Section.

G) Viscosity condition for comparable fuel.

i) ExcludedSyngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications must be analyzed as generated.

ii) If hazardous waste comparable fuel is blended in order to meet the kinematic viscosity 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 undertake the 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.

H) 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
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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). Persons subject to the speculative accumulation test pursuant to Section 721.102(c)(4).

810) Operating record. 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 as a fuel; and

iii) The certification signed by the person claiming the exclusion or his authorized representative;

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;
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C) The estimate of the average and maximum monthly and annual quantities of each fuel waste 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)(e)(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 (c)(3) or (c)(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;

v) A description of the analytical methods used, including any clean-up and sample preparation methods;
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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 (e)(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

v) A one-time certification by the burner, as required pursuant to subsection (b)(10)(e)(12) of this Section.

R1) Records retention. Records must be maintained for the period of three
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years. A generator must maintain a current waste analysis plan during that three-year period.

10) 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)(c)(2) of this Section;

B) Identification of the name and address of the facilities 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.

11) 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.

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.
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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.

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
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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 which 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. 18611, effective November 12, 2010)

SUBPART H: FINANCIAL REQUIREMENTS FOR MANAGEMENT OF EXCLUDED HAZARDOUS SECONDARY MATERIALS

Section 721.240 Applicability
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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. 18611, effective November 12, 2010)

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. 18611, effective November 12, 2010)

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.

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 725.241(d)).
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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 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 which increases the cost of conducting the activities described in subsection (a) of
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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. 1861, effective November 12, 2010)

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.
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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:
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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.

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
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The 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 which 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 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 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 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 remedy as is 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;

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."

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:
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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 which shows 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
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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) where 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).

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:
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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 forth in 35 Ill. Adm. Code 724 or 725, or the guarantor must establish a trust fund in the name of the owner or operator and in the amount of the current cost estimate that satisfies the requirements of subsection (a) of this Section.
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(c)(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.

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. 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
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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;

B) 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 that, 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 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
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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.
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 to provide insurance as an excess or surplus lines insurer, in one or more states.
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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 where 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 which 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 where 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 may be 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 which 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 where 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 to 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.
C) A final court order that establishes a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence which 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 where 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.

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.
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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:
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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).

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 which shows 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 261.147(f)(3) and 73 Fed. Reg. 64668 (Oct. 30, 2008). This statement maintains structural consistency with the corresponding federal provision.
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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) where 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 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) Where 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) Where 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 has occurred:

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).
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i) The non-U.S. corporation has identified a registered agent for service of process in the State of Illinois (the state in which the facility covered by the guarantee is located) and in the state in which it has its principal place of business (if other than the State of Illinois); and

ii) The Attorney General or Insurance Commissioner of the State of Illinois (as the state in which a facility covered by the guarantee is located) and the state in which the guarantor corporation has its principal place of business (if other than the State of Illinois) has 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.

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.
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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 on Federal Bonds and as Acceptable Reinsuring Companies," on an annual
The wording of the surety bond must be identical to the wording specified by the Agency pursuant to Section 721.251.

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 (as the state in which the facility covered by the surety bond is located).

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 (j) 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. Where the owner or operator must either add sufficient funds 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. 18611, effective November 12, 2010)

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. 18611, effective November 12, 2010)

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. 18611, effective November 12, 2010)

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 USEPA approval of the Illinois requirements is important to regulated entities in Illinois, although the federal provision does not impose requirements necessary as a matter of State law.

(Source: Added at 34 Ill. Reg. 18611, effective November 12, 2010)

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. 18611, effective November 12, 2010)
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>
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<tr>
<td>Total Organic Halogens as Cl</td>
<td>NA</td>
<td>−</td>
<td>−</td>
<td>(Note 1)</td>
<td></td>
</tr>
<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>
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<tr>
<td>Cyanide, total</td>
<td>57-12-5</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
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</tr>
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</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>
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<tr>
<td>Arsenic, total</td>
<td>7440-38-2</td>
<td>ND</td>
<td>=</td>
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<td></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>
</tr>
<tr>
<td>Beryllium, total</td>
<td>7440-41-7</td>
<td>ND</td>
<td>=</td>
<td>1.2</td>
<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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<td></td>
</tr>
<tr>
<td>Cobalt</td>
<td>7440-48-4</td>
<td>ND</td>
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<tr>
<td>Lead, total</td>
<td>7439-92-1</td>
<td>57</td>
<td>18,400</td>
<td>31</td>
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<tr>
<td>Manganese</td>
<td>7439-96-5</td>
<td>ND</td>
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<tr>
<td>Mercury, total</td>
<td>7439-97-6</td>
<td>ND</td>
<td>=</td>
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<tr>
<td>Nickel, total</td>
<td>7440-02-0</td>
<td>106</td>
<td>18,400</td>
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<td>Selenium, total</td>
<td>7782-49-2</td>
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<td>Silver, total</td>
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## POLLUTION CONTROL BOARD

### NOTICE OF ADOPTED AMENDMENTS

<table>
<thead>
<tr>
<th>Substance</th>
<th>Code</th>
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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>
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<tr>
<td>Benzo(a)anthracene</td>
<td>56-55-3</td>
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<tr>
<td>Benzene</td>
<td>71-43-2</td>
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<td>Benzo(b)fluoranthene</td>
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<td>Benzo(k)fluoranthene</td>
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<tr>
<td>Benzo(a)pyrene</td>
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<tr>
<td>Chrysene</td>
<td>218-01-9</td>
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<td><strong>Dibenzo(a,h)anthracene</strong></td>
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<td><strong>7,12-Dimethylbenz(a)-anthracene</strong></td>
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<td><strong>Fluoranthene</strong></td>
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</tr>
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<td>Indeno(1,2,3-cd)pyrene</td>
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<td>3-Methylcholanthrene</td>
<td>56-49-5</td>
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<tr>
<td><strong>Naphthalene</strong></td>
<td>91-20-3</td>
<td>6,200</td>
<td>19,400</td>
<td>3,200</td>
</tr>
<tr>
<td><strong>Toluene</strong></td>
<td>108-88-3</td>
<td>69,000</td>
<td>19,400</td>
<td>36,000</td>
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<td><strong>Oxygenates:</strong></td>
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<td>Acetophenone</td>
<td>98-86-2</td>
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<td>=</td>
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<tr>
<td>Acrolein</td>
<td>107-02-8</td>
<td>ND</td>
<td>=</td>
<td>39</td>
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<tr>
<td>Allyl alcohol</td>
<td>107-18-6</td>
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<td><strong>Bis(2-ethylhexyl)-phthalate</strong></td>
<td>117-81-7</td>
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<td>Butyl benzyl phthalate</td>
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<td>=</td>
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<tr>
<td>o-Cresol <strong>(2-Methyl phenol)</strong></td>
<td>95-48-7</td>
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</tr>
<tr>
<td>m-Cresol <strong>(3-Methyl phenol)(3-Methyl phenol)</strong></td>
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<td>p-Cresol <strong>(4-Methyl phenol)</strong></td>
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<td>Di-n-butyl phthalate</td>
<td>84-74-2</td>
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<td>Diethyl phthalate</td>
<td>84-66-2</td>
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<td>2,4-Dimethylphenol</td>
<td>105-67-9</td>
<td>ND</td>
<td>=</td>
<td>2,400</td>
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</table>
# POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

