

2011

ILLINOIS

REGISTER

RULES
OF GOVERNMENTAL
AGENCIES



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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2011

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 20, 2010	January 3, 2011
2	December 27, 2010	January 7, 2011
3	January 3, 2011	January 14, 2011
4	January 10, 2011	January 21, 2011
5	January 18, 2011	January 28, 2011
6	January 24, 2011	February 4, 2011
7	January 31, 2011	February 14, 2011
8	February 7, 2011	February 18, 2011
9	February 15, 2011	February 25, 2011
10	February 22, 2011	March 4, 2011
11	February 28, 2011	March 11, 2011
12	March 7, 2011	March 18, 2011
13	March 14, 2011	March 25, 2011
14	March 21, 2011	April 1, 2011
15	March 28, 2011	April 8, 2011
16	April 4, 2011	April 15, 2011
17	April 11, 2011	April 22, 2011
18	April 18, 2011	April 29, 2011
19	April 25, 2011	May 6, 2011
20	May 2, 2011	May 13, 2011
21	May 9, 2011	May 20, 2011

22	May 16, 2011	May 27, 2011
23	May 23, 2011	June 3, 2011
24	May 31, 2011	June 10, 2011
25	June 6, 2011	June 17, 2011
26	June 13, 2011	June 24, 2011
27	June 20, 2011	July 1, 2011
28	June 27, 2011	July 8, 2011
29	July 5, 2011	July 15, 2011
30	July 11, 2011	July 22, 2011
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32	July 25, 2011	August 5, 2011
33	August 1, 2011	August 12, 2011
34	August 8, 2011	August 19, 2011
35	August 15, 2011	August 26, 2011
36	August 22, 2011	September 2, 2011
37	August 29, 2011	September 9, 2011
38	September 6, 2011	September 16, 2011
39	September 12, 2011	September 23, 2011
40	September 19, 2011	September 30, 2011
41	September 26, 2011	October 7, 2011
42	October 3, 2011	October 14, 2011
43	October 11, 2011	October 21, 2011
44	October 17, 2011	October 28, 2011
45	October 24, 2011	November 4, 2011
46	October 31, 2011	November 14, 2011
47	November 7, 2011	November 18, 2011
48	November 14, 2011	November 28, 2011
49	November 21, 2011	December 2, 2011
50	November 28, 2011	December 9, 2011
51	December 5, 2011	December 16, 2011
52	December 12, 2011	December 27, 2011
53	December 19, 2011	December 30, 2011

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 17, 2011 to January 3, 2012.

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Public Availability of Inspection Information
- 2) Code Citation: 83 Ill. Adm. Code 596
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
596.10	New Section
596.20	New Section
596.30	New Section
- 4) Statutory Authority: Implementing and authorized by Section Sections 6 and 8 of the Illinois Gas Pipeline Safety Act [220 ILCS 20/6 and 8] and Sections 4-404 and 5-108 of the Public Utilities Act [220 ILCS 5/4-404 and 5-108]
- 5) A complete description of the subjects and issues involved: The Illinois Commerce Commission (Commission) regulates the transmission of natural gas pursuant to the Illinois Gas Pipeline Safety Act ("Act") [220 ILCS 20]. The federal Department of Transportation has an initiative to prevent potentially catastrophic gas-related incidents. Transportation Secretary Ray LaHood announced a Department pipeline safety initiative that intends to address immediate concerns in pipeline safety and which, among other things, will make information about pipelines and the safety record of pipeline operators easily accessible to the public.

Section 6(a)(3) of the Act requires jurisdictional entities to permit inspection of books, records, and facilities. Under the Commission's current certification agreement with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, the Commission's Gas Pipeline Safety Program conducts a number of different types of inspections regarding these jurisdictional entities. Consistent with Section 6(a)(3) of the Act, information is provided by jurisdictional entities in connection with these inspections.

In accordance with Section 4-404 of the Public Utilities Act (PUA) [220 ILCS 5/4-404], the Commission must provide adequate protection for any confidential and proprietary information furnished, delivered or filed in connection with these inspections. In addition, Section 5-108 of the PUA [220 ILCS 5/5-108] prohibits any officer or employee of the Commission from divulging any fact or information coming to their knowledge in connection with these inspections – except as may be authorized either by the Commission or a circuit court. In order to respond to Secretary LaHood's initiative, the Commission proposes making available to the public, by posting on the Commission's website, information obtained in connection with Gas Pipeline Safety Program

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED RULES

inspections of jurisdictional entities. This would be a step towards providing the public with access to information that will help keep the public safe and reduce the potential for serious accidents. The Commission is initiating a rulemaking proceeding to provide jurisdictional entities notice and an opportunity to be heard with respect to the proposed rules.

- 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 amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These proposed rules neither create nor expand any State mandate on units of local government, school districts, or community college districts.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* in Docket 11-0671, with:

Elizabeth Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield IL 62701

217/782-7434
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: These rules will affect any subject jurisdictional entities that are also small businesses as defined in the Illinois Administrative Procedure Act. These

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED RULES

rules will not affect any small municipalities or not for profit corporations that are not jurisdictional entities.

- B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: Managerial and legal skills
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The Commission did not anticipate the need for this rulemaking at that time.

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

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED RULES

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER d: GAS UTILITIESPART 596
PUBLIC AVAILABILITY OF INSPECTION INFORMATION

Section

596.10	Definitions
596.20	Public Availability of Inspection Information
596.30	Confidential or Proprietary Information

AUTHORITY: Implementing and authorized by Sections 6 and 8 of the Illinois Gas Pipeline Safety Act [220 ILCS 20/6 and 8] and Sections 4-404 and 5-108 of the Public Utilities Act [220 ILCS 5/4-404 and 5-108].

SOURCE: Adopted at 36 Ill. Reg. _____, effective _____.

Section 596.10 Definitions

"Commission" shall mean the Illinois Commerce Commission.

"Gas" shall mean natural gas, flammable gas or gas that is toxic or corrosive.

"Inspection information" shall include all information that has come to the Commission in the course of any inspection or other activity performed by any agent or employee of the Commission under the jurisdiction of the Illinois Gas Pipeline Safety Act [220 ILCS 20] (Act), including, without limitation, any account, record, memorandum, book, paper, document, plant, facility, equipment or other property of any person subject to Commission jurisdiction under the Act, and irrespective of the medium in which the information exists.

"Person" shall mean any individual, firm, joint venture, partnership, corporation, association, municipality, or cooperative association and includes any trustee, receiver, assignee or personal representative.

"Pipeline facilities" shall include new and existing pipe, rights-of-way and any equipment, facility or building used in the transportation of gas or the treatment of gas during the course of that transportation.

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED RULES

"Transportation of gas" shall mean the gathering, transmission or distribution of gas by pipeline or its storage within this State and not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Pipeline Act.

Section 596.20 Public Availability of Inspection Information

Any inspection information regarding any person who either engages in the transportation of gas or who owns or operates pipeline facilities within this State under the jurisdiction of the Commission under the Illinois Gas Pipeline Safety Act, except to the extent that information is confidential or proprietary, shall be available to the public by the Commission and may be posted on the Commission's website.

Section 596.30 Confidential or Proprietary Information

Any person, as set forth in Section 596.20, who believes that any inspection information is confidential or proprietary, shall request that the Commission enter an order to protect the confidential or proprietary information pursuant to 83 Ill. Adm. Code 200.430.

BOARD OF HIGHER EDUCATION

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Approval of Noninstructional Capital Projects
- 2) Code Citation: 23 Ill. Adm. Code 1040
- 3) Section Number: 1040.20 Proposed Action: Amendment
- 4) Statutory Authority: Implementing Sections 8 and 9.11 and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/8, 9.05 and 9.11]
- 5) A Complete Description of the Subjects and Issues Involved: Pursuant to PA 97-610, a public university is required to submit a plan for capital improvements of noninstructional facilities to the Board of Higher Education for approval before final commitments are made only if the total cost of the project as approved by the institution's board of control is in excess of \$2.0 million.
- 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 amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].
- 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. Comments should be submitted to:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
431 East Adams Street, 2nd Floor
Springfield, Illinois 62701

BOARD OF HIGHER EDUCATION

NOTICE OF PROPOSED AMENDMENT

Telephone: 217/557-7358
E-Mail: helland@ibhe.org
Facsimile: 217/782-8548

- 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: The 6/24/2011 Regulatory Agenda indicated the intent of the Board to review and update this Part.

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

BOARD OF HIGHER EDUCATION

NOTICE OF PROPOSED AMENDMENT

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1040

APPROVAL OF NONINSTRUCTIONAL CAPITAL PROJECTS

Section

1040.10	Purpose
1040.20	Definition of Terms
1040.21	Notice of Intent
1040.22	Required Documentation
1040.25	Criteria for Approval
1040.27	Submission Process
1040.30	Noninstructional Capital Improvements and Community College Locally-Funded Capital Projects (Repealed)

AUTHORITY: Implementing Sections 8 and 9.11 and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/8, 9.05 and 9.11].

SOURCE: Amended and effective April 15, 1976; rules repealed and new rules adopted and codified at 8 Ill. Reg. 16899, effective September 4, 1984; amended at 30 Ill. Reg. 19510, effective December 5, 2006; amended at 33 Ill. Reg. 17322, effective December 8, 2009; amended at 36 Ill. Reg. _____, effective _____.

Section 1040.20 Definition of Terms

"Board" means the Board of Higher Education.

"Buildings, additions and/or structures" means those facilities with roofs and/or walls that have foundations.

"Capital budget categories" means the main categories of proposed capital projects for which approval is requested. The categories include: buildings, additions and/or structures; land; equipment; utilities; remodeling and rehabilitation; site improvements; and planning.

"Equipment" means expenditures for the acquisition, replacement, or increase of visible tangible personal property of a nonconsumable nature, with a unit value of

BOARD OF HIGHER EDUCATION

NOTICE OF PROPOSED AMENDMENT

\$51 or more, that is not included in the category of buildings, additions, and/or structures or remodeling and rehabilitation.

"Governing Board" or "board of control" means the Board of Trustees of a State supported institution.

"Land" means expenditures for real property and expenditures for the acquisition of real property, including easements of record and expenses directly and necessarily related to the purchase or acquisition. "Land" shall include existing buildings and/or structures.

"Noninstructional capital project" means the construction, remodeling, renovation, purchase, or modification of facilities or properties used in whole or part for purposes other than classroom education if the total cost of the project as approved by the institution's board of control is in excess of \$2 million [110 ILCS 205/8]. Repair and maintenance projects, defined by the Illinois State Comptroller as ordinary and necessary projects needed to keep an asset serviceable through its expected life, are excluded.

"Planning" means the architectural and engineering design required for the planning of buildings, additions and/or structures or specific major remodeling projects.

"Program statement" means a statement setting forth the broad parameters within which architects and planners must work and describing in detail the space requirements, activities, functions, relationships and space needs to be incorporated into a new or remodeled facility.

"State supported institutions" means the public universities of the State of Illinois: University of Illinois; Southern Illinois University; Chicago State University; Eastern Illinois University; Governors State University; Illinois State University; Northeastern Illinois University; Northern Illinois University; and Western Illinois University.

"Remodeling and rehabilitation" means capital improvements that have the primary objective of restoring or upgrading a structure or facility to its original operating condition or improving the existing functional capability or capacity of the structure or facility.

BOARD OF HIGHER EDUCATION

NOTICE OF PROPOSED AMENDMENT

"Scope" means the parameters of the project, including square footage, quantification of work and programmatic use.

"Scope statement" means a narrative statement containing background and justification for a project; quantification of work items and cost breakdowns; identification of dependent relationships between the proposed project and any other; and desired completion date of the project.

"Site improvements" means modification to real estate for earth movement and clearance, drainage, streets and walkways, parking, finish grading, seeding and landscaping, and all other improvements to real estate not included in other categories.

"Total projects costs" means all costs related to the capital budget categories and the designation of source of funds for those costs.

"Utilities" means systems for distributing or disbursing utility services outside the five-foot boundary line of existing or proposed buildings, additions and/or structures.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Mobile Sources
- 2) Code Citation: 35 Ill. Adm. Code 240
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
240.102	Amend
240.104	Amend
240.105	Amend
240.106	Amend
240.151	Amend
240.171	Amend
240.201	New
240.202	New
240.203	New
- 4) Statutory Authority: Section 13C-20 of the Vehicle Emissions Inspection Law of 2005 [625 ILCS 5/13C-20] and Sections 10, 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28]
- 5) A complete description of the subjects and issues involved: This rulemaking amends Part 240 to reflect an amendment (PA 97-0106) to the Vehicle Emissions Inspection Law of 2005 (VEIL of 2005) [625 ILCS 5/13C]. PA 97-106 amends the VEIL of 2005 by repealing the steady-state idle exhaust and evaporative system integrity emissions inspection tests. These inspection tests were substituted for the on-board diagnostic (OBD) test for heavy-duty vehicles not required to be equipped with OBD systems meeting federal OBD II specifications and certain vehicles that could not receive the OBD test due to their design or with known OBD communication or software problems. PA 97-0106 exempts pre-2007 heavy-duty vehicles with a gross vehicle weight rating (GVRW) between 8,501 and 14,000 pounds and any heavy-duty vehicles with a GVWR greater than 14,000 pounds from the requirements to be tested. These heavy-duty vehicles are not all required to be equipped with OBD systems meeting federal OBD II specifications. Also, PA 97-106 adds a visual inspection test as a new substitute for the OBD test for vehicles that cannot receive the OBD test due to their design or with known OBD communication or software problems. PA 97-106 makes other relatively minor changes and is effective February 1, 2012.

The proposed amendments to Part 240 specify that the steady-state idle exhaust and evaporative system integrity inspection test standards are effective only through January 31, 2012. Also, the proposed amendments add visual inspection test standards that are

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

effective beginning February 1, 2012 and add a definition of "visual inspection test". Finally, the proposed amendments make other minor changes consistent with the addition of the new visual inspection test standards. The Illinois Pollution Control Board (Board) is required by the VEIL of 2005 to adopt this proposal within 120 days after filing by the Illinois Environmental Protection Agency (Illinois EPA) (625 ILCS 5/13C-20).

- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: The Illinois EPA relied on various sources to compose this rulemaking. Copies of these sources are available for review with the Board and are listed below:
1. Clean Air Act (42 U.S.C. 7401 et seq.)
 2. PA 97-106 (effective Feb. 1, 2012)
 3. 40 C.F.R. § 85.2222 (2010)
 4. Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program, United States Environmental Protection Agency, Air and Radiation, June 2001.
 5. Reinventing the Illinois I/M Program, 2005 Clean Air Conference, James Matheny, Illinois Environmental Protection Agency, Page 18, September 2005.
 6. VOC Reduction (TPD) in the Chicago NAA from Existing and Proposed I/M Programs, 2012-2020, Sam Long, Illinois Environmental Protection Agency, January 11, 2011.
 7. VOC Reduction (TPD) in the Metro-East + Jersey NAA from Existing and Proposed I/M Programs, 2012-2020, Sam Long, Illinois Environmental Protection Agency, January 11, 2011.
- 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 amendments pending on this Part? No

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of statewide policy objectives: These proposed amendments do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3].
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the Illinois Register. Comments should refer to docket R12-12 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order in R12-10 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail robertsd@ipcb.state.il.us.

- 13) Initial regulatory flexibility analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any small business, small municipalities, or not-for-profit corporations that own or operate a vehicle subject to emissions inspection could be affected by the proposed amendments.
- B) Reporting, bookkeeping or other procedures required for compliance: The proposal does not require reporting or bookkeeping. The proposal requires compliance with new visual inspection test standards and use of new inspection procedures established in 35 Ill. Adm. Code 276 related to these new standards.
- C) Types of Professional skills necessary for compliance: No professional skills beyond those currently required by the rule are expected to be necessary.
- 14) Regulatory agenda in which these amendments were summarized: July 2011

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER k: EMISSION STANDARDS AND LIMITATIONS
FOR MOBILE SOURCES

PART 240
MOBILE SOURCES

SUBPART A: DEFINITIONS AND GENERAL PROVISIONS

Section	
240.101	Preamble
240.102	Definitions
240.103	Prohibitions
240.104	Inspection
240.105	Penalties
240.106	Determination of Violation
240.107	Incorporations by Reference

SUBPART B: EMISSIONS

Section	
240.121	Smoke Emissions
240.122	Diesel Engine Emissions Standards for Locomotives
240.123	Liquid Petroleum Gas Fuel Systems
240.124	Vehicle Exhaust Emission Standards (Repealed)
240.125	Compliance Determination (Repealed)

SUBPART C: SMOKE OPACITY STANDARDS AND TEST PROCEDURES
FOR DIESEL-POWERED HEAVY DUTY VEHICLES

Section	
240.140	Applicability
240.141	Smoke Opacity Standards and Test Procedures for Diesel-Powered Heavy Duty Vehicles

SUBPART D: STEADY-STATE IDLE MODE TEST EMISSION STANDARDS

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section

- 240.151 Applicability
- 240.152 Steady-State Idle Mode Vehicle Exhaust Emission Standards
- 240.153 Compliance Determination

SUBPART E: TRANSIENT LOADED MODE TEST EMISSION STANDARDS

Section

- 240.161 Applicability (Repealed)
- 240.162 Vehicle Exhaust Emission Start-Up Standards (Repealed)
- 240.163 Vehicle Exhaust Emission Final Standards (Repealed)
- 240.164 Vehicle Exhaust Emission Fast-Pass Standards (Repealed)
- 240.165 Compliance Determination (Repealed)

SUBPART F: EVAPORATIVE TEST STANDARDS

Section

- 240.171 Applicability
- 240.172 Evaporative System Integrity Test Standards
- 240.173 Evaporative System Purge Test Standards (Repealed)

SUBPART G: ON-ROAD REMOTE SENSING TEST EMISSION STANDARDS

Section

- 240.181 Applicability
- 240.182 On-Road Remote Sensing Emission Standards
- 240.183 Compliance Determination

SUBPART H: ON-BOARD DIAGNOSTIC TEST STANDARDS

Section

- 240.191 Applicability
- 240.192 On-Board Diagnostic Test Standards
- 240.193 Compliance Determination

SUBPART I: VISUAL INSPECTION TEST STANDARDS

Section

- 240.201 Applicability

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

240.202 Visual Inspection Test Standards

240.203 Compliance Determination

240.APPENDIX A Rule into Section Table

240.APPENDIX B Section into Rule Table

240.TABLE A Vehicle Exhaust Emission Start-Up Standards (Repealed)

240.TABLE B Vehicle Exhaust Emission Final Standards (Repealed)

240.TABLE C Vehicle Exhaust Emission Fast-Pass Standards (Repealed)

AUTHORITY: Implementing Sections 9 and 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9, 10, 27, and 28] and Section 13C-20 of the Vehicle Emissions Inspection Law of 2005 [625 ILCS 5/13C-20].

SOURCE: Adopted as Chapter 2: Air Pollution, Part VII: Mobile Sources, filed and effective April 14, 1972; codified at 7 Ill. Reg. 13628; amended in R85-25, at 10 Ill. Reg. 11277, effective June 16, 1986; amended in R90-20 at 16 Ill. Reg. 6184, effective April 7, 1992; amended in R94-20 at 18 Ill. Reg. 18013, effective December 12, 1994; amended in R94-19 at 18 Ill. Reg. 18228, effective December 20, 1994; amended in R98-24 at 22 Ill. Reg. 13723, effective July 13, 1998; expedited correction at 22 Ill. Reg. 21120, effective July 13, 1998; amended in R01-12 at 24 Ill. Reg. 19188, effective December 18, 2000; amended in R01-8 at 25 Ill. Reg. 3680, effective February 26, 2001; amended in R02-8 at 25 Ill. Reg. 16379, effective December 18, 2001; amended in R11-19 at 35 Ill. Reg. 5552, effective March 18, 2011; amended in R12-12 at 36 Ill. Reg. _____, effective _____.

BOARD NOTE: This Part implements the Environmental Protection Act as of July 1, 1994.

SUBPART A: DEFINITIONS AND GENERAL PROVISIONS

Section 240.102 Definitions

All terms that appear in this Part have the definitions specified in this Section, the Vehicle Emissions Inspection Law of 2005 [625 ILCS 5/13C], and 35 Ill. Adm. Code 201 and 211. When conflicting definitions occur between this Section and 35 Ill. Adm. Code 201 or 211, the definitions of this Section apply in this Part.

"Agency" means the Illinois Environmental Protection Agency.

"Diesel engine" means all types of internal-combustion engines in which air is compressed to a temperature sufficiently high to ignite fuel injected directly into the cylinder area.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

"Diesel locomotive" means a diesel engine vehicle designed to move cars on a railway.

"Evaporative system integrity test" means a test of a vehicle's evaporative system. The test shall either consist of a leak check of a vehicle's fuel cap with a fuel cap pressure decay tester (fuel cap pressure decay test), a fuel cap leak flow tester (fuel cap leak flow test), or a visual functional check, as applicable.

"Fuel cap" means a device used to seal a vehicle's fuel inlet.

"Fuel cap leak flow test" means a test which may be performed in accordance with this Part on a vehicle's fuel cap using a fuel cap leak flow tester to determine whether the vehicle complies with the evaporative system emission standards of this Part.

"Fuel cap leak flow tester" means a device used to determine the leak flow integrity of a vehicle's fuel cap by comparing the measured leak flow of the fuel cap with an established fuel cap leak flow standard.

"Fuel cap pressure decay test" means the test performed in accordance with this Part on a vehicle's fuel cap using a fuel cap pressure decay tester to determine whether the vehicle complies with the evaporative system emission standards of this Part.

"Fuel cap pressure decay tester" means a device used to determine the pressure decay integrity of a vehicle's fuel cap by monitoring the pressure behind the fuel cap for a ten second period and comparing the measured pressure decay of the fuel cap to an established fuel cap pressure decay standard.

"Fuel cap visual functional test" means the test performed in accordance with this Part on a vehicle's fuel cap using visual analysis to determine whether the vehicle complies with the evaporative system emission standards of this Part.

"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy duty vehicle" means any motor vehicle rated at more than 8500 pounds GVWR or that has a vehicle curb weight of more than 6000 pounds or that has a

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basic vehicle frontal area in excess of 45 square feet.

"High idle" means a vehicle operating condition with engine disconnected from an external load (placed in either neutral or park) and operating at speed of 2500 \pm 300 RPM.

"Idle mode" means that portion of a vehicle emission test procedure conducted with the engine disconnected from an external load and operating at minimum throttle.

"Initial idle mode" means the first of up to two idle mode sampling periods during a steady-state idle mode test, during which exhaust emission measurements are made with the vehicle in "as-received" condition.

"Light duty truck 1" means a motor vehicle rated at 6000 pounds maximum GVWR or less and which has a vehicle frontal area of 45 square feet or less, and which is designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or is designed primarily for transportation of persons and has a capacity of more than 12 persons, or is available with special features enabling off-street or off-highway operation and use.

"Light duty truck 2" means a motor vehicle rated between 6001 and 8500 pounds maximum GVWR and which has a vehicle frontal area of 45 square feet or less, and which is designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or is designed primarily for transportation of persons and has a capacity of more than 12 persons, or is available with special features enabling off-street or off-highway operation and use.

"Light duty vehicle" means a passenger car or passenger car derivative capable of seating 12 passengers or fewer.

"Measured values" means five-second running averages of exhaust emission concentrations sampled at a minimum rate of twice per second.

"Model year" means the year of manufacture of a motor vehicle based upon the annual production period as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then "model year" means the calendar year of manufacture.

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"Motor vehicle" as used in this Part, shall have the same meaning as in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146].

"Opacity" means the percentage of light transmitted from a source that is prevented from reaching a light detector.

"Preconditioning mode" means a period of steady-state high-idle operation conducted to ensure that the engine and emissions control system components are operating at normal operating temperatures, thus minimizing false failures caused by improper or insufficient warm-up.

"Second-chance idle mode" means the second of two idle mode sampling periods during a steady-state idle mode test, preceded by a preconditioning mode and utilized as a second chance to pass idle exhaust emission standards immediately following an initial idle mode failure.

"Snap-acceleration test" means a test to measure exhaust smoke opacity from heavy-duty diesel powered vehicles in accordance with the SAE J1667 procedure, incorporated by reference at Section 240.107 of this Subpart.

"Steady-state idle test" means a vehicle emission test procedure consisting of an initial idle mode measurement of exhaust emissions followed, if necessary, by a loaded or high idle preconditioning mode and a second-chance idle mode.

"Vehicle curb weight" means the actual vehicle weight plus standard equipment and a full fuel tank.

"Visual inspection test" means a visual examination of a vehicle's malfunction indicator lamp (MIL) consisting of verifying the status of the MIL in the key-on/engine off position followed by verifying the status of the MIL in the key-on/engine on position to determine the status of the MIL and existence of an emission related malfunction with the vehicle.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 240.104 Inspection

- a) All motor vehicles subject to inspection pursuant to Section 13C-15 of the

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Vehicle Emissions Inspection Law of 2005 [625 ILCS 5/13C-15] shall comply with applicable vehicle emission standards contained in Sections 240.152, 240.172, 240.182, ~~and~~ 240.192, and 240.202 of this Part.

- b) All diesel-powered vehicles subject to inspection pursuant to Section 13-109.1 of the Illinois Vehicle Code [625 ILCS 5/13-109.1] must comply with applicable smoke opacity standards set forth in Section 240.141(a) of this Part.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 240.105 Penalties

- a) Any violations of Sections 240.103, 240.121, 240.122, or 240.123 of this Part shall be subject to the penalties as set forth in Section 42 of the Act [415 ILCS 5/42].
- b) Any violations of Sections 240.104(b), 240.152, 240.172, 240.182, ~~or~~ 240.192, or 240.202 of this Part, as applicable, shall be subject to the penalties as set forth in Sections 13C-55 and 13C-60 of the Vehicle Emissions Inspection Law [625 ILCS 5/13C-55 and 13C-60].
- c) Any violation of Section 240.141(a) of this Part will be subject to penalties as set forth in Section 13-109.1 of the Illinois Vehicle Code [625 ILCS 5/13-109.1].

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 240.106 Determination of Violation

- a) Any violations of Sections 240.103, 240.121, 240.122, or 240.123 of this Part shall be determined by visual observation or by a test procedure employing an opacity measurement system as qualified by 35 Ill. Adm. Code 201, Subpart J.
- b) Any violations of Sections 240.152, 240.172, 240.182, ~~or~~ 240.192, or 240.202 of this Part, as applicable, shall be determined in accordance with test procedures adopted by the Agency in 35 Ill. Adm. Code 276.
- c) Any violation of Section 240.141(a) of this Part will be determined in accordance with test procedures set forth in Section 240.141(b) of this Part.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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SUBPART D: STEADY-STATE IDLE MODE TEST EMISSION STANDARDS

Section 240.151 Applicability

This Subpart is effective through January 31, 2012. The standards of this Subpart apply to those vehicles identified in subsection 13C-25(d) of the Vehicle Emissions Inspection Law of 2005.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART F: EVAPORATIVE TEST STANDARDS

Section 240.171 Applicability

This Subpart is effective through January 31, 2012. The standards of this Subpart apply to those vehicles identified in subsection 13C-25(d) of the Vehicle Emissions Inspection Law of 2005.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART I: VISUAL INSPECTION TEST STANDARDS**Section 240.201 Applicability**

This Subpart is applicable beginning February 1, 2012. The standards of this Subpart apply to those vehicles tested pursuant to subsection 13C-25(h) of the Vehicle Emissions Inspection Law of 2005.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 240.202 Visual Inspection Test Standards

Vehicles subject to visual inspection testing shall fail the visual inspection test if the MIL does not illuminate in the key-on/engine off position or continuously illuminates in the key-on/engine on position.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 240.203 Compliance Determination

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Compliance shall be determined based upon a visual examination of the MIL using the visual inspection test procedures adopted by the Agency in 35 Ill. Adm. Code 276.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: RCRA and UIC Permit Programs
- 2) Code Citation: 35 Ill. Adm. Code 702
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
702.101	Amend
702.110	Amend
702.123	Amend
702.150	Amend
702.161	Amend
- 4) Statutory authority: 415 ILCS 5/7.2, 13, 22.4 and 27
- 5) A complete description of the subjects and issues involved: The following briefly describes the subjects and issues involved in the docket R11-14 rulemaking of which the amendments to Part 702 are a single segment. Also affected are 35 Ill. Adm. Code 704, 705 and 730, 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 October 6, 2011, proposing amendments in docket R11-14, which opinion and order is available from the address below.

This proceeding updates the Illinois underground injection control (UIC) rules to correspond with amendments adopted by the United States Environmental Protection Agency (USEPA) that appeared in the Federal Register during a single update period. The docket and time period that is involved in this proceeding is the following:

R11-14	Federal UIC amendments that occurred during the period July 1, 2010 through December 31, 2010.
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The R11-14 docket amends rules in Parts 702, 704, 705 and 730. The amendments to the Parts are inter-related. The following table briefly summarizes the federal actions in the update period:

December 10, 2010 (75 Fed. Reg. 77230)

Description of the USEPA action: USEPA designated carbon dioxide injection wells used for geosequestration of carbon as Class VI injection wells and established standards for permitting, design, and operation of Class VI wells.

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The amendments to Part 702 are a single segment of the docket R11-14 rulemaking that also affects 35 Ill. Adm. Code 704, 705, and 730, 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 R11-14 rulemaking in this Illinois Register only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 702. A comprehensive description is contained in the Board's opinion and order of October 6, 2011, proposing amendments in docket R11-14, which opinion and order is available from the address below.

Specifically, the amendments to Part 702 implement the federal standards for Class VI carbon sequestration injection wells in Illinois.

The amendments to Part 704 are a single segment of the docket R11-14 rulemaking that also affects 35 Ill. Adm. Code 702, 705, and 730, 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 R11-14 rulemaking in this Illinois Register only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 702. A comprehensive description is contained in the Board's opinion and order of October 6, 2011, proposing amendments in docket R11-14, which opinion and order is available from the address below.

Specifically, the amendments to Part 704 implement the federal standards for Class VI carbon sequestration injection wells in Illinois.

Tables appear in the Board's opinion and order of October 6, 2011 in docket R11-14 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 October 6, 2011 opinion and order in docket R11-14.

Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] 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).

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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
- 11) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2008)].
- 12) Time, Place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R11-14 and be addressed to:

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

Please direct inquiries to the following person and reference docket R11-14:

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

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

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

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- 13) Initial regulatory flexibility analysis:
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that own or operate an underground injection well.
 - B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.
 - C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.
- 14) Regulatory agenda on which this rulemaking was summarized: December 17, 2010; 34 Ill. Reg. 19623, 19687

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITS

PART 702

RCRA AND UIC PERMIT PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section	
702.101	Purpose, Scope, and Applicability
702.102	Electronic Reporting
702.103	Trade Secret or Non-Disclosable Information Submitted to the Agency or Board
702.104	References
702.105	Rulemaking
702.106	Adoption of Agency Criteria
702.107	Permit Appeals and Review of Agency Determinations
702.108	Variances and Adjusted Standards
702.109	Enforcement Actions
702.110	Definitions

SUBPART B: PERMIT APPLICATIONS

Section	
702.120	Permit Application
702.121	Who Applies
702.122	Completeness
702.123	Information Requirements
702.124	Recordkeeping
702.125	Continuation of Expiring Permits
702.126	Signatories to Permit Applications and Reports

SUBPART C: PERMIT CONDITIONS

Section	
702.140	Conditions Applicable to all Permits
702.141	Duty to Comply
702.142	Duty to Reapply

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702.143	Need to Halt or Reduce Activity Not a Defense
702.144	Duty to Mitigate
702.145	Proper Operation and Maintenance
702.146	Permit Actions
702.147	Property Rights
702.148	Duty to Provide Information
702.149	Inspection and Entry
702.150	Monitoring and Records
702.151	Signature Requirements
702.152	Reporting Requirements
702.160	Establishing Permit Conditions
702.161	Duration of Permits
702.162	Schedules of Compliance
702.163	Alternative Schedules of Compliance
702.164	Recording and Reporting

SUBPART D: ISSUED PERMITS

Section	
702.181	Effect of a Permit
702.182	Transfer
702.183	Modification
702.184	Causes for Modification
702.185	Facility Siting
702.186	Revocation
702.187	Minor Modifications

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].

SOURCE: Adopted in R81-32 at 6 Ill. Reg. 12479, effective May 17, 1982; amended in R82-19 at 7 Ill. Reg. 14352, effective May 17, 1982; amended in R84-9 at 9 Ill. Reg. 11926, effective July 24, 1985; amended in R85-23 at 10 Ill. Reg. 13274, effective July 29, 1986; amended in R86-1 at 10 Ill. Reg. 14083, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6131, effective March 24, 1987; amended in R87-5 at 11 Ill. Reg. 19376, effective November 12, 1987; amended in R87-26 at 12 Ill. Reg. 2579, effective January 15, 1988; amended in R87-29 at 12 Ill. Reg. 6673, effective March 28, 1988; amended in R87-39 at 12 Ill. Reg. 13083, effective July 29, 1988; amended in R89-1 at 13 Ill. Reg. 18452, effective November 13, 1989; amended in R89-2 at 14 Ill. Reg. 3089, effective February 20, 1990; amended in R89-9 at 14 Ill. Reg. 6273,

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effective April 16, 1990; amended in R92-10 at 17 Ill. Reg. 5769, effective March 26, 1993; amended in R93-16 at 18 Ill. Reg. 6918, effective April 26, 1994; amended in R94-5 at 18 Ill. Reg. 18284, effective December 20, 1994; amended in R95-6 at 19 Ill. Reg. 9913, effective June 27, 1995; amended in R95-20 at 20 Ill. Reg. 11210, effective August 1, 1996; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 532, effective December 16, 1997; amended in R99-15 at 23 Ill. Reg. 9359, effective July 26, 1999; amended in R00-11/R01-1 at 24 Ill. Reg. 18585, effective December 7, 2000; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 438, effective December 20, 2006; amended in R11-14 at 35 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 702.101 Purpose, Scope, and Applicability

- a) Coverage.
 - 1) The permit regulations of 35 Ill. Adm. Code 702 through 705 include provisions for the following two permit programs:
 - A) The RCRA (Resource Conservation and Recovery Act) permit program pursuant to Title V and Title X of the Environmental Protection Act [415 ILCS 5/Title V and Title X].
 - B) The UIC (Underground Injection Control) permit program pursuant to Title III and Title X of the Environmental Protection Act [415 ILCS 5/Title III and Title X].
 - 2) The regulations of 35 Ill. Adm. Code 702 through 705 cover basic permitting requirements (35 Ill. Adm. Code 702 through 704) and procedures for processing of permit applications (35 Ill. Adm. Code 705) for the RCRA and UIC permit programs.
 - 3) The regulations of 35 Ill. Adm. Code 702 through 705 are derived from 40 CFR 124, 144, and 270.
- b) Structure.
 - 1) The regulations of 35 Ill. Adm. Code 702 through 705 comprise the following four Parts:

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- A) This Part contains definitions applicable to 35 Ill. Adm. Code 702 through 705. It also contains basic permitting requirements for the RCRA and UIC programs.
 - B) The regulations of 35 Ill. Adm. Code 703 contain requirements specific to RCRA permits. In case of inconsistency between 35 Ill. Adm. Code 702 and 703, 35 Ill. Adm. Code 703 will control.
 - C) The regulations of 35 Ill. Adm. Code 704 contain requirements specific to UIC permits. In case of inconsistency between 35 Ill. Adm. Code 702 and 704, 35 Ill. Adm. Code 704 will control.
 - D) The regulations of 35 Ill. Adm. Code 705 establish procedures for issuance of RCRA and UIC permits by the Agency .
- 2) The structure and coverage of 35 Ill. Adm. Code 702 through 704 are indicated in the following table:

	RCRA AND UIC <u>Subpart of</u> 35 Ill. Adm. Code 702 Subpart	RCRA <u>Subpart of</u> 35 Ill. Adm. Code 703 Subpart	UIC <u>Subpart of</u> 35 Ill. Adm. Code 704 Subpart
General	A	A	A
Prohibitions	=	B	B
Authorization by Rule	=	C	C
Permit Application	B	D	D
Special Forms of Permits	=	E	=
Permit Conditions	C	F	E
Issued Permits	D	=	H
Permit Modification	=	G	=
Remedial Action Plans	=	H	=
Intergration with MACT Standards	=	I	=

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RCRA Standardized Permits	=	J	=
Requirements Applicable to Hazardous Waste Injection Wells	=	=	F
Financial Responsibility for Class I Hazardous Waste Injection Wells	=	=	G
Requirements Applicable to Class V Injection Wells	=	=	I
<u>Requirements Applicable to Class VI Injection Wells</u>			<u>J</u>

c) Relation to other requirements.

- 1) Permit application forms. An applicant for a RCRA or UIC permit or a person seeking interim status under RCRA must submit its application on an Agency permit application form when such is available.
- 2) Technical regulations. Each of the two permit programs that are covered in these permit regulations has separate additional regulations that contain technical requirements for that program. These separate regulations are used by the Agency to determine the requirements that must be placed in any permit that it issues. These separate regulations are located as follows:

RCRA 35 Ill. Adm. Code 720 through 728, 733, and 739
UIC 35 Ill. Adm. Code 730 and 738

BOARD NOTE: Derived in significant part from 40 CFR 144.1 and 270.1 (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)-(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 702.110 Definitions

The following definitions apply to 35 Ill. Adm. Code 702, 703, 704, and 705. Terms not defined in this Section have the meaning given by the appropriate act and regulations, as such are defined in this Section. When a definition applies primarily to one or more programs, those programs appear in parentheses after the defined terms.

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

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Agency" means the Illinois Environmental Protection Agency.

"Application" means the Agency forms for applying for a permit. For RCRA, application also includes the information required by the Agency pursuant to 35 Ill. Adm. Code 703.182 through 703.212 (contents of Part B of the RCRA application).

"Appropriate act and regulations" means the federal Resource Conservation and Recovery Act (42 USC 6901 et seq.) (RCRA), the federal Safe Drinking Water Act (42 USC 300f et seq.) (SDWA), or the Environmental Protection Act, whichever is applicable, and the applicable regulations promulgated under those statutes.

"Approved program or approved state" means a state or interstate program that has been approved or authorized by USEPA pursuant to 40 CFR 271 (RCRA) or ~~section~~Section 1422 of the SDWA (42 USC 300h-1) (UIC).

"Aquifer" (RCRA and UIC) means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Area of review" (UIC) means the area surrounding an injection well described according to the criteria set forth in 35 Ill. Adm. Code 730.106, or in the case of an area permit, the project area plus a circumscribing area the width of which is either 402 meters (one-quarter of a mile) or a number calculated according to the criteria set forth in 35 Ill. Adm. Code 730.106.

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"Board" (RCRA and UIC) means the Illinois Pollution Control Board.

"Cesspool" (UIC) means a drywell that receives untreated sanitary waste containing human excreta and which sometimes has an open bottom or perforated sides.

"Closure" (RCRA) means the act of securing a Hazardous waste management facility pursuant to 35 Ill. Adm. Code 724.

"Component" (RCRA) means any constituent part of a unit or any group of constituent parts of a unit that are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, or kiln thermocouple).

"Contaminant" (UIC) means any physical, chemical, biological, or radiological substance or matter in water.

"Corrective action management unit" or "CAMU" (RCRA) means an area within a facility that is designated by the Agency pursuant to Subpart S of 35 Ill. Adm. Code 724 for the purpose of implementing corrective action requirements pursuant to 35 Ill. Adm. Code 724.201 and RCRA section 3008(h) (42 USC 6928(h)). A CAMU must only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility. BOARD NOTE: USEPA must also designate a CAMU until it grants this authority to the Agency. See the note following 35 Ill. Adm. Code 724.652.

"CWA" (RCRA and UIC) means the Clean Water Act (33 USC 1251 et seq.), as amended.

"Date of approval by USEPA of the Illinois UIC program" (UIC) means March 3, 1984.

"Director" (RCRA and UIC) means the Director of the Illinois Environmental Protection Agency or the Director's designee.

"Disposal" (RCRA) means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

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

"Draft permit" (RCRA and UIC) means a document prepared pursuant to 35 Ill. Adm. Code 705.141 indicating the Agency's tentative decision to issue, deny, modify, terminate, or reissue a permit. A notice of intent to deny a permit, as discussed in 35 Ill. Adm. Code 705.141, is a type of draft permit. A denial of a request for modification, as discussed in 35 Ill. Adm. Code 705.128, is not a draft permit. A proposed permit is not a draft permit.

"Drywell" (UIC) means a well, other than an improved sinkhole or subsurface fluid distribution system, that is completed above the water table so that its bottom and sides are typically dry, except when receiving fluids.

"Drilling mud" (UIC) means a heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

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

It is used for neutralizing wastes that are hazardous wastes only because they exhibit the corrosivity characteristics defined in 35 Ill. Adm. Code 721.122, or 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 35 Ill. Adm. Code 720.110.

"Emergency permit" (RCRA and UIC) means a RCRA or UIC permit issued in accordance with 35 Ill. Adm. Code 703.221 or 704.163, respectively.

"Environmental Protection Agency" or "EPA" or "USEPA" (RCRA and UIC) means the United States Environmental Protection Agency.

"Exempted aquifer" (UIC) means an aquifer or its portion that meets the criteria in

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the definition of "underground source of drinking water" but which has been exempted according to the procedures in 35 Ill. Adm. Code 702.105, 704.104, and 704.123(b).

"Existing hazardous waste management (HWM) facility" or "existing facility" (RCRA) means a facility that was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if the following occurs:

The owner or operator has obtained the federal, State, and local approvals or permits necessary to begin physical construction; and

Either of the following has transpired:

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

The owner or operator has entered into contractual obligations for physical construction of the facility that cannot be canceled or modified without substantial loss and which are to be completed within a reasonable time.

"Existing injection well" (UIC) means an injection well that is not a new injection well.

"Facility mailing list" (RCRA) means the mailing list for a facility maintained by the Agency in accordance with 35 Ill. Adm. Code 705.163(a).

"Facility or activity" (RCRA and UIC) means any HWM facility, UIC injection well, or any other facility or activity (including land or appurtenances thereto) that is subject to regulations under the Illinois RCRA or UIC program.

"Federal, State, and local approvals or permits necessary to begin physical construction" (RCRA) means permits and approvals required under federal, State, or local hazardous waste control statutes, regulations, or ordinances.

"Final authorization" (RCRA) means January 31, 1986, the date of approval by USEPA of the Illinois Hazardous Waste Management Program that has met the requirements of ~~section~~Section 3006(b) of RCRA (42 USC 6926(b)) and the applicable requirements of subpart A of 40 CFR 271.

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"Fluid" (UIC) means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

"Formation" (UIC) means a body of rock characterized by a degree of lithologic homogeneity that is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

"Formation fluid" (UIC) means fluid present in a formation under natural conditions, as opposed to introduced fluids, such as drilling mud.

"Functionally equivalent component" (RCRA) means a component that performs the same function or measurement and which meets or exceeds the performance specifications of another component.

"Generator" (RCRA) means any person, by site location, whose act or process produces hazardous waste.

"Geologic sequestration" means the long-term containment of a gaseous, liquid or supercritical carbon dioxide stream in a subsurface geologic formation. This term does not apply to carbon dioxide capture or transport.

"Groundwater" (RCRA and UIC) means a water below the land surface in a zone of saturation.