<table>
<thead>
<tr>
<th>Chemical Name</th>
<th>CAS Number</th>
<th>ND</th>
<th>Limit</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dimethyl phthalate</td>
<td>131-11-3</td>
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<td>Di-n-octyl phthalate</td>
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<td>Endothall</td>
<td>145-73-3</td>
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<td>Ethyl methacrylate</td>
<td>97-63-2</td>
<td>ND</td>
<td>39</td>
<td></td>
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<tr>
<td>2-Ethoxyethanol (Ethylene glycol monoethyl ether)</td>
<td>110-80-5</td>
<td>ND</td>
<td>100</td>
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<tr>
<td>Isobutyl alcohol</td>
<td>78-83-1</td>
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<td>39</td>
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<td>Isosafrole</td>
<td>120-58-1</td>
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<tr>
<td>Methyl ethyl ketone (2-Butanone)</td>
<td>78-93-3</td>
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<td>39</td>
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<tr>
<td>Methyl methacrylate</td>
<td>80-62-6</td>
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<td>39</td>
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<td>1,4-Naphthoquinone</td>
<td>130-15-4</td>
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<td></td>
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<td>Phenol</td>
<td>108-95-2</td>
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<tr>
<td>Propargyl alcohol (2-Propyn-1-ol)</td>
<td>107-19-7</td>
<td>ND</td>
<td>30</td>
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<tr>
<td>Safrole</td>
<td>94-59-7</td>
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<td><strong>Sulfonated Organics:</strong></td>
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<td></td>
<td></td>
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<tr>
<td>Carbon disulfide</td>
<td>75-15-0</td>
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<td>ND</td>
<td>39</td>
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<td>Disulfoton</td>
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<td>Ethyl methanesulfonate</td>
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<td>Methyl methanesulfonate</td>
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<td>Phorate</td>
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<td>1,3-Propane sultone</td>
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<td>Tetraethylthiopyrophosphate (Sulfotepp)</td>
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<td>ND</td>
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<tr>
<td>Thiophenol (Benzenethiol)</td>
<td>108-98-5</td>
<td>ND</td>
<td>ND</td>
<td>30</td>
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<tr>
<td>O,O,O-Triethyl phosphorothioate</td>
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<td>ND</td>
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<tr>
<td><strong>Nitrogenated Organics:</strong></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Acetonitrile (Methyl cyanide)</td>
<td>75-05-8</td>
<td>ND</td>
<td>ND</td>
<td>39</td>
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<tr>
<td>2-Acetylaminofluorene (2-AAF)</td>
<td>53-96-3</td>
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<td>ND</td>
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<td>Compound</td>
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<td>Limit</td>
<td>Value</td>
<td>Limit</td>
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<td>---------------------------------------------</td>
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<tr>
<td>4-Aminobiphenyl</td>
<td>92-67-1</td>
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<td>504-24-5</td>
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<td>Aniline</td>
<td>62-53-3</td>
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<td>60-51-5</td>
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<td>p-((Dimethylamino)azo-benzene)</td>
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<td>oαoα-Dimethylphenylethylamine</td>
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<td>Diphenylamine</td>
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<td>Ethyl carbamate (Urethane)</td>
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<td>Methacrylonitrile</td>
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<td>Methapyrilene</td>
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<td>Methomyl</td>
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<td>2-Methylactonitrile (Acetone cyanohydrin)</td>
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<td>Result</td>
<td>Reporting Limit</td>
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<td>--------</td>
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<td>Methyl parathion</td>
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<td>ND</td>
<td>ND</td>
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<td>ND</td>
<td>ND</td>
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<td>1-Naphthylamine, α-Naphthylamine</td>
<td>134-32-7</td>
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<td>ND</td>
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<tr>
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**POLLUTION CONTROL BOARD**

**NOTICE OF ADOPTED AMENDMENTS**

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<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</td>
<td>30</td>
</tr>
<tr>
<td>1,2,4,5-Tetrachlorobenzene</td>
<td>95-94-3</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>2,400</td>
</tr>
<tr>
<td>1,1,2,2-Tetrachloroethane</td>
<td>79-34-5</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>39</td>
</tr>
<tr>
<td>Tetrachloroethylene (Perchloroethylene)</td>
<td>127-18-4</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>39</td>
</tr>
<tr>
<td>2,3,4,6-Tetrachlorophenol</td>
<td>58-90-2</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>2,400</td>
</tr>
<tr>
<td>1,2,4-Trichlorobenzene</td>
<td>120-82-1</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>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</td>
<td>39</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane (Vinyl trichloride)</td>
<td>79-00-5</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>39</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>79-01-6</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>39</td>
</tr>
<tr>
<td>Trichlorofluoromethane (Trichloromonofluoromethane)</td>
<td>75-69-4</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>39</td>
</tr>
<tr>
<td>2,4,5-Trichlorophenol</td>
<td>95-95-4</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>2,400</td>
</tr>
<tr>
<td>2,4,6-Trichlorophenol</td>
<td>88-06-2</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>2,400</td>
</tr>
<tr>
<td>1,2,3-Trichloropropane</td>
<td>96-18-4</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>39</td>
</tr>
<tr>
<td>Vinyl Chloride</td>
<td>75-01-4</td>
<td>ND</td>
<td>=</td>
<td>ND</td>
<td>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. 18611, effective November 12, 2010)
POLLUTION CONTROL BOARD

NOTICE OF ADOPTED 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>Applicable Subsection of Section 721.102:</th>
<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>(c)(1)</td>
<td>(c)(2)</td>
<td>(c)(3)</td>
<td>(c)(4)</td>
</tr>
<tr>
<td>Spent materials</td>
<td>Yes</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>
<td>Yes</td>
</tr>
<tr>
<td>Sludges exhibiting a characteristic of hazardous waste</td>
<td>Yes</td>
<td>Yes</td>
<td><strong>No</strong></td>
</tr>
</tbody>
</table>
**POLLUTION CONTROL BOARD**

**NOTICE OF ADOPTED AMENDMENTS**

<table>
<thead>
<tr>
<th>By-products (listed in Section 721.131 or 721.132)</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>By-products exhibiting a characteristic of hazardous waste</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</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. 18611, effective November 12, 2010)
POLLUTION CONTROL BOARD

NOTICE OF ADOPTED 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 Amended
   - 722.112 Amended
   - 722.121 Amended
   - 722.134 Amended
   - 722.187 Amended
   - 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) **Effective date of amendments:** November 12, 2010

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

incorporated by reference for the purposes of Part 721. The amendments include the new incorporation by reference to the document entitled "Accreditation Council for Graduate Medical Education: Glossary of Terms."

8) Statement of availability: The adopted amendments, a copy of the Board's opinion and order adopted October 7, 2010 in docket R09-16/R10-4 (consolidated), and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of proposal published in the Illinois Register: August 6, 2010; 34 Ill. Reg. 11298

10) Has JCAR issued a statement of objection to this rulemaking? No. Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between the proposal and the final version: A table that appears in the Board's opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated) summarizes the differences between the amendments adopted in that order and those proposed by the Board in an opinion and order dated June 17, 2010, in docket R09-16/R10-4 (consolidated). Many of the differences are explained in greater detail in the Board's opinion and order adopting the amendments.

The differences are limited to minor corrections without significant substantive effect. The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the August 6, 2010 issue of the Illinois Register, the Board received a number of suggestions for revisions from JCAR.
POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated), as indicated in item 11 above. See the October 7, 2010 opinion and order in docket R09-16/R10-4 (consolidated) for additional details on the JCAR suggestions and the Board actions with regard to each. One table in that opinion itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

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

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

15) Summary and purpose of amendments: 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 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. A separate table of changes and corrections in the text since June 17, 2010 appears in the October 7, 2010. The preponderance of those changes and corrections are not based on current federal amendments. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 and October 7, 2010 opinions and orders in docket R09-16/R10-4 (consolidated).
POLLUTION CONTROL BOARD

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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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) Information and questions regarding these adopted amendments must be directed to: Please reference consolidated docket R09-16/R10-4 (consolidated) and direct inquiries to the following person:

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

312/814-6924

Request copies of the Board's opinion and order of October 7, 2010 at 312-814-3620. Alternatively, you may obtain a copy of the Board's opinion and order from the Internet at http://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 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

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>722.110</td>
<td>Purpose, Scope, and Applicability</td>
</tr>
<tr>
<td>722.111</td>
<td>Hazardous Waste Determination</td>
</tr>
<tr>
<td>722.112</td>
<td>USEPA Identification Numbers</td>
</tr>
<tr>
<td>722.113</td>
<td>Electronic Reporting</td>
</tr>
</tbody>
</table>

SUBPART B: THE MANIFEST

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>722.120</td>
<td>General Requirements</td>
</tr>
<tr>
<td>722.121</td>
<td>Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests</td>
</tr>
<tr>
<td>722.122</td>
<td>Number of Copies</td>
</tr>
<tr>
<td>722.123</td>
<td>Use of the Manifest</td>
</tr>
<tr>
<td>722.127</td>
<td>Waste Minimization Certification</td>
</tr>
</tbody>
</table>

SUBPART C: PRE-TRANSPORT REQUIREMENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>722.130</td>
<td>Packaging</td>
</tr>
<tr>
<td>722.131</td>
<td>Labeling</td>
</tr>
<tr>
<td>722.132</td>
<td>Marking</td>
</tr>
<tr>
<td>722.133</td>
<td>Placarding</td>
</tr>
<tr>
<td>722.134</td>
<td>Accumulation Time</td>
</tr>
</tbody>
</table>

SUBPART D: RECORDKEEPING AND REPORTING

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>722.140</td>
<td>Recordkeeping</td>
</tr>
</tbody>
</table>
POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

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

Section
722.300 Definitions
722.301 Applicability
722.302 Opting into the Subpart K Requirements
722.303 Notice of Election into the Subpart K Requirements
722.304 Notice of Withdrawal from the Subpart K Requirements
722.305 Summary of the Requirements of this Subpart K
722.306 Container Standards in the Laboratory
722.307 Personnel Training
722.308 Removing Unwanted Material from the Laboratory
722.309 Hazardous Waste Determination and Removal of Unwanted Material from the Laboratory
722.310 Hazardous Waste Determination in the Laboratory
722.311 Hazardous Waste Determination at an On-Site Central Accumulation Area
722.312 Hazardous Waste Determination at an On-Site Treatment, Storage, or Disposal Facility
722.313 Laboratory Clean-Outs
722.314 Laboratory Management Plan
722.315 Unwanted Material That Is Not Solid Waste or Hazardous Waste
722.316 Non-Laboratory Hazardous Waste Generated at an Eligible Academic Entity

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].

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS


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
POLLUTION CONTROL BOARD

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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

NOTICE OF ADOPTED AMENDMENTS

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. 18817, effective November 12, 2010)

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 the 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. 18817, effective November 12, 2010)

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
POLLUTION CONTROL BOARD

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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 RecoverySolidWaste 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
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.
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 Recovery Solid 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 Recovery Solid 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 in 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. 18817, effective November 12, 2010)

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

4) The generator complies with the requirements for owners or operators in
725.116 and 728.107(a)(5).

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
702, 703, and 705, unless the generator has been granted an extension of the 90-
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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
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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"; and


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), 36(c), and 37(b)] if it finds that the F006 waste must remain on-site for
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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 management practices at the facility showing that they are
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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 724.172 or 725.172 may accumulate the returned waste on-site in accordance with
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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. 18817, effective November 12, 2010)

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;

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 of the requirements of Section 722.142 if any of the following occurs:
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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. 18817, effective November 12, 2010)
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 which has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or which 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 which 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 which 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 which 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 which 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. 18817, effective November 12, 2010)

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. 18817, effective November 12, 2010)

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. 18817, effective November 12, 2010)

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(s) 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"
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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. 18817, effective November 12, 2010)

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
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(s) 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. 18817, effective November 12, 2010)

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 which 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. 18817, effective November 12, 2010)

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 which 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. 18817, effective November 12, 2010)

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:
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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 which is sufficient to demonstrate that training for all laboratory workers has occurred. Examples of documentation which 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. 18817, effective November 12, 2010)

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. 18817, effective November 12, 2010)

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.

(Source: Added at 34 Ill. Reg. 18817, effective November 12, 2010)

**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. 18817, effective November 12, 2010)

Section 722.311 Hazardous Waste Determination at an On-Site Central Accumulation Area

When an eligible academic entity makes the hazardous waste determination, pursuant to Section 722.111, for unwanted material at an on-site central accumulation area, 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 central accumulation area.

b) All unwanted material removed from the laboratory must be taken directly from the laboratory to the on-site central accumulation area.

c) The unwanted material becomes subject to the generator accumulation regulations of Section 722.134(a) (or Section 722.134(j) and (k) for a Performance Track member), for a large quantity generator, or Section 722.134(d) through (f), for a small quantity generator, as soon as the material arrives in the central accumulation area, except for the "hazardous waste" labeling requirements of Section 722.134(a)(3) (or Section 722.134(j)(6) for a Performance Track member).

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 the on-site central accumulation area.
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. 18817, effective November 12, 2010)

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;
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c) 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 affixed or attached to 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. 18817, effective November 12, 2010)

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 which 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 which is generated prior to the beginning of the laboratory clean-out and which 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 of 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. 18817, effective November 12, 2010)

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));
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 information:
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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. 18817, effective November 12, 2010)

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. 18817, effective November 12, 2010)

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. 18817, effective November 12, 2010)
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 Numbers:**

   - 724.152 Amended
   - 724.199 Amended

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

5) **Effective date of Amendments:** November 12, 2010

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

7) **Do these amendments 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.

8) **Statement of availability:** The adopted amendments, a copy of the Board's opinion and order adopted October 7, 2010 in docket R09-16/R10-4 (consolidated), and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) **Notice of proposal published in the Illinois Register:** August 6, 2010; 34 Ill. Reg. 11354

10) **Has JCAR issued a statement of objections to this rulemaking?** No. Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) **Differences between the proposal and the final version:** A table that appears in the Board's opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated) summarizes the differences between the amendments adopted in that order and those proposed by the Board in an opinion and order dated June 17, 2010, in docket R09-16/R10-4 (consolidated). Many of the differences are explained in greater detail in the Board's opinion and order adopting the amendments.
The differences are limited to minor corrections without significant substantive effect. The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based. One revision is the addition of Section 724.199 for correction of a cross-reference in subsection (c)(1) in response to a request submitted by the Illinois Environmental Protection Agency in its comments on the proposal.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the August 6, 2010 issue of the Illinois Register, the Board received a number of suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated), as indicated in item 11 above. See the October 7, 2010 opinion and order in docket R09-16/R10-4 (consolidated) for additional details on the JCAR suggestions and the Board actions with regard to each. One table in that opinion itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

13) Will these amendments replace emergency amendments currently in effect? No

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

15) Summary and purpose of amendments: 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. A separate table of changes and corrections in the text since June 17, 2010 appears in the October 7, 2010. The preponderance of those changes and corrections are not based on current federal amendments. Persons interested in the details of those corrections and amendments should refer to the June 17, 2010 and October 7, 2010 opinions and orders 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) Information and questions regarding these adopted amendments must be directed to:
Please reference consolidated docket R09-16/R10-4 (consolidated) and direct inquiries to the following person:

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

312/814-6924

Request copies of the Board's opinion and order of October 7, 2010 at 312-814-3620. Alternatively, you may obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

The full text of the Adopted 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 724
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

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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
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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. 18873, effective November 12, 2010)

SUBPART F: RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Section 724.199 Compliance Monitoring Program

An owner or operator required to establish a compliance monitoring program under this Subpart F must, at a minimum, discharge the following responsibilities:

a) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under Section 724.192. The Agency must specify the groundwater protection standard in the facility permit, including the following:

1) A list of the hazardous constituents identified under Section 724.193;

2) Concentration limits under Section 724.194 for each of those hazardous constituents;

3) The compliance point under Section 724.195; and

4) The compliance period under Section 724.196.

b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under Section 724.195. The groundwater monitoring system must comply with Section 724.197(a)(2), 724.197(b), and 724.197(c).

c) The Agency must specify the sampling procedures and statistical methods
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appropriate for the constituents and facility, consistent with Section 724.197(g) and (h).

1)  The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with Section 724.197(g).

2)  The owner or operator must record groundwater analytical data as measured and in a form necessary for the determination of statistical significance under Section 724.197(h) for the compliance period of the facility.

d)  The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to subsection (a) of this Section, at a frequency specified under subsection (f) of this Section.

1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the methods specified in the permit under Section 724.197(h). The methods must compare data collected at the compliance points to a concentration limit developed in accordance with Section 724.194.

2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of the sampling. The Agency must specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

e)  The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

f)  The Agency must specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with Section 724.197(g).

g)  The owner or operator must annually determine whether additional hazardous
constituents from Appendix I of this Part, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in Section 724.198(f). To accomplish this, the owner or operator must consult with the Agency to determine the following on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix I of this Part for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix I constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Agency, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Agency within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then it must report the concentrations of these additional constituents to the Agency within seven days after completion of the initial analysis, and add them to the monitoring list.

h) If the owner or operator determines, pursuant to subsection (d) of this Section that any concentration limits under Section 724.194 are being exceeded at any monitoring well at the point of compliance, the owner or operator must do the following:

1) Notify the Agency of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded.

2) Submit to the Agency an application for a permit modification to establish a corrective action program meeting the requirements of Section 724.200 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Agency under Section 724.198(g)(5). The application must at a minimum include the following information:

A) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under subsection (a) of this Section; and
POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

B) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this Section.

i) If the owner or operator determines, pursuant to subsection (d) of this Section, that the groundwater concentration limits under this Section are being exceeded at any monitoring well at the point of compliance, the owner or operator may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation, or natural variation in groundwater. In making a demonstration under this subsection (i), the owner or operator must do the following:

1) Notify the Agency in writing within seven days that it intends to make a demonstration under this subsection (i);

2) Within 90 days, submit a report to the Agency that demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

3) Within 90 days, submit to the Agency an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

4) Continue to monitor in accord with the compliance monitoring program established under this Section.

j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this Section, the owner or operator must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(Source: Amended at 34 Ill. Reg. 18873, effective November 12, 2010)
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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:** 725.152  
   **Adopted action:** Amended

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

5) **Effective date of amendment:** November 12, 2010

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

7) **Does this amendment 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.