"Hazardous waste" (RCRA and UIC) means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.

"Hazardous waste management facility" or "HWM facility" (RCRA) means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

"HWM facility" (RCRA) means ~~hazardous~~hazardous waste management facility.

"Improved sinkhole" (UIC) means a naturally occurring karst depression or other natural crevice that is found in volcanic terrain and other geologic settings that have been modified by man for the purpose of directing and emplacing fluids into

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the subsurface.

"Injection well" (RCRA and UIC) means a well into which fluids are being injected.

"Injection zone" (UIC) means a geologic formation, group of formations, or part of a formation receiving fluids through a well.

"In operation" (RCRA) means a facility that is treating, storing, or disposing of hazardous waste.

"Interim authorization" (RCRA) means May 17, 1982, the date of approval by USEPA of the Illinois Hazardous Waste Management Program that has met the requirements of section 3006(g)(2) of RCRA (42 USC 6926(g)(2)) and applicable requirements of 40 CFR 271.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by the Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the appropriate act and regulations.

"Major facility" means any RCRA or UIC facility or activity classified as such by the Regional Administrator or the Agency.

"Manifest" (RCRA and UIC) means the shipping document originated and signed by the generator that contains the information required by Subpart B of 35 Ill. Adm. Code 722.

"National Pollutant Discharge Elimination System" means the program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements pursuant to Section 12(f) of the Environmental Protection Act and Subpart A of 35 Ill. Adm. Code 309 and 35 Ill. Adm. Code 310. The term includes an approved program.

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

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"New injection well" (UIC) means a well that began injection after March 3, 1984, the date of USEPA approval of the UIC program for the State of Illinois. BOARD NOTE: See 40 CFR 147.700 (2010) and 49 Fed. Reg. 3991 (Feb. 1, 1984).

"Off-site" (RCRA) means any site that is not on-site.

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

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the RCRA or UIC program.

"Permit" means an authorization, license, or equivalent control document issued to implement this Part and 35 Ill. Adm. Code 703, 704, and 705. "Permit" includes RCRA permit by rule (35 Ill. Adm. Code 703.141), RCRA standardized permit (35 Ill. Adm. Code 703.238), UIC area permit (35 Ill. Adm. Code 704.162), and RCRA or UIC "Emergency Permit" (35 Ill. Adm. Code 703.221 and 704.163). "Permit" does not include RCRA interim status (35 Ill. Adm. Code 703.153 through 703.157), UIC authorization by rule (Subpart C of 35 Ill. Adm. Code 704), or any permit that has not yet been the subject of final Agency action, such as a draft permit or a proposed permit.

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency, or assigns.

"Physical construction" (RCRA) means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

"Plugging" (UIC) means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

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"Point of injection" means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box—the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

"POTW" means publicly owned treatment works.

"Project" (UIC) means a group of wells in a single operation.

"Publicly owned treatment works" or "POTW" is as defined in 35 Ill. Adm. Code 310.

"Radioactive waste" (UIC) means any waste that contains radioactive material in concentrations that exceed those listed in table II, column 2 in appendix B to 10 CFR 20, incorporated by reference in 35 Ill. Adm. Code 720.111.

"RCRA" (RCRA) means the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.). For the purposes of regulation pursuant to 35 Ill. Adm. Code 700 through 705, 720 through 728, 733, 738, and 739, "RCRA" refers only to RCRA Subtitle C. This does not include the RCRA Subtitle D (municipal solid waste landfill) regulations, found in 35 Ill. Adm. Code 810 through 815, and the RCRA Subtitle I (underground storage tank) regulations found in 35 Ill. Adm. Code 731 and 732.

"RCRA permit" (RCRA) means a permit required pursuant to Section 21(f) of the Act [415 ILCS 5/21(f)].

"RCRA standardized permit" (RCRA) means a RCRA permit issued pursuant to Subpart J of 35 Ill. Adm. Code 703 and Subpart G of 35 Ill. Adm. Code 705 that authorizes management of hazardous waste. The RCRA standardized permit may have two parts: a uniform portion issued for all RCRA standardized permits and a supplemental portion issued at the discretion of the Agency.

"Regional Administrator" (RCRA and UIC) means the Regional Administrator of the USEPA Region in which the facility is located or the Regional Administrator's designee.

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BOARD NOTE: Illinois is in USEPA Region 5.

"Remedial action plan " or "RAP" (RCRA) means a special form of RCRA permit that a facility owner or operator may obtain pursuant to Subpart H of 35 Ill. Adm. Code 703, instead of a RCRA permit issued pursuant to this Part and 35 Ill. Adm. Code 703, to authorize the treatment, storage, or disposal of hazardous remediation waste (as defined in 35 Ill. Adm. Code 720.110) at a remediation waste management site.

"Sanitary waste" (UIC) means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities, provided the waste is not mixed with industrial waste.

"Schedule of compliance"(RCRA and UIC) means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the appropriate act and regulations.

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

"Septic system" (UIC) means a well, as defined in this Section, that is used to emplace sanitary waste below the surface and which is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

"Site" (RCRA and UIC) means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"SIC code" (RCRA and UIC) means "Standard Industrial Classification code." This is the code 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

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Classification Manual," incorporated by reference in 35 Ill. Adm. Code 720.111.

"State" (RCRA and UIC) means the State of Illinois.

"State Director" (RCRA and UIC) means the Director of the Illinois Environmental Protection Agency.

"State/USEPA agreement" (RCRA and UIC) means an agreement between the Regional Administrator and the State that coordinates USEPA and State activities, responsibilities, and programs, including those under the RCRA and SDWA.

"Storage" (RCRA) 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.

"Stratum" (plural "strata") (UIC) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

"Subsurface fluid distribution system" (UIC) means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

"Total dissolved solids" (UIC) means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR 136.3 (Identification of Test Procedures; the method for filterable residue), incorporated by reference in 35 Ill. Adm. Code 720.111.

"Transfer facility" (RCRA) means any transportation related facility, including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous wastes are held during the normal course of transportation.

"Transferee" (UIC) means the owner or operator receiving ownership or operational control of the well.

"Transferor" (UIC) means the owner or operator transferring ownership or operational control of the well.

"Transporter" (RCRA) means a person engaged in the off-site transportation of

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"hazardous waste" by air, rail, highway, or water.

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

"UIC" (UIC) means the Underground Injection Control program.

"Underground injection" (UIC) means a well injection.

"Underground source of drinking water" or "USDW" (RCRA and UIC) means an aquifer or its portion that is not an exempted aquifer and of which either of the following is true:

It supplies any public water system; or

It contains a sufficient quantity of groundwater to supply a public water system; and

It currently supplies drinking water for human consumption; or

It contains less than 10,000 mg/ℓ total dissolved solids.

"USDW" (RCRA and UIC) means an underground source of drinking water.

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

It is part of a wastewater treatment facility that is subject to regulation pursuant to Subpart A of 35 Ill. Adm. Code 309 or 35 Ill. Adm. Code 310; and

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

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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 35 Ill. Adm. Code 720.110.

"Well" (UIC) means a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or, a subsurface fluid distribution system.

"Well injection" (UIC) means the subsurface emplacement of fluids through a well.

BOARD NOTE: Derived from 40 CFR 124.2, 144.3 and 270.2 (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART B: PERMIT APPLICATIONS

Section 702.123 Information Requirements

An applicant for a RCRA or UIC Class I, III, or V permit must provide the following information to the Agency, using the application form provided by the Agency (additional information required of applicants is set forth in Subpart D of 35 Ill. Adm. Code 703 (RCRA) and 35 Ill. Adm. Code 704.161 (UIC)). An applicant for a Class VI injection well permit must follow the criteria provided in 35 Ill. Adm. Code 730.182.

- a) The activities conducted by the applicant that require it to obtain a permit under RCRA or UIC.
- b) The name, mailing address, and location of the facility for which the application is submitted.
- c) Up to four SIC codes that best reflect the principal products or services provided by the facility.
- d) The operator's name, address, telephone number, ownership status, and status as

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Federal, State, private, public, or other entity.

- e) This subsection (e) corresponds with 40 CFR 144.31(e)(5) and 270.13(f), relating to facilities on Indian lands. The Board has replaced the corresponding federal text with this statement to maintain structural parity with the corresponding federal rules. The name, address, and phone number of the owner of the facility.
- f) A listing of all permits or construction approvals received or applied for under any of the following programs:
- 1) The hazardous waste management program under RCRA, this Part, and 35 Ill. Adm. Code 703;
 - 2) The UIC program under SDWA, this Part, and 35 Ill. Adm. Code 704;
 - 3) The National Pollutant Discharge Elimination System (NPDES) program under the federal CWA (33 USC 1251 et seq.) and 35 Ill. Adm. Code 309;
 - 4) The Prevention of Significant Deterioration (PSD) program under the federal Clean Air Act (42 USC 7401 et seq.);
 - 5) The nonattainment program under the federal Clean Air Act;
 - 6) The National Emission Standards for Hazardous Pollutants (NESHAPs) preconstruction approval under the federal Clean Air Act;
 - 7) Any ocean dumping permits under the federal Marine Protection Research and Sanctuaries Act (33 UCS 1401 et seq.);
 - 8) Any dredge or fill permits under Section 404 of CWA (33 USC 1344); and
 - 9) Any other relevant environmental permits, including any State-issued permits.
- g) A topographic map (or other map if a topographic map is unavailable) extending 1609 meters (one mile) beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water

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bodies, and drinking water wells listed in public records or which are otherwise known to the applicant within 402 meters (one-quarter mile) of the facility property boundary.

- h) A brief description of the nature of the business.

BOARD NOTE: Derived from 40 CFR [144.31\(e\)\(1\) through \(e\)\(8\)](#) ~~144.31(e)~~, 270.10(d), and [270.13\(a\) through \(f\) and \(k\) through \(m\)](#) (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010) ~~270.13 (2005)~~.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART C: PERMIT CONDITIONS

Section 702.150 Monitoring and Records

- a) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.
- b) The permittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by its permit; and records of all data used to complete the application for its permit for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Agency at any time.
- c) Records of monitoring information must include all of the following information:
- 1) The date, exact place, and time of sampling or measurements;
 - 2) The individuals who performed the sampling or measurements;
 - 3) The dates analyses were performed;
 - 4) The individuals who performed the analyses;
 - 5) The analytical techniques or methods used; and
 - 6) The results of such analyses.

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- d) The owner or operator of a Class VI injection well must retain records as specified in Subpart H of 35 Ill. Adm. Code 730, including Sections 730.184(g), 730.191(f), 730.192(d), 730.193(f) and 730.193(h).

BOARD NOTE: Derived from 40 CFR 144.51(j) and 270.30(j) (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 702.161 Duration of Permits

- a) Permit duration.
- 1) RCRA. A RCRA permit must be effective for a fixed term to be determined by the Agency on a case-by-case basis, but not to exceed 10~~ten~~ years.
 - 2) UIC. A UIC permit for a Class I or Class V injection well must be effective for a fixed term to be determined by the Agency on a case-by-case basis, but not to exceed 10~~ten~~ years. A UIC permit for a Class III injection well must be issued for a period not to exceed five years; provided, however, that the Agency must, without requiring a new application, renew such permits for a period not to exceed five years per renewal, up to the operating life of the facility, unless the Agency determines that the permit should be modified, reissued, or a minor modification made, as provided in Sections 702.183 through 702.187, in which case the permittee must file a new permit application. A UIC permit for a Class VI injection well must be issued for a period not to exceed five years; provided, however, that the Agency must, without requiring a new application, renew the permits for a period not to exceed five years per renewal, up to the operating life of the facility and the post-injection site care period, unless the Agency determines that the permit should be modified, reissued or a minor modification made, as provided in Sections 702.183 through 702.187, in which case the permittee must file a new permit application.
- b) Except as provided in Section 702.125, the term of a permit must not be extended by modification beyond the maximum duration specified in this Section.

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- c) The Agency may issue any permit for a duration that is less than the full allowable term pursuant to this Section.
- d) The Agency must review each RCRA permit for a land disposal facility no later than five years after the date of permit issuance or reissuance, and the Agency must modify the permit as necessary, as provided in Section 702.183 and 702.184.

BOARD NOTE: Derived from 40 CFR 144.36 and 270.50 (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: UIC Permit Program
- 2) Code Citation: 35 Ill. Adm. Code 704
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
704.102	Amend
704.103	Amend
704.104	Amend
704.106	Amend
704.122	Amend
704.123	Amend
704.125	New Section
704.128	New Section
704.129	New Section
704.142	Amend
704.150	Amend
704.162	Amend
704.181	Amend
704.182	Amend
704.184	Amend
704.189	Amend
704.190	Amend
704.260	Amend
704.262	Amend
704.264	Amend
704.280	Amend
- 4) Statutory Authority: 415 ILCS 5/7.2, 13 and 27
- 5) A complete description of the subjects and issues involved: The amendments to Part 704 are a single segment of the docket R11-14 rulemaking that also affects 35 Ill. Adm. Code 702, 705 and 730, 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 R11-14 rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 702. A comprehensive description is contained in the Board's opinion and order of October 6, 2011, proposing amendments in docket R11-14, which opinion and order is available from the address below.

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Specifically, the amendments to Part 704 implement the federal standards for Class VI carbon sequestration injection wells in Illinois.

Tables appear in the Board's opinion and order of October 6, 2011 in docket R11-14 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 October 6, 2011 opinion and order in docket R11-14.

Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] 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).