8) **Statement of availability:** The adopted amendments, a copy of the Board's opinion and order adopted October 7, 2010 in docket R09-16/R10-4 (consolidated), and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) **Notice of proposal published in the Illinois Register:** August 6, 2010; 34 Ill. Reg. 11368

10) **Has JCAR issued a statement of objection to this rulemaking?** No. Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) **Differences between the proposal and the final version:** A table that appears in the Board's opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated) summarizes the differences between the amendments adopted in that order and those proposed by the Board in an opinion and order dated June 17, 2010, in docket R09-16/R10-4 (consolidated). Many of the differences are explained in greater detail in the Board's opinion and order adopting the amendments.
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The differences are limited to minor corrections without significant substantive effect. The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] 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 APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the August 6, 2010 issue of the Illinois Register, the Board received a number of suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the opinion and order of October 7, 2010 in docket R09-16/R10-4 (consolidated), as indicated in item 11 above. See the October 7, 2010 opinion and order in docket R09-16/R10-4 (consolidated) for additional details on the JCAR suggestions and the Board actions with regard to each. One table in that opinion itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

13) Will this amendment replace any emergency amendment currently in effect? No

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

15) Summary and purpose of amendment: The amendment to Part 725 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 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."
T...
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 725
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

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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].

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.
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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
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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. 18890, effective November 12, 2010)
DEPARTMENT OF INSURANCE

NOTICE OF EMERGENCY RULES

1) **Heading of the Part:** Mandatory Child Only Open Enrollment Period for Individual Market Carriers

2) **Code Citation:** 50 Ill. Adm. Code 5410

3) **Section Numbers:**
   - 5410.10 New Section
   - 5410.20 New Section
   - 5410.30 New Section
   - 5410.40 New Section
   - 5410.50 New Section
   - 5410.60 New Section

4) **Statutory Authority:** Implementing Section 355a of the Illinois Insurance Code and authorized by Sections 355a and 401 of the Illinois Insurance Code [215 ILCS 5/355a and 401]

5) **Effective Date of Emergency Rules:** November 9, 2010

6) **Reason for Emergency:** The immediate adoption of these emergency rules is imperatively necessary for the preservation of public health, safety, and welfare. The purpose of these rules is to facilitate the implementation of certain provisions of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the "Affordable Care Act" (ACA).

The ACA provides that group and individual health insurance coverage may not impose pre-existing condition exclusions for children under age 19 for policy years beginning on or after September 23, 2010. For the individual health insurance coverage market the
federal regulations implementing the ACA require carriers offering individual health insurance coverage, for policy years beginning on or after September 23, 2010, that issue coverage to children under age 19 to do so regardless of the child's prior health. These regulations and the ACA do not prohibit the carrier from assessing premium based on the health of the family and/or child.

The Federal agencies charged with implementation of the ACA (the U.S. Departments of Health and Human Services, Labor, and Treasury, collectively referred to as the "Federal agencies") have also issued guidance stating carriers in the individual market may restrict enrollment of children under age 19, whether in family or child-only coverage, to specific open enrollment periods if allowed under State law. The Federal agencies have further stated that "unless State laws provide such guidance, issuers in the individual market may determine the number and length of open enrollment periods for children under 19."

The Department is currently aware that several of the major carriers are withdrawing from the Child Only Plan market; carriers have informed the Department that this withdrawal is due, in part, to lack of defined open enrollment periods. The ACA contemplates open enrollment periods, but Illinois currently has no open enrollment periods for the Child Only Plan market. This mandated open enrollment period is imperative to ensure and protect consumers' need for access to individual market health insurance for children under age 19. Open enrollment periods facilitate a fair and competitive marketplace for carriers; lack of defined open enrollment periods minimizes or eliminates consumer choices and options for Child Only Plans. These emergency rules will establish defined open enrollment periods.

10) **A Complete Description of the Subjects and Issues Involved**: This emergency rule sets a standard open-enrollment period during which insurers will accept applications for the issuance of child-only (under-19) policies on the individual market. This rule also provides for certain "qualifying events", and requires that insurers accept applications within 30 days of these events. This rule also provides for disincentives and protections against lapses in coverage, risk dumping, and potential subscriber gaming.

11) **Are there any proposed amendments to this Part pending?** No.

12) **Statement of Statewide Policy Objectives**: This rule will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

13) **Information and questions regarding this amendment shall be directed to:**
DEPARTMENT OF INSURANCE

NOTICE OF EMERGENCY RULES

David Grant, Assistant Deputy Director for Health Insurance Products
Department of Insurance
320 West Washington
Springfield, Illinois  62767-0001

217/782-6369

The full text of the Emergency Rules begins on the next page:
DEPARTMENT OF INSURANCE

NOTICE OF EMERGENCY RULES

TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER kkk: HEALTH CARE SERVICE PLANS

PART 5410
MANDATORY CHILD ONLY OPEN ENROLLMENT PERIOD
FOR INDIVIDUAL MARKET CARRIERS

Section
5410.10 Scope and Purpose
5410.20 Applicability
5410.30 Definitions
5410.40 Rules
5410.50 Enforcement
5410.60 Effective Date

AUTHORITY: Implementing Section 355a of, and authorized by Sections 355a and 401 of, the Illinois Insurance Code [215 ILCS 5/355a and 401].

SOURCE: Emergency rules adopted at 34 Ill. Reg. 18904, effective November 9, 2010, for a maximum of 150 days.

Section 5410.10 Scope and Purpose

The purpose of these emergency rules is to facilitate the implementation of certain provisions of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the "Affordable Care Act" (ACA), and regulations adopted by the U.S. Departments of Health and Human Services, Labor, and Treasury to implement the ACA at 26 CFR Parts 54 and 602, 29 CFR Part 2590, and 45 CFR Parts 144, 146, and 147 (hereafter the "Regulations").
DEPARTMENT OF INSURANCE

NOTICE OF EMERGENCY RULES

Section 5410.20 Applicability

This emergency regulation applies to all carriers that issue coverage in the individual health insurance market with an effective date on or after September 23, 2010.

Section 5410.30 Definitions

"Carrier" shall mean an insurer issuing Child Only Plans.

"Child Only Plan" shall mean renewable individual health insurance coverage (as defined in 42 U.S.C. 300gg-91) issued with an effective date on or after September 23, 2010, which provides coverage to an individual under the age of 19. This shall not include individual health insurance coverage that covers children under age 19 as dependents.

"Qualifying Event" shall include the following:

For individuals under age 19 covered as a dependent under the plan of another (the insured), and for individuals under age 19 with their own coverage:

Loss of the insured's or the individual's employer-sponsored insurance, including termination of employment or reduction in the number of hours of employment;

Involuntary loss of the insured's or the individual's other existing coverage for any reason other than fraud, misrepresentation or failure to pay premium so long as the individual is under age 19 when the qualifying event occurs;

Exhaustion of the insured's or the individual's COBRA continuation coverage;

A situation in which a claim is incurred that would meet or exceed a lifetime or annual limit on all benefits;
DEPARTMENT OF INSURANCE

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Termination of employer contributions towards the insured's or the individual's coverage, including any current or former employers;

Legal separation or divorce of the insured or the individual; and

In the case of coverage offered through an HMO, or other arrangement, that does not provide benefits to persons who no longer reside, live, or work in a service area, loss of the insured's or the individual's coverage because a person no longer resides in the service area (whether or not within the choice of the person).

For individuals under age 19 who have been covered as a dependent under the plan of another (the insured):

Cessation of the individual's dependent status; and

Death of the insured.

For individuals under age 19 with their own coverage:

Birth, adoption, or placement for adoption of an individual; and

A person under age 19 becomes a dependent of the individual through marriage, birth, adoption, or placement for adoption.

Birth, adoption, or placement for adoption.

Section 5410.40 Rules

EMERGENCY

a) Enrollment Required During Certain Periods

1) Carriers shall accept applications for Child Only Plan coverage during the open enrollment periods outlined in this Part.

2) Carriers shall also accept applications for Child Only Plan coverage if the application is received within 30 days of a qualifying event.

b) Transition Period – Initial Open Enrollment
1) Carriers shall hold a one-time open enrollment period from January 1, 2011 until January 31, 2011. During this open enrollment period, all children under the age of 19 making application for Child Only Plan coverage shall be offered coverage without any limitations or riders based on health status.

2) Notice of this open enrollment opportunity and instructions on how to enroll must be displayed prominently on the carrier's web site for the duration of the open enrollment period.

3) Applications for coverage during this open enrollment period shall become effective on March 1, except that if mutually agreed upon by the applicant and the carrier an alternative effective date may be selected.

c) Biannual Open Enrollment for New Applicants

1) Beginning July 1, 2011, and each January and July thereafter, carriers shall hold an open enrollment period for Child Only Plan applicants for the duration of the entire month. During these open enrollment periods, all Child Only Plan applicants under the age of 19 shall be offered coverage without any limitations or riders based on health status.

2) Notice of the open enrollment opportunity and open enrollment dates for new applicants, as well as the opportunity to enroll due to a Qualifying Event, must be displayed prominently on the carrier's web site throughout the year.

3) Applications for coverage during a January open enrollment period shall become effective no later than March 1 following the open enrollment during which the application is received. Applications for coverage during a July open enrollment period shall become effective no later than September 1 following the open enrollment during which the application is received.

d) Surcharge for Lapse in Coverage

1) To encourage continuous coverage, a child enrolling in an individual market Child Only Plan may be subject to a surcharge of up to 50% of the
DEPARTMENT OF INSURANCE

NOTICE OF EMERGENCY RULES

standard rate for up to 12 months if the child has a lapse in a Child Only Plan within the past 12 months.