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency amendments currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 11) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2008)].
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R11-14 and be addressed to:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

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State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference docket R11-14:

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

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

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

- 13) Initial regulatory flexibility analysis:
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that own or operate an underground injection well.
 - B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.
 - C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.
- 14) Regulatory agenda on which this rulemaking was summarized: December 17, 2010

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITSPART 704
UIC PERMIT PROGRAM

SUBPART A: GENERAL PROVISIONS

Section	Content
704.101	Content
704.102	Scope of the Permit or Rule Requirement
704.103	Identification of Aquifers
704.104	Exempted Aquifers
704.105	Specific Inclusions and Exclusions
704.106	Classification of Injection Wells
704.107	Definitions
704.108	Electronic Reporting

SUBPART B: PROHIBITIONS

Section	Content
704.121	Prohibition Against Unauthorized Injection
704.122	Prohibition Against Movement of Fluid into USDW
704.123	Identification of USDWs and Exempted Aquifers
704.124	Prohibition Against Class IV Injection Wells
<u>704.125</u>	<u>Prohibition Against Non-Experimental Class V Injection Wells for Geologic Sequestration</u>
<u>704.128</u>	<u>Requirements for Class VI Injection Wells</u>
<u>704.129</u>	<u>Transitioning from a Class II Injection Well to a Class VI Injection Well</u>

SUBPART C: AUTHORIZATION OF UNDERGROUND INJECTION BY RULE

Section	Content
704.141	Existing Class I and III Injection Wells
704.142	Prohibitions Against Injection into Wells Authorized by Rule
704.143	Expiration of Authorization
704.144	Requirements

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704.145	Existing Class IV Injection Wells
704.146	Class V Injection Wells
704.147	Requiring a Permit
704.148	Inventory Requirements
704.149	Requiring other Information
704.150	Requirements for Class I and III Injection Wells Authorized by Rule
704.151	RCRA Interim Status for Class I Injection Wells

SUBPART D: APPLICATION FOR PERMIT

Section	
704.161	Application for Permit; Authorization by Permit
704.162	Area Permits
704.163	Emergency Permits
704.164	Signatories to Permit Applications

SUBPART E: PERMIT CONDITIONS

Section	
704.181	Additional Conditions
704.182	Establishing UIC Permit Conditions
704.183	Construction Requirements
704.184	Corrective Action
704.185	Operation Requirements
704.186	Hazardous Waste Requirements
704.187	Monitoring and Reporting
704.188	Plugging and Abandonment
704.189	Financial Responsibility
704.190	Mechanical Integrity
704.191	Additional Conditions
704.192	Waiver of Requirements by Agency
704.193	Corrective Action
704.194	Maintenance and Submission of Records

SUBPART F: REQUIREMENTS FOR WELLS INJECTING HAZARDOUS WASTE

Section	
704.201	Applicability
704.202	Authorization

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704.203 Requirements

SUBPART G: FINANCIAL RESPONSIBILITY FOR CLASS I
HAZARDOUS WASTE INJECTION WELLS

Section

704.210 Applicability
704.211 Definitions
704.212 Cost Estimate for Plugging and Abandonment
704.213 Financial Assurance for Plugging and Abandonment
704.214 Trust Fund
704.215 Surety Bond Guaranteeing Payment
704.216 Surety Bond Guaranteeing Performance
704.217 Letter of Credit
704.218 Plugging and Abandonment Insurance
704.219 Financial Test and Corporate Guarantee
704.220 Multiple Financial Mechanisms
704.221 Financial Mechanism for Multiple Facilities
704.222 Release of the Owner or Operator
704.230 Incapacity
704.240 Wording of the Instruments

SUBPART H: ISSUED PERMITS

Section

704.260 Transfer
704.261 Modification
704.262 Causes for Modification
704.263 Well Siting
704.264 Minor Modifications

SUBPART I: REQUIREMENTS FOR CLASS V INJECTION WELLS

Section

704.279 General
704.280 Definition of a Class V Injection Well
704.281 Examples of Class V Injection Wells
704.282 Protection of Underground Sources of Drinking Water
704.283 Notification of a Class V Injection Well

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704.284	Permit Requirements
704.285	Applicability of the Additional Requirements
704.286	Definitions
704.287	Location in a Groundwater Protection Area or Another Sensitive Area
704.288	Additional Requirements
704.289	Closure of a Class V Injection Well

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].

SOURCE: Adopted in R81-32 at 6 Ill. Reg. 12479, effective March 3, 1984; amended in R82-19, at 7 Ill. Reg. 14402, effective March 3, 1984; amended in R83-39, at 55 PCB 319, at 7 Ill. Reg. 17338, effective December 19, 1983; amended in R85-23 at 10 Ill. Reg. 13290, effective July 29, 1986; amended in R87-29 at 12 Ill. Reg. 6687, effective March 28, 1988; amended in R88-2 at 12 Ill. Reg. 13700, effective August 16, 1988; amended in R88-17 at 13 Ill. Reg. 478, effective December 30, 1988; amended in R89-2 at 14 Ill. Reg. 3116, effective February 20, 1990; amended in R94-17 at 18 Ill. Reg. 17641, effective November 23, 1994; amended in R94-5 at 18 Ill. Reg. 18351, effective December 20, 1994; amended in R00-11/R01-1 at 24 Ill. Reg. 18612, effective December 7, 2000; amended in R01-30 at 25 Ill. Reg. 11139, effective August 14, 2001; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 605, effective December 20, 2006; amended in R11-14 at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 704.102 Scope of the Permit or Rule Requirement

Although ~~six~~five classes of wells are set forth in Section 704.106, the UIC (Underground Injection Control) permit program described in 35 Ill. Adm. Code 702, 704, 705, and 730 regulates underground injection for only ~~five~~four classes of wells (see definition of "well injection," 35 Ill. Adm. Code 702.110). Class II wells (Section 704.106(b)) are not subject to the requirements found in 35 Ill. Adm. Code 702, 704, 705, and 730. The UIC permit program for Class II wells is regulated by the Illinois Department of Natural Resources, Office of Mines and Minerals, Oil and Gas Division, pursuant to the Illinois Oil and Gas Act [225 ILCS 725] (see 62 Ill. Adm. Code 240). The owner or operator of a Class I, Class III, Class IV, or Class V injection well must be authorized either by permit or ~~by~~ rule. In carrying out the mandate of the SDWA, this Part provides that no injection may be authorized by permit or ~~by~~ rule if it results in movement of fluid containing any contaminant into underground sources of drinking water (USDWs) (Section 704.122), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 35 Ill. Adm. Code 611, or ~~if the presence of that~~

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contaminant may adversely affect the health of persons (Section 704.122). Section 704.124 prohibits the construction, operation, or maintenance of a Class IV injection well. A Class V injection well is regulated under Subpart I of this Part. If remedial action appears necessary for a Class V injection well, an individual permit may be required (Subpart C of this Part) or the Agency must require remedial action or closure by order (see Section 704.122(c)).

BOARD NOTE: Derived from 40 CFR 144.1(g) preamble (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.103 Identification of Aquifers

During UIC program development, the Agency may identify aquifers and portions of aquifers that are actual or potential sources of drinking water. This identification will provide an aid to the Agency in carrying out its duty to protect all USDWs. An aquifer is a USDW if it fits the definition in 35 Ill. Adm. Code 702.110, even if it has not been identified by the Agency.

BOARD NOTE: See 35 Ill. Adm. Code 702.106. Derived from 40 CFR 144.1(g) (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.104 Exempted Aquifers

The Board may designate "exempted aquifers" using criteria in 35 Ill. Adm. Code 730. Such an aquifer is one that would otherwise qualify as a USDW to be protected, but which has no real potential to be used as a source of drinking water. Therefore they are not USDWs. No aquifer is an "exempted aquifer" until it has been affirmatively designated under the procedures set forth in Section 704.123. An aquifer that does not fit the definition of a USDW is not an exempted aquifer. It is simply not subject to the special protection afforded a USDW. During initial Class VI injection well program development, the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for Class VI injection wells must not be expanded. All Class II to Class VI injection well aquifer exemption expansions previously issued must be incorporated into the Class VI injection well program descriptions required by USEPA pursuant to 40 CFR 145.23(f)(9).

BOARD NOTE: See 35 Ill. Adm. Code 702.105. Derived from 40 CFR 144.1(g) (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.106 Classification of Injection Wells

Injection wells are classified as follows:

- a) Class I injection wells. Any of the following is a Class I injection well:
 - 1) A well used by a generator of hazardous waste or the owner or operator of a hazardous waste management facility to inject hazardous waste beneath the lowermost formation containing a USDW within 402 meters (one-quarter mile) of the well bore.
 - 2) Any other industrial and municipal disposal well that injects fluids beneath the lowermost formation containing a USDW within 402 meters (one-quarter mile) of the well bore.
 - 3) A radioactive waste disposal well that injects fluids below the lowermost formation containing a USDW within 402 meters (one quarter-mile) of the well bore.
- b) Class II injection wells. Any well that injects any of the following fluids is a Class II injection well:
 - 1) Fluids that are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production, and which may be commingled with waste waters from gas plants that are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
 - 2) Fluids injected for enhanced recovery of oil or natural gas; and
 - 3) Fluids injected for storage of hydrocarbons that are liquid at standard temperature and pressure.
- c) Class III injection wells. Any well that injects fluids for the extraction of minerals, including the following:

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- 1) The mining of sulfur by the Frasch process;
 - 2) The in-situ production of uranium or other metals. This category includes only in-situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines, such as stopes leaching, is included as a Class V injection well; and
 - 3) Solution mining of salts or potash.
- d) Class IV injection wells. Any of the following is a Class IV injection well:
- 1) A well used by a generator of hazardous waste or of radioactive waste, by the owner or operator of a hazardous waste management facility or by the owner or operator of a radioactive waste disposal site to dispose of hazardous wastes or radioactive wastes into a formation that contains a USDW within 402 meters (one-quarter mile) of the well.
 - 2) A well used by a generator of hazardous waste or of radioactive waste, by the owner or operator of a hazardous waste management facility, or by the owner or operator of a radioactive waste disposal site to dispose of hazardous waste or radioactive waste above a formation that contains a USDW within 402 meters (one-quarter mile) of the well.
 - 3) A well used by a generator of hazardous waste or the owner or operator of a hazardous waste management facility to dispose of hazardous waste that cannot be classified under any of subsections (a)(1), (d)(1), or (d)(2) of this Section (e.g., a well that is used to dispose of hazardous waste into or above a formation that contains an aquifer that has been exempted pursuant to 35 Ill. Adm. Code 730.104).
- e) Class V injection wells. Any injection well that is not classified as a Class I, II, III, ~~IV~~, or VI injection well. [Section 704.281 describes specific types of Class V injection wells.](#)
- f) [Class VI injection wells.](#)
- 1) [An injection well that is not experimental in nature that is used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;](#)

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- 2) An injection well that is used for geologic sequestration of carbon dioxide that has been granted a permit that includes alternative injection well depth requirements pursuant to Section 730.195; or
- 3) An injection well that is used for geologic sequestration of carbon dioxide that has received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 704.123(d) and 35 Ill. Adm. Code 730.104.

BOARD NOTE: Derived from 40 CFR 144.6 (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART B: PROHIBITIONS

Section 704.122 Prohibition Against Movement of Fluid into USDW

- a) No owner or operator may construct, operate, maintain, convert, plug, abandon or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant could cause a violation of any national primary drinking water regulation under 35 Ill. Adm. Code 611 (derived from 40 CFR 141) or could otherwise adversely affect the health of persons. The applicant for a permit has the burden of showing that the requirement of this subsection (a) is met.
- b) For a Class I, ~~or III,~~ or VI injection well, if any water quality monitoring of a USDW indicates the movement of any contaminant into the USDW, except as authorized under 35 Ill. Adm. Code 730, the Agency must prescribe such additional requirements for construction, corrective action, operation, monitoring or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of a well authorized by permit, these additional requirements must be imposed by modifying the permit in accordance with 35 Ill. Adm. Code 702.183 through 702.185, or appropriate enforcement action may be taken if the permit has been violated, and the permit may be subject to revocation under 35 Ill. Adm. Code 702.186 if cause exists. In the case of wells authorized by rule, see Section 704.141 through 704.146.

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- c) For a Class V injection well, if at any time the Agency learns that a Class V injection well could cause a violation of any national primary drinking water regulation under 35 Ill. Adm. Code 611 (derived from 40 CFR 141), it must undertake one of the following actions:
- 1) It must require the injector to obtain an individual permit;
 - 2) It must issue a permit that requires the injector to take such actions (including, where necessary, closure of the injection well) as may be necessary to prevent the violation; or
 - 3) It may initiate enforcement action.
- d) Whenever the Agency learns that a Class V injection well may be otherwise adversely affecting the health of persons, it may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under subsection (c) of this Section.
- e) Notwithstanding any other provision of this Section, the Agency may take emergency action upon receipt of information that a contaminant that is present in or is likely to enter a public water system or a USDW may present an imminent and substantial endangerment to the health of persons. The Agency may declare an emergency and affix a seal pursuant to Section 34 of the Act [415 ILCS 5/34].

BOARD NOTE: Derived from 40 CFR 144.12 [\(2010\), as amended at 75 Fed. Reg. 77230 \(Dec. 10, 2010\)\(2005\)](#).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.123 Identification of USDWs and Exempted Aquifers

- a) The Agency may identify (by narrative description, illustrations, maps, or other means) and must protect, ~~except where exempted under subsection (b) of this Section,~~ as a USDW, any aquifer or part of an aquifer that meets the definition of a USDW [set forth](#) in 35 Ill. Adm. Code 702.110, [except as one of the exceptions of subsections \(a\)\(1\) and \(a\)\(2\) of this Section applies. Other than Agency-approved aquifer exemption expansions that meet the criteria set forth in 35 Ill. Adm. Code 730.104, a new aquifer exemption must not be issued for a Class VI injection well.](#) Even if an aquifer has not been specifically identified by the

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Agency, it is a USDW if it meets the definition in 35 Ill. Adm. Code 702.110. Identification of USDWs must be made according to criteria adopted by the Agency pursuant to 35 Ill. Adm. Code 702.106.

- 1) The Agency may not identify an aquifer or part of an aquifer as a USDW to the extent that there is an applicable aquifer exemption under subsection (b) of this Section.
- 2) The Agency may not identify an aquifer or part of an aquifer as a USDW to the extent that the aquifer or part of an aquifer is an expansion to the areal extent of an existing Class II enhanced oil recovery or is subject to an enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration under subsection (d) of this Section.

b) Identification of an exempted aquifer.

- 1) The Agency may identify (by narrative description, illustrations, maps, or other means) and describe in geographic or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, any aquifer or part of an aquifer that the Agency desires the Board to designate as an exempted aquifer using the criteria in 35 Ill. Adm. Code 730.104, as described in this subsection (b).
- 2) No designation of an exempted aquifer may be final until approved by USEPA as part of the State program.
- 3) Subsequent to program approval, the Board may identify additional exempted aquifers.
- 4) Identification of exempted aquifers must be by rulemaking pursuant to 35 Ill. Adm. Code 102 and 702.105 and Sections 27 and 28 of the Act [415 ILCS 5/27 and 28], considering the criteria set forth in 35 Ill. Adm. Code 730.104.

c) For a Class III injection well, an applicant for a permit that necessitates an aquifer exemption under 35 Ill. Adm. Code 730.104(b)(1) must furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project,

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such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a timetable of planned development of the mining zone must be considered by the Board in addition to the information required by Section 704.161(c). Approval of the exempted aquifer must be by rulemaking pursuant to 35 Ill. Adm. Code 102 and 702.105 and Sections 27 and 28 of the Act [415 ILCS 5/27 and 28]. Rules will not become final until approved by USEPA as a program revision.

- d) Expansion to the Areal Extent of Existing Class II Aquifer Exemptions for Class VI Wells. The owner or operator of a Class II enhanced oil recovery or enhanced gas recovery well may request that the Agency approve an expansion to the areal extent of an aquifer exemption already in place for a Class II enhanced oil recovery or enhanced gas recovery well for the exclusive purpose of Class VI injection for geologic sequestration. This request must be treated as a revision to the applicable federal UIC program under 40 CFR 147 or as a substantial program revision to an approved state UIC program under 40 CFR 145.32 and will not be final until approved by USEPA.
- 1) The request for an expansion of the areal extent of an existing aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration must define (by narrative description, illustrations, maps, or other means) and describe in geographic or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts of aquifers that are requested to be designated as exempted using the criteria in 35 Ill. Adm. Code 730.104.
 - 2) In making a determination to expand the areal extent of an aquifer exemption of a Class II enhanced oil recovery or enhanced gas recovery well for the purpose of Class VI injection, the Agency must determine that the request meets the criteria for exemptions in 35 Ill. Adm. Code 730.104. In evaluating a request, the Agency must consider:
 - A) Any current and potential future use of the USDWs to be exempted as drinking water resources;
 - B) The predicted extent of the injected carbon dioxide plume, and any mobilized fluids that may result in degradation of water quality, over the lifetime of the geologic sequestration project, as informed

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by computational modeling performed pursuant to 35 Ill. Adm. Code 730.184(c)(1), in order to ensure that the proposed injection operation will not at any time endanger USDWs including non-exempted portions of the injection formation;

- C) Whether the areal extent of the expanded aquifer exemption is of sufficient size to account for any possible revisions to the computational model during reevaluation of the area of review, pursuant to 35 Ill. Adm. Code 730.184(e); and
- D) Any information submitted to support a request by the owner or operator for a permit that includes alternative injection well depth requirements pursuant to 35 Ill. Adm. Code 730.195, if appropriate.

BOARD NOTE: Derived from 40 CFR 144.7 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.125 Prohibition Against Non-Experimental Class V Injection Wells for Geologic Sequestration

The construction, operation, or maintenance of any non-experimental Class V geologic sequestration well is prohibited.

BOARD NOTE: Derived from 40 CFR 144.15 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 704.128 Requirements for Class VI Injection Wells

The owner or operator of a Class VI injection well must obtain a permit. A Class VI well cannot be authorized by rule to inject carbon dioxide.

BOARD NOTE: Derived from 40 CFR 144.18 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010).

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 704.129 Transitioning from a Class II Injection Well to a Class VI Injection Well

- a) The owner or operator of a Class II injection well that is injecting carbon dioxide into an oil and gas reservoir for the primary purpose of long-term storage must apply for and obtain a Class VI injection well geologic sequestration permit when there is an increased risk to a USDW compared to usual Class II injection well operations. In determining if there is an increased risk to a USDW, the owner or operator must consider the factors specified for Agency consideration in subsection (b) of this Section.
- b) The Agency must determine when there is an increased risk to a USDW from injecting carbon dioxide into an oil and gas reservoir for the primary purpose of long-term storage compared to usual Class II injection well operations and that a Class VI injection well permit is required. In order to make this determination, the Agency must consider the following factors:
- 1) Any increase in reservoir pressure within the injection zones;
 - 2) Any increase in carbon dioxide injection rates;
 - 3) Any decrease in reservoir production rates;
 - 4) The distance between the injection zones and USDWs;
 - 5) The suitability of the Class II injection well area of review delineation;
 - 6) The quality of abandoned well plugs within the area of review;
 - 7) The owner's or operator's plan for recovery of carbon dioxide after the cessation of injection;
 - 8) The source and properties of injected carbon dioxide; and
 - 9) Any additional site-specific factors that the Agency determines are necessary to determine whether the injection poses greater risk than usual Class II operations.

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BOARD NOTE: Derived from 40 CFR 144.19 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART C: AUTHORIZATION OF UNDERGROUND INJECTION BY RULE

Section 704.142 Prohibitions Against Injection into Wells Authorized by Rule

An owner or operator of a well authorized by rule pursuant to this Subpart C is prohibited from injecting into the well on the occurrence of any of the following:

- a) Upon the effective date of an applicable permit denial;
- b) Upon a failure to submit a permit application in a timely manner pursuant to Section 704.147 or 704.161;
- c) Upon a failure to submit inventory information in a timely manner pursuant to Section 704.148;
- d) Upon a failure to comply with a request for information in a timely manner pursuant to Section 704.149;
- e) Upon a failure to provide alternative financial assurance pursuant to Section 704.150(d)(6);
- f) 48 hours after receipt of a determination by the Agency pursuant to Section 704.150(f)(3) that the well lacks mechanical integrity, unless the Agency orders immediate cessation pursuant to Section 34 of the Act or as ordered by a court pursuant to Section 43 of the Act [415 ILCS 5/43];
- g) Upon receipt of notification from the Agency that the transferee has not demonstrated financial assurance pursuant to Section 704.150(d);
- h) For Class I and Class III injection wells: after March 3, 1989, unless a timely and complete permit application for a permit was pending the Agency's decision; or
- i) This subsection (i) corresponds with 40 CFR 144.21(c)(9), a provision related to Class II injection wells, which are regulated by the Illinois Department of Natural

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[Resources, Office of](#) Mines and Minerals, and not by the Board. This statement maintains structural consistency with USEPA rules.

BOARD NOTE: Derived from 40 CFR 144.21(c) ~~(2010)~~(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.150 Requirements for Class I and III Injection Wells Authorized by Rule

The following requirements apply to the owner or operator of a Class I or Class III well authorized by rule under this Subpart C, as provided by Section 704.144.

- a) The owner or operator must comply with all applicable requirements of this Subpart C and with Sections 704.121, 704.122, 704.124, 704.201, 704.202, and 704.203. Any noncompliance with these requirements constitutes a violation of the Act and SDWA and is grounds for enforcement action, except that the owner or operator need not comply with these requirements to the extent and for the duration such noncompliance is authorized by an emergency permit under Section 704.163.
- b) Twenty-four hour reporting. The owner or operator must report any noncompliance that may endanger health or the environment, including either of the events described in subsection (b)(1) or (b)(2) of this Section, subject to the conditions of subsection (b)(3) of this Section:
 - 1) Any monitoring or other information that indicates that any contaminant may cause an endangerment to a USDW; or
 - 2) Any noncompliance or malfunction of the injection system that may cause fluid migration into or between ~~USDW~~USDW's.
 - 3) Any information must be provided orally within 24 hours from the time the owner or operator becomes aware of the circumstances. A written submission must also be provided within five days of the time the owner or operator becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent

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recurrence of the noncompliance.

- c) Plugging and abandonment plan.
- 1) The owner or operator must prepare, maintain, and comply with a plan for plugging and abandonment of the wells or project that meets the requirements of 35 Ill. Adm. Code 730.110. For purposes of this subsection (c), temporary intermittent cessation of injection operations is not abandonment.
 - 2) Submission of plan.
 - A) The owner or operator must submit the plan on any forms prescribed by the Agency.
 - B) The owner or operator must submit any proposed significant revision to the method of plugging reflected in the plan no later than the notice of plugging required by subsection (i) of this Section (i.e., 45 days prior to plugging, unless shorter notice is approved).
 - C) The plan must include the following information:
 - i) The nature and quantity and material to be used in plugging;
 - ii) The location and extent (by depth) of the plugs;
 - iii) Any proposed test or measurement to be made;
 - iv) The amount, size, and location (by depth) of casing to be left in the well;
 - v) The method and location where casing is to be parted; and
 - vi) The estimated cost of plugging the well.
 - D) After a cessation of operations of two years, the owner or operator must plug and abandon the well in accordance with the plan, unless

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the owner or operator performs both of the following actions:

- i) It provides written notice to the Agency; and
 - ii) It describes actions or procedures, satisfactory to the Agency that the owner or operator will take to ensure that the well will not endanger ~~a USDW~~USDW's during the period of temporary abandonment. These actions and procedures must include compliance with the technical requirements applicable to active injection wells, unless the operator obtains regulatory relief in the form of a variance or adjusted standard from the technical requirements pursuant to 35 Ill. Adm. Code 104 and Title IX of the Act [415 ILCS 5/Title IX].
- E) The owner or operator of any well that has been temporarily abandoned (ceased operations for more than two years and which has met the requirements of subsections (c)(2)(D)(i) and (c)(2)(D)(ii)) of this Section must notify the Agency in writing prior to resuming operation of the well.
- d) Financial responsibility.
- 1) The owner or operator or transferor of a Class I or Class III injection well is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner acceptable to the Agency until one of the following has occurred:
 - A) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to subsection (c) of this Section and 35 Ill. Adm. Code 730.110 and submission of a plugging and abandonment report has been made pursuant to subsection (k) of this Section;
 - B) The well has been converted in compliance with subsection (j) of this Section; or
 - C) The transferor has received notice from the Agency that the

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transferee has demonstrated financial responsibility for the well. The owner or operator must show evidence of such financial responsibility to the Agency by the submission of a surety bond or other adequate assurance, such as a financial statement.

- 2) The owner or operator was to have submitted such evidence no later than March 3, 1985. Where the ownership or operational control of the well was transferred later than March 3, 1985, the transferee must submit such evidence no later than the date specified in the notice required pursuant to subsection (1)(2) of this Section.
- 3) The Agency may require the owner or operator to submit a revised demonstration of financial responsibility if the Agency has reason to believe that the original demonstration is no longer adequate to cover the cost of closing, plugging, and abandoning the well.
- 4) The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of Subpart G of this Part.
- 5) An owner or operator must notify the Agency by certified mail of the commencement of any voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code that names the owner or operator as debtor, within 10 business days after the commencement of the proceeding. Any party acting as guarantor for the owner or operator for the purpose of financial responsibility must so notify the Agency if the guarantor is named as debtor in any such proceeding.
- 6) In the event of commencement of a proceeding specified in subsection (d)(5) of this Section, an owner or operator that has furnished a financial statement for the purpose of demonstrating financial responsibility pursuant to this Section will be deemed to be in violation of this subsection (d) until an alternative financial assurance demonstration acceptable to the Agency is provided either by the owner or operator or by its trustee in bankruptcy, receiver, or other authorized party. All parties must be prohibited from injecting into the well until such alternative financial assurance is provided.
- e) This subsection (e) corresponds with 40 CFR 144.28(e), which pertains exclusively to enhanced recovery and hydrocarbon storage wells (Class II wells).

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Those wells are regulated by the Illinois Department of [Natural Resources, Office of Mines and Minerals](#), rather than by the Board and the Agency. This statement maintains structural consistency with USEPA rules.

- f) Operating requirements.
- 1) No person must cause or allow injection between the outermost casing protecting USDWs and the well bore.
 - 2) Maintenance of mechanical integrity.
 - A) The owner or operator of a Class I or Class III injection well authorized by rule under this Subpart C must establish and maintain mechanical integrity, as defined in 35 Ill. Adm. Code 730.106, until either of the following has occurred:
 - i) The well is properly plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to subsection (c) of this Section and 35 Ill. Adm. Code 730.110 and a plugging and abandonment report is submitted pursuant to subsection (k); or
 - ii) The well is converted in compliance with subsection (j) of this Section.
 - B) The Agency may require by permit condition that the owner or operator comply with a schedule describing when mechanical integrity demonstrations must be made.
 - 3) Cessation upon Lack of Mechanical Integrity.
 - A) When the Agency determines that a Class I (non-hazardous) or Class III injection well lacks mechanical integrity pursuant to 35 Ill. Adm. Code 730.108, the Agency must give written notice of its determination to the owner or operator.
 - B) Unless the Agency requires immediate cessation, the owner or operator must cease injection into the well within 48 hours of receipt of the Agency's determination.

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- C) The Agency may allow plugging of the well in accordance with 35 Ill. Adm. Code 730.110, or require the owner or operator to perform such additional construction, operation, monitoring, reporting, and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity.
 - D) The owner or operator may resume injection upon receipt of written notification from the Agency that the owner or operator has demonstrated mechanical integrity pursuant to 35 Ill. Adm. Code 730.108.
- 4) The Agency may allow the owner or operator of a well that lacks mechanical integrity pursuant to 35 Ill. Adm. Code 730.108(a)(1) to continue or resume injection if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.
 - 5) For a Class I injection well, unless an alternative to a packer has been approved under 35 Ill. Adm. Code 730.112(c), the owner or operator must fill the annulus between the tubing and the long string of casings with a fluid approved by the Agency and maintain a pressure, also approved by the Agency, on the annulus. The owner or operator of a Class I well completed with tubing and packer must fill the annulus between tubing and casing with a non-corrosive fluid and maintain a positive pressure on the annulus. For any other Class I injection well, the owner or operator must insure that the alternative completion method will reliably provide a comparable level of protection of USDWs.
 - 6) Injection pressure for Class I and III injection wells.
 - A) Except during stimulation, the owner or operator must not exceed an injection pressure at the wellhead that must be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the injection zone; and
 - B) The owner or operator must not inject at a pressure that will initiate fractures in the confining zone or cause the movement of injection

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or formation fluids into a USDW.