2) The 50% surcharge may be on top of the rate that would be charged for the same child demonstrating continuous coverage.

e) Prohibited Practices

1) To ensure parents cannot temporarily obtain family coverage at any point in the year only to subsequently drop coverage to make the child a child only subscriber, carriers are allowed to cancel coverage for dependents in the individual market if the parent subscriber drops coverage.

2) The carrier must allow the child to enroll on a child-only basis during the next open enrollment period without assessing a surcharge for lapse in coverage.

Section 5410.50 Enforcement

EMERGENCY

Pursuant to Article XXIV of the Illinois Insurance Code [215 ILCS 5/Art. XXIV], noncompliance with this Part may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Illinois statutes pertaining to the business of insurance or other laws which include the imposition of fines, refund of excess premiums plus interest, restitution, issuance of cease and desist orders, and/or suspensions or revocation of license or certificate of authority.

Section 5410.60 Effective Date

EMERGENCY

This Part shall become effective on November 9, 2010 and expire the earlier of 150 days or upon change to federal requirements for guarantee issue coverage to children under age 19.
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

1) **Heading of the Part**: Pay Plan

2) **Code Citation**: 80 Ill. Adm. Code 310

3) **Section Number**: Peremptory Action

310.APPENDIX A TABLE K Amendment

4) **Reference to the Specific State or Federal Court Order, Federal Rule or Statute which Requires this Peremptory Rulemaking**: The Department of Central Management Services (CMS) is amending the Pay Plan (80 Ill. Adm. Code 310) Section 310.Appendix A Table K to reflect the RC-023 Title and Salary Ranges Revised to Reflect the Wage Deferral per Memorandum of Agreement and Correction to the Memorandum of Understanding for Registered Nurse – Advanced Practice between the Illinois Nurses Association (INA) and the State of Illinois signed October 15, 2010. The Wage Deferral Memorandum of Agreement was signed June 16, 2010. One percent of the 2% January 1, 2011 general increase set forth in Article XX Section 1(e) of the Master agreement is deferred to June 30, 2011. The Memorandum of Understanding for Registered Nurse – Advanced Practice was signed August 13, 2010. The Registered Nurse – Advanced Practice title was assigned to RC-023-26 pay grade effective March 23, 2009. Issued on March 23, 2010 was the Illinois Labor Relations Board State Panel Certification of Representative (Case No. S-RC-09-116) assigning the classification Registered Nurse – Advanced Practice to the RC-023 bargaining unit with no position excluded.

5) **Statutory Authority**: Authorized by Sections 8, 8a and 9(7) of the Personnel Code [20 ILCS 415/8, 20 ILCS 415/8a and 20 ILCS 415/9(7)], subsection (d) of Section 1 -5 of the Illinois Administrative Procedure Act [5 ILCS 100/1-5(d)] and by Sections 4, 6, 15 and 21 of the Illinois Public Labor Relations Act [5 ILCS 315/4, 5 ILCS 315/6, 5 ILCS 315/15 and 5 ILCS 315/21].

6) **Effective Date**: November 15, 2010

7) **A Complete Description of the Subjects and Issues Involved**: In Section 310.Appendix A Table K, rate tables effective January 1 and July 1 2009, and January 1, 2010 are added for the Registered Nurse – Advanced Practice title and its assigned rates. The rate table effective July 1, 2010 is revised to include the Registered Nurse – Advanced Practice title and its assigned rates. New rate tables effective January 1 and June 30, 2011 are added. The old rate table effective January 1, 2011 is removed.

8) **Does this rulemaking contain an automatic repeal date?** No
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

9) Date filed with the Index Department: November 15, 2010

10) This and other Pay Plan amendments are available in the Division of Technical Services of the Bureau of Personnel.

11) Is this in compliance with Section 5-50 of the Illinois Administrative Procedure Act? Yes

12) Are there any other proposed amendments pending on this Part? Yes

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13) Statement of Statewide Policy Objectives: These amendments to the Pay Plan affect only the employees subject to the Personnel Code and do not set out any guidelines that affect local or other jurisdictions in the State.

14) Information and questions regarding this peremptory amendment shall be directed to:

Mr. Jason Doggett
Manager
Compensation Section
Division of Technical Services and Agency Training and Development
Bureau of Personnel
Department of Central Management Services
504 William G. Stratton Building
Springfield IL  62706
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

217/782-7964
Fax: 217/524-4570
CMS.PayPlan@Illinois.gov

The full text of the Peremptory Amendments begins on the next page:
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND
POSITION CLASSIFICATIONS
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 310
PAY PLAN

SUBPART A: NARRATIVE

Section
310.20 Policy and Responsibilities
310.30 Jurisdiction
310.40 Pay Schedules
310.45 Comparison of Pay Grades or Salary Ranges Assigned to Classifications
310.47 In-Hiring Rate
310.50 Definitions
310.60 Conversion of Base Salary to Pay Period Units
310.70 Conversion of Base Salary to Daily or Hourly Equivalents
310.80 Increases in Pay
310.90 Decreases in Pay
310.100 Other Pay Provisions
310.110 Implementation of Pay Plan Changes (Repealed)
310.120 Interpretation and Application of Pay Plan
310.130 Effective Date
310.140 Reinstiution of Within Grade Salary Increases (Repealed)
310.150 Fiscal Year 1985 Pay Changes in Schedule of Salary Grades, effective July 1, 1984 (Repealed)

SUBPART B: SCHEDULE OF RATES

Section
310.205 Introduction
310.210 Prevailing Rate
310.220 Negotiated Rate
310.230 Part-Time Daily or Hourly Special Services Rate (Repealed)
310.240 Daily or Hourly Rate Conversion
310.250 Member, Patient and Inmate Rate
310.260 Trainee Rate
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310.270 Legislated Rate
310.280 Designated Rate
310.290 Out-of-State Rate (Repealed)
310.295 Foreign Service Rate (Repealed)
310.300 Educator Schedule for RC-063 and HR-010
310.310 Physician Specialist Rate
310.320 Annual Compensation Ranges for Executive Director and Assistant Executive Director, State Board of Elections (Repealed)
310.330 Excluded Classes Rate (Repealed)

SUBPART C: MERIT COMPENSATION SYSTEM

Section
310.410 Jurisdiction
310.415 Merit Compensation Salary Range Assignments
310.420 Objectives
310.430 Responsibilities
310.440 Merit Compensation Salary Schedule
310.450 Procedures for Determining Annual Merit Increases and Bonuses
310.455 Intermittent Merit Increase (Repealed)
310.456 Merit Zone (Repealed)
310.460 Other Pay Increases
310.470 Adjustment
310.480 Decreases in Pay
310.490 Other Pay Provisions
310.495 Broad-Band Pay Range Classes
310.500 Definitions
310.510 Conversion of Base Salary to Pay Period Units (Repealed)
310.520 Conversion of Base Salary to Daily or Hourly Equivalents
310.530 Implementation
310.540 Annual Merit Increase and Bonus Guidechart
310.550 Fiscal Year 1985 Pay Changes in Merit Compensation System, effective July 1, 1984 (Repealed)

310.APPENDIX A Negotiated Rates of Pay
310.TABLE A RC-104 (Conservation Police Supervisors, Laborers’ – ISEA Local #2002)
310.TABLE B VR-706 (Assistant Automotive Shop Supervisors, Automotive Shop Supervisors and Meat and Poultry Inspector Supervisors, Laborers’ –
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ISEA Local #2002)

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310.APPENDIX B Schedule of Salary Grade Pay Grades – Monthly Rates of Pay (Repealed)
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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310. APPENDIX C  Medical Administrator Rates (Repealed)
310. APPENDIX D  Merit Compensation System Salary Schedule
310. APPENDIX E  Teaching Salary Schedule (Repealed)
310. APPENDIX F  Physician and Physician Specialist Salary Schedule (Repealed)
310. APPENDIX G  Broad-Band Pay Range Classes Salary Schedule

AUTHORITY: Implementing and authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

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**Section 310. APPENDIX A  Negotiated Rates of Pay**

**Section 310. TABLE K  RC-023 (Registered Nurses, INA)**

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**Effective January 1, 2010**

**Bargaining Unit: RC-023**

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# NOTICE OF PEREMPTORY AMENDMENT

## Effective July 1, 2010
**Bargaining Unit: RC-023**

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Effective January 1, 2011
**Bargaining Unit: RC-023**
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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Effective June 30, 2011
Bargaining Unit: RC-023
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

<table>
<thead>
<tr>
<th>Title</th>
<th>Code</th>
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<tr>
<td>Health Facilities Surveillance Nurse</td>
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Effective January 1, 2011
Bargaining Unit: RC-023

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<td>Health Facilities Surveillance Nurse</td>
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</tr>
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<td>Nursing Act Assistant Coordinator</td>
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</table>
NOTE: Effective July 1, 2010, the Step 8 rate shall be increased by $50 per month for those employees who have 3 or more years of creditable service on Step 8 in the same pay grade. Effective July 1, 2010, the Step 8 rate shall be increased by $75 per month for those employees who have 6 or more years of creditable service on Step 8 in the same pay grade.

(Source: Amended by peremptory rulemaking at 34 Ill. Reg. 18912, effective November 15, 2010)
NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENT

1) **Heading of the Part:** Certificate of Certified Public Accountant

2) **Code Citation:** 23 Ill. Adm. Code 1400

3) **Section Number:** 1400.90  
   **Proposed Action:** Withdrawal

4) **Date Notice of Proposed Amendment Published in the Illinois Register:** March 19, 2010; 34 Ill. Reg. 3347

5) **Reason for the withdrawal:** The Board plans to add an effective date to the amendment and propose it in the next week's *Illinois Register*. 
ILLINOIS COMMERCE COMMISSION

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENT

1) Heading of the Part: Internet Enrollment Rules

2) Code Citation: 83 Ill. Adm. Code 453

3) Section Number: Proposed Action:
   453.40 Amendment

4) Date Notice of Proposed Amendment Published in Illinois Register: December 28, 2009;
   33 Ill. Reg. 17222

5) Reason for the withdrawal: Parties to the docket 09-0592 have raised issues that could not be resolved within the one-year limit for rulemakings.
ILLINOIS COMMERCE COMMISSION

NOTICE OF WITHDRAWAL OF PROPOSED RULES

1) **Heading of the Part:** Obligations of Retail Electric Suppliers

2) **Code Citation:** 83 Ill. Adm. Code 412

3) **Section Numbers:**
   - 412.10    New Section
   - 412.20    New Section
   - 412.100   New Section
   - 412.110   New Section
   - 412.120   New Section
   - 412.130   New Section
   - 412.140   New Section
   - 412.150   New Section
   - 412.160   New Section
   - 412.170   New Section
   - 412.180   New Section
   - 412.200   New Section
   - 412.210   New Section
   - 412.220   New Section
   - 412.230   New Section
   - 412.240   New Section
   - 412.250   New Section
   - 412.300   New Section
   - 412.310   New Section
   - 412.320   New Section

4) **Date Notice of Proposed Rules Published in Illinois Register:** December 28, 2009, 33 Ill. Reg. 17202

5) **Reason for the withdrawal:** Parties to the docket 09-0592 have raised issues that could not be resolved within the one-year limit for rulemakings.
ILLINOIS EMERGENCY MANAGEMENT AGENCY

NOTICE OF MODIFICATION TO MEET THE OBJECTION OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

1) **Heading of the Part:** Licensing of Radioactive Material

2) **Code Citation:** 32 Ill. Adm. Code 330

3) **Section Number:** 330.40
   **Proposed Action:** Modification

4) **Date Notice of Proposed Rules Published in the Register:** August 28, 2009; 33 Ill. Reg. 12061

5) **Date JCAR Statement of Objection and Filing Prohibition Published in the Register:**
   August 27, 2010; 34 Ill. Reg. 12562

6) **Summary of Action Taken by the Agency:** At its meeting on August 10, 2010, the Joint Committee on Administrative Rules (JCAR) issued an objection to and filing prohibition for the rulemaking titled "Licensing of Radioactive Material" (32 Ill. Adm. Code 330; 33 Ill. Reg. 12061). According to JCAR, "the rulemaking causes a significant adverse economic impact on the affected public. JCAR further requests that IEMA conduct an additional meeting to enable the affected public to present data in an attempt to show that the public health and safety can be protected with less adverse economic impact."

   As requested, IEMA held a public meeting on October 27, 2010, to collect data regarding economic impact of the proposed rulemaking. IEMA allowed a question and answer time so that people could get IEMA's interpretation of the rulemaking and to discuss various issues. In addition, IEMA received oral comment from 19 individuals representing varying interests in this matter. Finally, IEMA received 10 written comments on the issue.

   IEMA has reviewed and considered all the comments presented. There were some new ideas brought out in the public meeting that need to be addressed. Based on these new ideas, IEMA is considering modifications to the proposed rulemaking. IEMA plans on discussing these modifications with JCAR in the near future and is hopeful that JCAR will find the modifications acceptable and will remove the filing prohibition.
Pursuant to 820 ILCS 130/11a of the Prevailing Wage Act the Director of the Illinois Department of Labor gives notice that the following contractors and subcontractors have been found to have disregarded their obligations to employees under the Prevailing Wage Act on two (2) separate occasions and that they, or any firm, corporation, partnership or association in which such contractors or subcontractors have an interest, are prohibited from being awarded any contract or subcontract for a public works project:

B & T Services of Monee, Inc.
4922 W. Margaret Street
Monee, IL  60449
IDOL Case No.(s): 2007-PW-AP06-0839 & 2006-PW-RW06-0939
May 21, 2010 and continuing through May 20, 2014

American Brick Paving, Inc.
c/o John Biebrach, President
825 Seegers Road
Des Plaines, IL  60016
IDOL Case No.:  2010-PW-WJ11-0557
September 24, 2010 and continuing through September 23, 2014

Performance Paving, Ltd.
c/o Larry Kennebeck, President
520 Bonner Road
Wauconda, IL  60084
IDOL Case No.(s): 2008-PW-WJ01-0530 & 2010-PW-WJ08-0214
"this debarment is effective until 4 years have elapsed from the date of publication of the list containing the name of the contractor"

Dirt & Sod, Inc.
c/o Pat Brandonisio, President
964 Elizabeth Drive
Elgin, IL  60120
IDOL Case No.(s):  2008-PW-WJ02-0633 & 2010-PW-WJ09-0254
DEPARTMENT OF LABOR

NOTICE OF PUBLIC INFORMATION

"this debarment is effective until 2 years have elapsed from the date of publication of the list containing the name of the contractor"

Copies of the Prevailing Wage Act are available on the internet at http://www.legis.state.il.us/ilcs/ch820/ch820act130.htm, and at the:

Illinois Department of Labor
Conciliation and Mediation Division
900 S. Spring
Springfield, Illinois  62704
Section 17.5 of the Environmental Protection Act (Act) [415 ILCS 5/17.5] requires the Board to adopt regulations that are "identical in substance" to rules adopted by the United States Environmental Protection Agency (USEPA) to implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (2006)). The USEPA National Primary Drinking Water Regulations (NPDWRs) implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal SDWA (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (2006)). The federal SDWA regulations are found at 40 C.F.R. 141 through 143.

Section 7.2(a) of the Act [415 ILCS 5/7.2(a)] requires the Board to complete its identical-in-substance rulemaking actions within one year after the date of the USEPA action on which they are based. Section 7.2(b) [415 ILCS 5/7.2(b)] allows the Board to extend the deadline for adoption by publication of a notice of reason for delay in the Illinois Register.

By an order dated November 4, 2010, the Board set forth reasons for delay and extended the deadline for final action on the amendments from November 15, 2010 to December 30, 2010. This was the second such extension of the deadline by the Board. By an order dated June 17, 2009, the Board previously set forth reasons for delay and extended the deadline for final action on the amendments from June 29, 2010 to November 15, 2010. The November 4, 2010 order stated in pertinent part as follows:

**REASONS FOR DELAY AND EXTENSION OF DUE DATE**

The Board has been as yet unable to complete a rulemaking proposal for public comment based on the USEPA actions. Section 7.2 of the Act (415 ILCS 5/7.2(b) (2008)) further provides that the Board can enter an order finding that compliance with the statutory due date for final action was not possible and stating the reasons.

The Board finds that meeting the November 15, 2010 deadline for final action was not possible. The Board states the reasons for delay as follows:

The publication of the Notice of Proposed Amendments was delayed for a few weeks for two reasons. First, the Board encountered a greater than usual number of minor corrections and clarifications were needed in the base text of the rules. This involved a thorough review of all of the analytical methods available from USEPA and of many available from other sources. Making the corrections further required itemized documentation of
POLLUTION CONTROL BOARD

NOTICE OF PUBLIC INFORMATION PURSUANT TO 415 ILCS 5/7.2(b)

the changes into tables that spanned more than 100 pages of the opinion and order. Further, concurrent work on the final opinion and order in another identical-in-substance rulemaking, RCRA Subtitle C Update, USEPA Amendments (July 1, 2008 through December 31, 2008 and June 15, 2010), R09-16 and RCRA Subtitle C Update, USEPA Amendments (January 1, 2009 through June 30, 2009), R10-4 (Oct. 7, 2010) (consolidated), slowed work on submitting the proposed amendments to the Office of the Secretary of State.