- g) **Monitoring Requirements.** The owner or operator must perform the monitoring as described in this subsection (g). Monitoring of the nature of the injected fluids must comply with applicable analytical methods cited in tables IA (List of Approved Biological Methods), IB (List of Approved Inorganic Test Procedures), IC (List of Approved Test Procedures for Non-Pesticide Organic Compounds), ID (List of Approved Test Procedures for Pesticides), IE (List of Approved Radiologic Test Procedures), and IF (List of Approved Methods for Pharmaceutical Pollutants) of 40 CFR 136.3 (Identification of Test Procedures) (1993) or in appendix III of 40 CFR 261 (Chemical Analysis Test Methods) (1992), each incorporated by reference in 35 Ill. Adm. Code 720.111(b), or with other methods that have been approved by the Agency.
- 1) The owner or operator of a Class I injection well must undertake the following actions:
 - A) It must analyze the nature of the injected fluids with sufficient frequency to yield data representative of their characteristics;
 - B) It must install and use continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing; and
 - C) It must install and use monitoring wells within the area of review, if required by the Agency, to monitor any migration of fluids into and pressure in the USDWs. The type, number, and location of the wells; the parameters to be measured; and the frequency of monitoring must be approved by the Agency.
 - 2) This subsection (g)(2) corresponds with 40 CFR 144.28(g)(2), a provision related to Class II injection wells, which are regulated by the Illinois Department of [Natural Resources, Office of Mines and Minerals](#), and not by the Board. This statement maintains structural consistency with USEPA rules.
 - 3) The owner or operator of a Class III injection well must undertake the following actions:

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- A) It must provide to the Agency a qualitative analysis and ranges in concentrations of all constituents of injected fluids at least once within the first year of authorization and thereafter whenever the injection fluid is modified to the extent that the initial data are incorrect or incomplete.
 - i) The owner or operator may request confidentiality pursuant to Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.
 - ii) If the information is proprietary the owner or operator may in lieu of the ranges in concentrations choose to submit maximum concentrations that must not be exceeded.
 - iii) In such a case the owner or operator must retain records of the undisclosed concentration and provide them upon request to the Agency as part of any enforcement investigation;
 - B) It must monitor injection pressure and either flow rate or volume semi-monthly, or meter and record daily injected and produced fluid volumes as appropriate;
 - C) It must monitor the fluid level in the injection zone semi-monthly, where appropriate; and
 - D) All Class III injection wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner or operator demonstrates to the Agency that manifold monitoring is comparable to individual well monitoring.
- h) Reporting requirements. The owner or operator must submit reports to the Agency as follows:
- 1) For a Class I injection well, quarterly reports on all of the following:

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- A) The physical, chemical, and other relevant characteristics of the injection fluids;
 - B) Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure;
 - C) The results from groundwater monitoring wells prescribed in subsection (f)(1)(C) of this Section;
 - D) The results of any test of the injection well conducted by the owner or operator during the reported quarter if required by the Agency; and
 - E) Any well work over performed during the reported quarter.
- 2) This subsection (h)(2) corresponds with 40 CFR 144.28(h)(2), a provision related to Class II injection wells, which are regulated by the Illinois Department of [Natural Resources, Office of](#) Mines and Minerals, and not by the Board. This statement maintains structural consistency with USEPA rules.
- 3) For a Class III injection well, all of the following:
- A) Quarterly reporting on all monitoring, as required in subsections (f)(2)(A), (f)(2)(B), and (f)(2)(C) of this Section;
 - B) Quarterly reporting of the results of any periodic tests required by the Agency that are performed during the reported quarter; and
 - C) Monitoring may be reported on a project or field basis rather than an individual well basis where manifold monitoring is used.
- i) Retention of records. The owner or operator must retain records of all monitoring information, including the following:
- 1) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this section, for a period of at least three years from the date of the sample, measurement or report. This period may be extended by

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request of the Agency at any time; and

- 2) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under Section 704.188. The owner or operator must retain the records after the three year retention period unless it delivers the records to the Agency or obtains written approval from the Agency to discard the records.
- j) Notice of abandonment. The owner or operator must notify the Agency at least 45 days before conversion or abandonment of the well.
 - k) Plugging and abandonment report. Within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator must submit a report to the Agency. If the quarterly report is due less than 15 days before completion of plugging, then the report must be submitted within 60 days. The report must be certified as accurate by the person who performed the plugging operation. Such report must consist of either:
 - 1) A statement that the well was plugged in accordance with the plan previously submitted to the Agency; or
 - 2) Where actual plugging differed from the plan previously submitted, an updated version of the plan, on any form supplied by the Agency, specifying the different procedures used.
 - l) Change of ownership.
 - 1) The owner or operator must notify the Agency of a transfer of ownership or operational control of the well at least 30 days in advance of the proposed transfer.
 - 2) The notice must include a written agreement between the transferor and the transferee containing a specific date when the financial responsibility demonstration of subsection (d) of this Section will be met by the transferee.
 - 3) The transferee is authorized to inject unless it receives notification from the Agency that the transferee has not demonstrated financial responsibility pursuant to subsection (d) of this Section.

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- m) Requirements for a Class I hazardous waste injection well. The owner or operator of any Class I injection well injecting hazardous waste must comply with Section 704.203. In addition the owner or operator must properly dispose of, or decontaminate by removing all hazardous waste residues, all injection well equipment.

BOARD NOTE: Derived from 40 CFR 144.28 ~~(2010)~~(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART D: APPLICATION FOR PERMIT

Section 704.162 Area Permits

- a) The Agency may issue a permit on an area basis, rather than for each injection well individually, provided that the permit is for injection wells for which each of the following is~~following are~~ true:
- 1) The injection wells~~They~~ are described and identified by location in permit applications, if they are existing injection wells, except that the Agency may accept a single description of multiple injection wells with substantially the same characteristics;
 - 2) The injection wells~~They~~ are within the same well field, facility site, reservoir, project, or similar unit in the same state;
 - 3) The injection wells~~They~~ are operated by a single owner or operator; ~~and~~
 - 4) The injection wells~~They~~ are used to inject other than hazardous waste; ~~and-~~
 - 5) The injection wells are other than Class VI injection wells.
- b) Area permits must specify both of the following:
- 1) The area within which underground injections are authorized; and
 - 2) The requirements for construction, monitoring, reporting, operation and

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abandonment for all wells authorized by the permit.

- c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon new injection wells within the permit area provided the following conditions are fulfilled:
- 1) The permittee notifies the Agency at such time as the permit requires;
 - 2) The additional well satisfies the criteria in subsection (a) of this Section and meets the requirements specified in the permit under subsection (b) of this Section; and
 - 3) The cumulative effects of drilling and operation of additional injection wells are considered by the Agency during evaluation of the area permit application and are acceptable to the Agency.
- d) If the Agency determines that any well constructed pursuant to subsection (c) of this Section does not satisfy the requirements of subsections (c)(1) and (c)(2) of this Section, the Agency may modify the permit under 35 Ill. Adm. Code 702.183 through 702.185, seek revocation under 35 Ill. Adm. Code 702.186, or take enforcement action. If the Agency determines that cumulative effects are unacceptable, the permit may be modified under 35 Ill. Adm. Code 702.183 through 702.185.

BOARD NOTE: Derived from 40 CFR 144.33 [\(2010\)](#), as amended at [75 Fed. Reg. 77303 \(Dec. 10, 2010\)](#)~~(2005)~~.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART E: PERMIT CONDITIONS

Section 704.181 Additional Conditions

The following conditions apply to all UIC permits, in addition to those set forth in 35 Ill. Adm. Code 702.140 through 702.152, and these conditions must be incorporated into all permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

- a) In addition to 35 Ill. Adm. Code 702.141 (duty to comply): the permittee

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~~needs~~need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in a temporary emergency permit under Section 704.163.

BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 144.51(a) ~~(2010)(2005)~~.

- b) In addition to 35 Ill. Adm. Code 702.150(b) (monitoring and records): the permittee must retain records concerning the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under Section 704.188 or under Subpart G of 35 Ill. Adm. Code 730, as appropriate. The owner or operator must continue to retain the records after the three-year retention period, unless the owner or operator delivers the records to the Agency or obtains written approval from the Agency to discard the records.

BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 144.51(j)(2)(ii) ~~(2010)(2005)~~.

- c) In addition to 35 Ill. Adm. Code 702.152(a) (notice of planned changes), the following limitation applies: except for all new wells authorized by an area permit under Section 704.162(c), a new injection well may not commence injection until construction is complete, and both of the following must occur:
- 1) The permittee must have submitted notice of completion of construction to the Agency; and
 - 2) Inspection review must have occurred, as follows:
 - A) The Agency has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or
 - B) The permittee has not received notice from the Agency of its intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in subsection (c)(1) of this Section, in which case prior inspection or review is waived, and the permittee may commence injection. The Agency must include in its notice a reasonable time period in which it will inspect the well.

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BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 144.51(m) ~~(2010)(2005)~~.

- d) Reporting noncompliance.
- 1) Twenty-four hour reporting. The permittee must report any noncompliance that may endanger health or the environment, including the following:
 - A) Any monitoring or other information that indicates that any contaminant may cause an endangerment to a USDW; and
 - B) Any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between USDWs.
 - 2) Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days after the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates, times, and, if the noncompliance has not been corrected, the anticipated time is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance of the noncompliance.

BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 144.51(1)(6) ~~(2010)(2005)~~.

- e) The permittee must notify the Agency at such times as the permit requires before conversion or abandonment of the well or, in the case of area permits, before closure of the project.

BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR 144.51(n) ~~(2010)(2005)~~.

- f) A Class I or Class III injection well permit must include, and a Class V permit may include, conditions that meet the applicable requirements of 35 Ill. Adm.

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Code 730.110 to ~~ensure~~insure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of 35 Ill. Adm. Code 730.110, the Agency must incorporate the plan into the permit as a permit condition. Where the Agency's review of an application indicates that the permittee's plan is inadequate, the Agency may require the applicant to revise the plan, prescribe conditions meeting the requirements of this subsection (f), or deny the permit. A Class VI injection well permit must include conditions that meet the requirements set forth in 35 Ill. Adm. Code 730.192. When the plan meets the requirements of 35 Ill. Adm. Code 730.192, the Agency must incorporate the plan into the permit as a permit condition. For purposes of this subsection (f), temporary or intermittent cessation of injection operations is not abandonment.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 144.51(o) (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

- g) Plugging and abandonment report. Within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator must submit a report to the Agency. If the quarterly report is due less than 15 days before completion of plugging, then the report must be submitted within 60 days. The report must be certified as accurate by the person who performed the plugging operation. Such report must consist of either of the following:
- 1) A statement that the well was plugged in accordance with the plan previously submitted to the Agency;
 - 2) Where actual plugging differed from the plan previously submitted, an updated version of the plan on the form supplied by the Agency specifying the differences.

BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 144.51(p) (2010)(2005).

- h) Duty to establish and maintain mechanical integrity.
- 1) The owner or operator of a Class I or Class III, or Class VI injection well permitted under this Part and 35 Ill. Adm. Code 702 must establish mechanical integrity prior to commencing injection or on a schedule determined by the Agency. Thereafter the owner or operator of a Class I,

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Class II, or Class III injection well must maintain, and thereafter mechanical integrity, as required by defined in 35 Ill. Adm. Code 730.108, and the owner or operator of a Class VI injection well must maintain mechanical integrity as required by Section 730.189. The Agency may require by permit condition that the owner or operator comply with a schedule describing when mechanical integrity demonstrations must be made.

- 2) When the Agency determines that a Class I or Class III injection well lacks mechanical integrity pursuant to 35 Ill. Adm. Code 730.108 or 730.189 (for a Class VI injection well), the Agency# must give written notice of its determination to the owner or operator. Unless the Agency requires immediate cessation, the owner or operator must cease injection into the well within 48 hours of receipt of the Agency determination. The Agency may allow plugging of the well pursuant to 35 Ill. Adm. Code 730.110 or require the permittee to perform such additional construction, operation, monitoring, reporting, and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Agency that the owner or operator has demonstrated mechanical integrity pursuant to 35 Ill. Adm. Code 730.108.
- 3) The Agency may allow the owner or operator of a well that lacks mechanical integrity pursuant to 35 Ill. Adm. Code 730.108(a)(1) to continue or resume injection, if the owner or operator has made a satisfactory showing that there is no movement of fluid into or between USDWs.

BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 144.51(q) (2010), amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.182 Establishing UIC Permit Conditions

In addition to the conditions established under 35 Ill. Adm. Code 702.160 and Section 704.181, each UIC permit must include conditions meeting the requirements of the following Sections, when applicable. A permit for the owner or operator of a Class VI injection well must include conditions meeting the requirements of Subpart H of 35 Ill. Adm. Code 730.

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BOARD NOTE: Derived from 40 CFR 144.52(a) preamble [\(2010\), as amended at 75 Fed. Reg. 77303 \(Dec. 10, 2010\)\(2005\)](#).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.184 Corrective Action

UIC permits must require by condition corrective action as set forth in Section 704.193 and 35 Ill. Adm. Code 730.107 [and 730.184](#).

BOARD NOTE: Derived from 40 CFR 144.52(a)(2) [\(2010\), as amended at 75 Fed. Reg. 77303 \(Dec. 10, 2010\)\(2005\)](#).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.189 Financial Responsibility

- a) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Agency until one of the following occurs:
 - 1) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to Section 704.181(f) and 35 Ill. Adm. Code 730.110 [and 730.192](#), and the permittee has submitted a plugging and abandonment report pursuant to Section 704.181(g);
 - 2) The well has been converted in compliance with Section 704.181(e); or
 - 3) The transferor of a permit has received notice from the Agency that the owner or operator receiving transfer of the permit (the new permittee) has demonstrated financial responsibility for the well.
- b) The permittee must show evidence of financial responsibility to the Agency by the submission of a surety bond or other adequate assurance, such as financial statements or other materials acceptable to the Agency. The Agency may on a periodic basis require the holder of a life-time permit to submit an estimate of the resources needed to plug and abandon the well revised to reflect inflation of such

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costs, and a revised demonstration of financial responsibility if necessary. For a Class VI injection well, the permittee must show evidence of financial responsibility to the Agency by the submission of an instrument that fulfills the requirements of 35 Ill. Adm. Code 730.185(a), such as a financial statement or other materials necessary for an Agency evaluation of the adequacy of the submitted financial assurance.

- c) The owner or operator of a ~~Class I well injecting~~ hazardous waste injection well must comply with the financial responsibility requirements ~~set forth in~~ Subpart G of this Part. The owner or operator of a Class VI injection well must comply with the financial responsibility requirements set forth in 35 Ill. Adm. Code 730.185.

BOARD NOTE: Derived from 40 CFR 144.52(a)(7) (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.190 Mechanical Integrity

A permit for any Class I or Class III injection well or injection project that lacks mechanical integrity must include, ~~or for any Class V injection well may include,~~ a condition that prohibits prohibiting injection operations until the ~~permittee shows to the satisfaction of the~~ Agency has determined pursuant to 35 Ill. Adm. Code 730.108 under 35 Ill. Adm. Code 730.108 that the well has mechanical integrity. A permit for any Class V injection well may include such a condition. A permit for any Class VI injection well must include a provision that prohibits injection operations until the Agency determines, pursuant to 35 Ill. Adm. Code 730.189, that the well has mechanical integrity.

BOARD NOTE: Derived from 40 CFR 144.52(a)(8) (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART H: ISSUED PERMITS

Section 704.260 Transfer

- a) Transfer by modification. Except as provided in subsection (b) of this Section, a

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permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or reissued (under Sections 704.261 through 704.264) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act. The new owner or operator to whom the permit is transferred must comply with all the terms and conditions specified in such permit.