For the foregoing reasons, the Board extends the rule completion deadline from November 15, 2010 until December 30, 2010 pursuant to Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)).

TIMETABLE FOR COMPLETION OF THIS RULEMAKING

Completing the amendments before December 30, 2010 will require the Board to progress to final adoption according to the following schedule:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended Due date:</td>
<td>December 30, 2010</td>
</tr>
<tr>
<td>Date Board voted to propose amendments:</td>
<td>August 5, 2010</td>
</tr>
<tr>
<td>Submitted for Illinois Register publication:</td>
<td>September 20, 2010</td>
</tr>
<tr>
<td>Illinois Register publication date:</td>
<td>October 8, 2010</td>
</tr>
<tr>
<td>End of 45-day public comment period:</td>
<td>November 22, 2010</td>
</tr>
<tr>
<td>Likely date of Board vote to adopt amendments:</td>
<td>December 2, 2010</td>
</tr>
<tr>
<td>Probable filing and effective date:</td>
<td>December 13, 2010</td>
</tr>
<tr>
<td>Probable Illinois Register publication date:</td>
<td>December 23, 2010</td>
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</table>

Direct inquiries as follows, referencing consolidated docket R10-1/R10-17/R11-6:

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

312/814-6924 or mccambm@ipc.state.il.us
The following second notices were received by the Joint Committee on Administrative Rules during the period of November 9, 2010 through November 15, 2010 and have been scheduled for review by the Committee at its December 14, 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.

<table>
<thead>
<tr>
<th>Second Notice Expires</th>
<th>Agency and Rule</th>
<th>Start Of First Notice</th>
<th>JCAR Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/24/10</td>
<td>Department of Revenue, Electronic Filing of Returns or Other Documents (86 Ill. Adm. Code 760)</td>
<td>9/24/10</td>
<td>12/14/10</td>
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<td>12/26/10</td>
<td>Drycleaner Environmental Response Trust Fund Council, General Program (35 Ill. Adm. Code 1500)</td>
<td>6/18/10</td>
<td>12/14/10</td>
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<td>12/26/10</td>
<td>Illinois Student Assistance Commission, Robert C. Byrd Honors Scholarship Program (23 Ill. Adm. Code 2755)</td>
<td>9/24/10</td>
<td>12/14/10</td>
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<td>12/26/10</td>
<td>Illinois Student Assistance Commission, Illinois Prepaid Tuition Program (23 Ill. Adm. Code 2775)</td>
<td>9/24/10</td>
<td>12/14/10</td>
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<td>12/29/10</td>
<td>Secretary of State, Certificates of Title, Registration of Vehicles (92 Ill. Adm. Code 1010)</td>
<td>9/3/10</td>
<td>12/14/10</td>
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<tr>
<td>12/29/10</td>
<td>Illinois State Toll Highway Authority, State Toll Highway Rules (92 Ill. Adm. Code 2520)</td>
<td>9/10/10</td>
<td>12/14/10</td>
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</tbody>
</table>
WHEREAS, on October 22, 2010, Bishop Arthur M. Brazier, prominent civic leader, civil rights crusader and the retired pastor of Chicago's Apostolic Church of God passed away at the age of 89; and,

WHEREAS, after serving our nation during World War II, Bishop Brazier was employed by the United States Postal Service before being called to the ministry and pursuing biblical training at the Moody Bible Institute; and,

WHEREAS, Bishop Brazier received his graduating certificate in 1961, a year after he was inducted as pastor of Apostolic Church of God. Bishop Brazier also served as diocesan of the Sixth Episcopal District of the Pentecostal Assemblies of the World for thirty-one years; and,

WHEREAS, while Bishop Brazier committed his life to the Christian ministry, he also recognized the need for being actively involved in the civic life of the city; and,

WHEREAS, in addition to his pastoral work, Bishop Brazier was the founding President of the Woodlawn Organization, worked with the Citizens Crusade Against Poverty and the Center for Community Change, and was the founding chairman of both the Board of the Woodlawn Preservation and Investment Corporation and The Fund for Community Redevelopment and Revitalization; and,

WHEREAS, during the civil rights movement, in 1966 Bishop Brazier invited Dr. Martin Luther King to the Apostolic Church of God for its annual Bible Conference; their like passion for civil rights led to the two men protesting, together, against segregated housing and schools in Chicago; and,

WHEREAS, his unwavering commitment to the ministry and to the community allowed Bishop Brazier to touch countless lives, and provided a source of inspiration to many people throughout the Land of Lincoln; and,

WHEREAS, Bishop Brazier never wavered in his devotion to his congregation and the community as a whole, remaining dedicated to his mission of confronting the larger issues that faced the community; and,

WHEREAS, Bishop Brazier had a profound impact on his family, his church, the community, the city, the state, and the country. His passing is a great loss to the people of Illinois; and,
WHEREAS, funeral services will be held on Friday, October 29, 2010 for Bishop Brazier, who is survived by his wife, Esther Isabelle Brazier, his children Lola Hillman, Dr. Byron T. Brazier, Janice Dortch, and Rosalyn Shepherd, seven grandchildren, and eleven great-grandchildren:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim October 29, 2010 as a DAY OF REMEMBRANCE OF BISHOP ARTHUR M. BRAZIER in Illinois, in recognition of the life and the enduring legacy of Bishop Brazier, and offer my sincere condolences to his family and friends.

Issued by the Governor October 28, 2010
Filed by the Secretary of State November 15, 2010

2010-379
La Raza Newspaper Day

WHEREAS, founded in 1970 by Mr. Alfredo Torres de Jesus, La Raza is one of the oldest and most significant Spanish weeklies in the United States; and

WHEREAS, La Raza was established with the vision of creating a source of information that would reflect the concerns and gains of the Latino community in Chicago, which at the time consisted only of the neighborhoods of West Town and Humboldt Park; and,

WHEREAS, the first edition of La Raza, published in a single-room office, was made up of only 12 pages and had a small circulation of 5,000; and,

WHEREAS, today more than 1.9 million Latinos live in Illinois, making up 15 percent of our population, and constituting the fastest-growing minority group; and,

WHEREAS, Latinos play a vital role in the diversity of our state's citizenry, and as their influence on our civic and cultural life has grown, so has the circulation and the importance of La Raza; and,

WHEREAS, La Raza has continued to evolve over the last four decades, insisting on providing top quality news and entertainment for Chicago's Latino community; and,

WHEREAS, the ongoing contributions from an array of editors and journalists with different personalities, experiences, and countries of origin have enabled La Raza to reflect the Latino community's cultural diversity; and,

WHEREAS, today, La Raza is widely recognized as the leading Latino publication in the City of Chicago; and,
PROCLAMATIONS

WHEREAS, for the past 40 years, La Raza has been a valuable resource to the Latino communities in Illinois; and,

WHEREAS, the State of Illinois recognizes the Latino population, and celebrates their ever-present contributions to the state's rich cultural diversity, and,

WHEREAS, this year, La Raza celebrates its 40th anniversary; and,

WHEREAS, La Raza is deserving of a commendation for its great achievements in journalism and community service:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim October 28, 2010 as LA RAZA NEWSPAPER DAY in Illinois, in recognition of La Raza's 40 years of dedication to the Latino community in the Land of Lincoln, and encourage all citizens to join in celebrating La Raza Newspaper's 40th Anniversary.

Issued by the Governor October 28, 2010
Filed by the Secretary of State November 15, 2010

2010-380
Perioperative Nurse Week

WHEREAS, perioperative nurses specialize in the care of patients immediately before, during, and after surgical intervention; and,

WHEREAS, serving in settings ranging from traditional hospital-based operating rooms to ambulatory surgical centers and physicians' offices, perioperative nurses work to provide the best care possible for surgical patients; and,

WHEREAS, perioperative nurses assess individual patient needs prior to surgery, prepare a plan for the care a surgical patient will receive and prepare the operating room and patient for surgery; and,

WHEREAS, surgical patients rely on the skills, knowledge, and expertise of perioperative registered nurses, who uphold a long tradition of improving surgical safety and the quality of patient care; and,

WHEREAS, the Association of perioperative Registered Nurses (AORN), is a 40,000 member strong organization with state and local chapters nationwide which supports perioperative registered nurses in hospitals and outpatient surgery centers; and,
PROCLAMATIONS

WHEREAS, during the week of November 8-14, 2010 AORN and its members across the country will celebrate Perioperative Nurse Week; and,

WHEREAS, Perioperative Nurse Week recognizes the contribution perioperative registered nurses make to patient safety and the opportunities and challenges facing the profession:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 8-14, 2010 as PERIOPERATIVE NURSE WEEK in Illinois, in recognition of perioperative registered nurses' important role and commitment to safe patient care.

Issued by the Governor October 28, 2010
Filed by the Secretary of State November 15, 2010

2010-381
National Community School Month

WHEREAS, public schools are the backbone of our democracy, providing young people with the tools they need to maintain our nation's precious values of freedom, civility and equality; and,

WHEREAS, education support professionals are an integral part of the educational process; and,

WHEREAS, education support professionals provide a safe and healthy learning environment for students; and,

WHEREAS, education support professionals work tirelessly to serve our children and communities with care and professionalism; and,

WHEREAS, the Learning Resources Network (LERN) is an international association of lifelong learning programming, offering information and resources to providers of lifelong learning programs; and,

WHEREAS, LERN supports community school programs and educators in schools, associations, and recreation throughout the United States, Canada, and Europe with research and "information that works," from marketing to trends in the field of community education; and,

WHEREAS, on November 6-8, 2010, more than 500 attendees from public schools, community colleges and universities across the country and around the world are expected to meet in Chicago for the Learning Resource Network's Annual Conference:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim November 2010 as NATIONAL COMMUNITY SCHOOL MONTH in Illinois, in recognition of the
importance of education support professionals in our schools and of lifelong learning in our communities.

Issued by the Governor October 28, 2010
Filed by the Secretary of State November 15, 2010

2010-382
Drunk and Drugged Driving (3D) Prevention Month

WHEREAS, motor vehicle crashes killed 911 people in Illinois during 2009; and,
WHEREAS, 319 of those deaths involved a driver impaired by alcohol; and,
WHEREAS, the December holiday season is traditionally one of the most deadly times of the year for impaired driving; and,
WHEREAS, for thousands of families across the state and the nation, these holidays are a sad time to remember loved ones they lost to impaired drivers during previous holiday seasons or other times throughout the year; and,
WHEREAS, organizations across the state and the nation join the You Drink & Drive. You Lose. and other campaign, among others, to foster public awareness of the dangers of impaired driving and anti-impaired driving law enforcement efforts; and,
WHEREAS, the State of Illinois is proud to partner with cities, towns, villages and other traffic safety groups in an effort to make our roads and streets safer:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim December 2010 as DRUNK AND DRUGGED DRIVING (3D) PREVENTION MONTH in Illinois, and call upon all citizens, government, agencies, business leaders, hospitals and health care providers, schools, and public and private institutions to promote awareness of the impaired driving problem, to support programs and policies to reduce the incidence of impaired driving, and to promote safer and healthier behaviors regarding the use of alcohol and other drugs this December holiday season and throughout the year.

Issued by the Governor October 28, 2010
Filed by the Secretary of State November 15, 2010

2010-383
Universal Hour of Peace
PROCLAMATIONS

WHEREAS, the United States of America has historically been a melting pot where people of all nationalities, religious faiths and cultures come together as one; and,

WHEREAS, the strength of our great state of Illinois rests in the cooperative community of its citizens; and,

WHEREAS, our only hope of establishing peace among diverse peoples is through recognizing our connectedness, our capacity for peacemaking and peacekeeping at home and abroad; and,

WHEREAS, the first day of a New Year typically denotes hopeful expectation and positive resolve in the hearts and minds of our citizens; and,

WHEREAS, the School of Metaphysics, a worldwide organization founded in our country to promote peace, understanding and goodwill by teaching people that living peaceably begins by thinking peaceably, has called for the observance of a Universal Hour of Peace over the midnight hour December 31, 2010 – January 1, 2011; and

WHEREAS, the Universal Hour of Peace is used as a means to spread the message of world peace and its vital importance to the future of the human race; and,

WHEREAS, the goal of the observance of the Universal Hour of Peace is to contribute to the peace-making process by encouraging all individuals to harness their abilities and actively participate in creating a more peaceful world:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby proclaim December 31, 2010 at 11:30 pm to January 1, 2011 at 12:30 am as the UNIVERSAL HOUR OF PEACE in Illinois, and encourage all citizens to do their part to build a more peaceful state, a more peaceful county, and a more peaceful world.

Issued by the Governor October 28, 2010
Filed by the Secretary of State November 15, 2010

2010-384
Flag Honors – Assistant Fire Chief Gary L. Cummins

WHEREAS, we hold the highest esteem and reverence for the men and women who answer the call to serve their friends, family and communities; and,

WHEREAS, first responders save countless lives every year with their heroic efforts; and,
WHEREAS, firefighters not only demonstrate the desire to serve, but have the courage to act calmly and professionally in otherwise terrifying situations; and,

WHEREAS, on the evening of October 31, 2010 one of these brave souls, Firefighter Gary L. Cummins of the Brocton Fire Protection District, was suddenly taken from us at the age of 62; and,

WHEREAS, we will always remember that throughout his 41 year career as a proud member and officer of the Brocton Fire Protection District, Firefighter Cummins courageously volunteered to walk into fires as everyone else ran out; and,

WHEREAS, although Firefighter Cummins is no longer with us we will not forget the countless lives that were impacted by his public service, including those individuals he assisted in the last hours of his life; and,

WHEREAS, funeral services for Firefighter Cummins, who was preceded in death by his wife and is survived by two adult sons, will be held on Saturday, November 6, 2010:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby order all persons or entities governed by the Illinois Flag Display Act to fly their flags at half-staff from sunrise on November 4, 2010 until sunset on November 6, 2010 in honor and remembrance of Firefighter Cummins, whose selfless service and sacrifice is an inspiration.

Issued by the Governor November 3, 2010
Filed by the Secretary of State November 15, 2010

2010-385
Flag Honors – Private First Class Andrew N. Meari

WHEREAS, on Monday, November 1, United States Army Private First Class Andrew N. Meari of Plainfield, Illinois died at age 21 when his unit was attacked with a vehicle-borne explosive device in the Zhari district, Kandahar, Afghanistan, where Private First Class Meari was serving in support of Operation Enduring Freedom; and,

WHEREAS, Private First Class Meari was an Infantryman assigned to Company A, 1st Battalion, 502nd Infantry Regiment, 2nd Brigade Combat Team, 101st Airborne Division (Air Assault) based at Fort Campbell, Kentucky; and,

WHEREAS, Private First Class Meari joined the Army in October 2008. This was his first deployment; and,
PROCLAMATIONS

WHEREAS, Private First Class Meari's awards and decorations include the National Defense Service Medal; Afghanistan Campaign Medal; Global War on Terrorism Service Medal; Army Service Ribbon; Overseas Service Ribbon; and Combat Infantry Badge; and,

WHEREAS, a visitation will be held on Wednesday, November 10, 2010 for Private First Class Meari, who is survived by his mother and father:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby order all persons or entities governed by the Illinois Flag Display Act to fly their flags at half-staff from sunrise on November 8, 2010 until sunset on November 10, 2010 in honor and remembrance of Private First Class Meari, whose selfless service and sacrifice is an inspiration.

Issued by the Governor November 5, 2010
Filed by the Secretary of State November 15, 2010

2010-386
Flag Honors – Specialist James Chad Young

WHEREAS, on Wednesday, November 3, United States Army Specialist James Chad Young of Rochester, Illinois died at age 25 of injuries sustained when an improvised explosive device detonated near his military vehicle in Kandahar Province, Afghanistan, where Specialist Young was serving in support of Operation Enduring Freedom; and,

WHEREAS, Specialist Young was assigned to the 323rd Engineer Company, U.S. Army Reserve, based in Spartanburg, South Carolina; and,

WHEREAS, Specialist Young graduated from Glenwood High School in 2003 and joined the Army in 2004; and,

WHEREAS, Specialist Young traveled extensively over the next few years, serving in Korea before deploying to Afghanistan for the first time. This was his second deployment; and,

WHEREAS, a funeral will be held on Monday, November 15, 2010 for Specialist Young, who is survived by his parents and a sister:

THEREFORE, I, Pat Quinn, Governor of the State of Illinois, do hereby order all persons or entities governed by the Illinois Flag Display Act to fly their flags at half-staff from sunrise on November 13, 2010 until sunset on November 15, 2010 in honor and remembrance of Specialist Young, whose selfless service and sacrifice is an inspiration.

Issued by the Governor November 9, 2010
PROCLAMATIONS

Filed by the Secretary of State November 15, 2010
ILLINOIS ADMINISTRATIVE CODE  
Issue Index - With Effective Dates

Rules acted upon in Volume 34, Issue 48 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

**PROPOSED RULES**

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<td>(Processing fee for credit cards purchases, if applicable.)</td>
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<td>TOTAL AMOUNT OF ORDER</td>
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☐ Check Make Checks Payable To: Secretary of State

☐ VISA ☐ Master Card ☐ Discover (There is a $2.00 processing fee for credit card purchases.)

Card #: ____________________________ Expiration Date: _______

Signature: ____________________________

**Send Payment To:** Secretary of State
Department of Index
Administrative Code Division
111 E. Monroe
Springfield, IL  62756

**Fax Order To:** (217) 557-8919

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