- b) Automatic transfers. As an alternative to transfers under subsection (a) of this Section, any UIC permit for a well not injecting hazardous or injecting carbon dioxide for geologic sequestration waste may be automatically transferred to a new permittee if each of the following conditions are fulfilled:
- 1) The current permittee notifies the Agency at least 30 days in advance of the proposed transfer date in subsection (b)(2) of this Section;
 - 2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between them and the notice demonstrates that the financial responsibility requirements of Section 704.189 will be met by the new permittee and that the new permittee agrees to comply with all the terms and conditions specified in the permit to be transferred under subsection (b) of this Section; and
 - 3) The Agency does not notify the existing permittee and the proposed new permittee of its intent to modify ~~or reissue~~ the permit. A modification under this subsection (b) may also be a minor modification under Section 704.264. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection (b)(2) of this Section.

BOARD NOTE: Derived from 40 CFR 144.38 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.262 Causes for Modification

- a) The following are causes for modification of a permit. For a Class I hazardous waste injection well or a Class III or Class IV injection well, any of the following may be cause for reissuance of the permit, as well as for permit modification. For

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all other injection wells, the following may be cause for reissuance of the permit, as well as for permit modification, when the permittee requests or agrees:

- 1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit.
- 2) Information. Permits other than for a Class III injection well may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For an area permit, this cause must include any information indicating that cumulative effects on the environment are unacceptable.
- 3) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued. A permit other than for a Class I hazardous waste injection well or a Class III [or Class VI](#) injection well may be modified during their terms for this cause only as follows:
 - A) The Agency may modify the permit when standards or regulations on which the permit was based have been changed by statute or amended standards or regulations.
 - B) The permittee may request modification when all of the following occur:
 - i) The permit condition requested to be modified was based on a provision of 35 Ill. Adm. Code 730;
 - ii) The Board has revised, withdrawn, or modified that provision on which the permit condition was based; and
 - iii) The permittee requests modification in accordance with 35 Ill. Adm. Code 705.128 within 90 days after the effective date of the changed statute or amended standards or

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regulations on which the request is based.

- C) For judicial decisions, a court of competent jurisdiction has remanded and stayed Board promulgated regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based or if a request is filed by the permittee in accordance with 35 Ill. Adm. Code 705.128 within 90 days after judicial remand.
 - 4) Compliance schedules. The Agency determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy.
 - 5) Basis for modification of Class VI permits. Additionally, for Class VI injection wells, whenever the Agency determines that permit changes are necessary based on any of the following:
 - A) A reevaluation of the area of review undertaken pursuant to Section 730.184(e)(1);
 - B) Any amendments to the testing and monitoring plan made pursuant to Section 730.190(j);
 - C) Any amendments to the injection well plugging plan made pursuant to Section 730.192(c);
 - D) Any amendments to the postinjection site care and site closure plan made pursuant to Section 730.193(a)(3);
 - E) Any amendments to the emergency and remedial response plan made pursuant to Section 730.194(d); or
 - F) A review of monitoring or testing results conducted in accordance with permit requirements.
- b) The following are causes to modify or, alternatively, to reissue a permit:
- 1) The Agency has received notification (as required in the permit, see 35 Ill.

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Adm. Code 702.152(c)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (35 Ill. Adm. Code 702.182(b)), but it must not be reissued after the effective date of the transfer, except upon the request of the new permittee.

- 2) A determination that the waste being injected is a hazardous waste, as defined in 35 Ill. Adm. Code 721.103, either because the definition has been revised, or because a previous determination has been changed.

BOARD NOTE: Derived from 40 CFR 144.39 (2010), as amended at 75 Fed. Reg. 77230 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 704.264 Minor Modifications

Upon the consent of the permittee, the Agency may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of 35 Ill. Adm. Code 705. Any permit modification not processed as a minor modification under this Section must be made for cause and with a 35 Ill. Adm. Code 705 draft permit and public notice as required in Sections 704.261 through 704.263. Minor modifications may only involve the following changes:

- a) Correcting typographical errors;
- b) Requiring more frequent monitoring or reporting by the permittee;
- c) Changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- d) Allowing for a change in ownership or operational control of a facility where the Agency determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Agency; or

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e) ~~Making other limited changes, as follows:~~

e)4) Changing quantities or types of fluids injected that are within the capacity of the facility as permitted and ~~that, in the judgment of the Agency has determined;~~ would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.

f)2) Changing construction requirements approved by the Agency pursuant to 35 Ill. Adm. Code 704.182 (establishing UIC permit conditions), provided that any such alteration must comply with this Part and 35 Ill. Adm. Code 702 and 730.

g)3) Amending a plugging and abandonment plan that has been updated under Section 704.181(e).

h) Amending a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan, when the Agency determines that the modifications merely clarify or correct the plan.

BOARD NOTE: Derived from 40 CFR 144.41 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART I: REQUIREMENTS FOR CLASS V INJECTION WELLS

Section 704.280 Definition of a Class V Injection Well

Section 704.106 defines the ~~six~~five classes of injection wells, including a Class V injection well, as regulated under this Subpart I. Typically, Class V injection wells are shallow wells used to place a variety of fluids directly below the land surface. However, if the fluids placed in the ground qualify as a hazardous waste under RCRA, the well is either a Class I or Class IV injection well, not a Class V injection well. Similarly, a carbon sequestration well is a Class VI injection well (or a Class II injection well under specified circumstances), not a Class V injection well. Examples of Class V injection wells are described in Section 704.281.

BOARD NOTE: Derived from 40 CFR 144.80 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Procedures for Permit Issuance
- 2) Code Citation: 35 Ill. Adm. Code 705
- 3) Section Number: 705.163 Proposed Action: Amend
- 4) Statutory Authority: 415 ILCS 5/7.2, 13 and 27
- 5) A complete description of the subjects and issues involved: The amendment to Part 705 are a single segment of the docket R11-14 rulemaking that also affects 35 Ill. Adm. Code 702, 704 and 730, 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 R11-14 rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 702. A comprehensive description is contained in the Board's opinion and order of October 6, 2011, proposing amendments in docket R11-14, which opinion and order is available from the address below.

Specifically, the amendment to Part 705 implement the federal standards for Class VI carbon sequestration injection wells in Illinois.

Tables appear in the Board's opinion and order of October 6, 2011 in docket R11-14 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 October 6, 2011 opinion and order in docket R11-14.

Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] provides that Section 5-35 of the Illinois Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the IAPA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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

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- 7) Will this proposed amendment replace any emergency amendments currently in effect?
No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Do these proposed amendment contain incorporations by reference? No
- 11) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2008)].
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R11-14 and be addressed to:

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

Please direct inquiries to the following person and reference docket R11-14:

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

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

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

- 13) Initial regulatory flexibility analysis:

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- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that own or operate an underground injection well.
- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.
- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.
- 14) Regulatory agenda on which this rulemaking was summarized: December 17, 2010; 34 Ill. Reg. 19623, 19687

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITS

PART 705
PROCEDURES FOR PERMIT ISSUANCE

SUBPART A: GENERAL PROVISIONS

Section	
705.101	Scope and Applicability
705.102	Definitions
705.103	Computation of Time
705.104	Electronic Reporting

SUBPART B: PERMIT APPLICATIONS

Section	
705.121	Permit Application
705.122	Completeness
705.123	Incomplete Applications
705.124	Site Visit
705.125	Effective Date
705.126	Decision Schedule
705.127	Consolidation of Permit Processing
705.128	Modification or Reissuance of Permits

SUBPART C: APPLICATION REVIEW

Section	
705.141	Draft Permits
705.142	Statement of Basis
705.143	Fact Sheet
705.144	Administrative Record for Draft Permits or Notices of Intent to Deny

SUBPART D: PUBLIC NOTICE

Section

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- 705.161 When Public Notice Must Be Given
- 705.162 Timing of Public Notice
- 705.163 Methods of Public Notice
- 705.164 Contents of Public Notice
- 705.165 Distribution of Other Materials

SUBPART E: PUBLIC COMMENT

Section

- 705.181 Public Comments and Requests for Public Hearings
- 705.182 Public Hearings
- 705.183 Obligation to Raise Issues and Provide Information
- 705.184 Reopening of Public Comment Period

SUBPART F: PERMIT ISSUANCE

Section

- 705.201 Final Permit Decision
- 705.202 Stay of Permit Conditions upon Appeal
- 705.203 Stay for New Application or upon Untimely Application for Renewal (Repealed)
- 705.204 Stay upon Reapplication or for Modification (Repealed)
- 705.205 Stay Following Interim Status (Repealed)
- 705.210 Agency Response to Comments
- 705.211 Administrative Record for Final Permits or Letters of Denial
- 705.212 Appeal of Agency Permit Determinations

SUBPART G: PROCEDURE FOR RCRA STANDARDIZED PERMIT

Section

- 705.300 General Information About RCRA Standardized Permits
- 705.301 Applying for a RCRA Standardized Permit
- 705.302 Issuance of a RCRA Standardized Permit
- 705.303 Public Participation in the RCRA Standardized Permit Process
- 705.304 Modifying a RCRA Standardized Permit

- 705.APPENDIX A Procedures for Permit Issuance
- 705.APPENDIX B Modification Process
- 705.APPENDIX C Application Process
- 705.APPENDIX D Application Review Process

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705.APPENDIX E Public Comment Process
705.APPENDIX F Permit Issuance or Denial

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].

SOURCE: Adopted in R81-32 at 6 Ill. Reg. 12479, effective May 17, 1982; amended in R82-19, at 7 Ill. Reg. 14352, effective May 17, 1982; amended in R84-9, at 9 Ill. Reg. 11894, effective July 24, 1985; amended in R89-2 at 14 Ill. Reg. 3082, effective February 20, 1990; amended in R94-5 at 18 Ill. Reg. 18265, effective December 20, 1994; amended in R95-6 at 19 Ill. Reg. 9906, effective June 27, 1995; amended in R03-7 at 27 Ill. Reg. 3675, effective February 14, 2003; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 706, effective December 20, 2006; amended at 36 Ill. Reg. _____, effective _____.

SUBPART D: PUBLIC NOTICE

Section 705.163 Methods of Public Notice

Public notice of activities described in Section 705.161(a) must be given by the following methods:

- a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):
 - 1) The applicant.
 - 2) Any other agency or entity that the Agency knows is required by State or federal law to review or approve issuance of a RCRA or UIC permit for the same facility or activity (including USEPA, other Federal and State agencies with jurisdiction over waterways, wildlife or other natural resources, and other appropriate government authorities, including other affected States and units of local government).
 - 3) Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and over coastal zone management plans, the Advisory Council on Historical Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected States.

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- 4) Persons on a mailing list developed by doing as follows:
 - A) Including those who request in writing to be on the list;
 - B) Including participants in past permit proceedings in that area; and
 - C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in governmental publications
 - D) The Agency may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Agency may delete from the list the name of any person who fails to respond to such a request.
 - 5) For RCRA permits only to the following entities:
 - A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
 - B) To each State agency having any authority under State law with respect to the construction or operation of such facility.
 - 6) For Class I injection well UIC permits only, to the Illinois Department of Natural Resources, Office of Mines and Minerals.
 - 7) For a Class VI injection well, mailing or e-mailing a notice to the Illinois Department of Natural Resources, Office of Mines and Minerals, Division of Gas and Oil and to the Agency, Divisions of Public Water Supply and Land Pollution Control.
 - 8)7) Any other person or entity that the Agency has reason to believe would be particularly interested in or affected by the proposed action.
- b) Publication of notice must be made as follows:
- 1) For major UIC permits, publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the facility or

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activity.

- 2) For RCRA permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.
- c) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it.

BOARD NOTE: Derived from See 40 CFR 124.10(c) (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2002).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Underground Injection Control Operating Requirements
- 2) Code Citation: 35 Ill. Adm. Code 730
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
730.101	Amend
730.103	Amend
730.104	Amend
730.105	Amend
730.121	Amend
730.172	Amend
730.181	New Section
730.182	New Section
730.183	New Section
730.184	New Section
730.185	New Section
730.186	New Section
730.187	New Section
730.188	New Section
730.189	New Section
730.190	New Section
730.191	New Section
730.192	New Section
730.193	New Section
730.194	New Section
730.195	New Section
- 4) Statutory authority: 415 ILCS 5/7.2, 13 and 27
- 5) A complete description of the subjects and issues involved: The amendments to Part 730 are a single segment of the docket R11-14 rulemaking that also affects 35 Ill. Adm. Code 702, 704, and 705, 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 R11-14 rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 730. A comprehensive description is contained in the Board's opinion and order of October 6, 2011, proposing amendments in docket R11-14, which opinion and order is available from the address below.

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Specifically, the amendments to Part 730 implement the federal standards for Class VI carbon sequestration injection wells in Illinois.

Tables appear in the Board's opinion and order of October 6, 2011 in docket R11-14 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 October 6, 2011 opinion and order in docket R11-14.

Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] 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).

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will these proposed amendments replace emergency amendments currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date: No
- 9) Does this rulemaking contain incorporations by reference: No
- 11) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2008)].
- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R11-14 and be addressed to:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

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State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference docket R11-14:

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

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

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

- 13) Initial regulatory flexibility analysis:
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that own or operate an underground injection well.
 - B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.
 - C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.
- 14) Regulatory agenda on which this rulemaking was summarized: December 17, 2010; 34 Ill. Reg. 19623, 19687

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND
UNDERGROUND STORAGE TANK PROGRAMS

PART 730

UNDERGROUND INJECTION CONTROL OPERATING REQUIREMENTS

SUBPART A: GENERAL

Section

730.101	Applicability, Scope, and Effective Date
730.102	Laws Authorizing Regulations
730.103	Definitions
730.104	Criteria for Exempted Aquifers
730.105	Classification of Injection Wells
730.106	Area of Review
730.107	Corrective Action
730.108	Mechanical Integrity
730.109	Criteria for Establishing Permitting Priorities
730.110	Plugging and Abandoning Wells

SUBPART B: CRITERIA AND STANDARDS APPLICABLE
TO CLASS I NON-HAZARDOUS WASTE INJECTION WELLS

Section

730.111	Applicability
730.112	Construction Requirements
730.113	Operating, Monitoring, and Reporting Requirements
730.114	Information to be Considered by the Agency

SUBPART C: CRITERIA AND STANDARDS APPLICABLE
TO CLASS II INJECTION WELLS

Section

730.121	Adoption of Criteria and Standards Applicable to Class II Injection Wells by the Illinois Department of Natural Resources, Office of Mines and Minerals
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SUBPART D: CRITERIA AND STANDARDS APPLICABLE
TO CLASS III INJECTION WELLS

Section	
730.131	Applicability
730.132	Construction Requirements
730.133	Operating, Monitoring, and Reporting Requirements
730.134	Information to be Considered by the Agency

SUBPART F: CRITERIA AND STANDARDS APPLICABLE
TO CLASS V INJECTION WELLS

Section	
730.151	Applicability
730.152	Inventory and Assessment (Repealed)

SUBPART G: CRITERIA AND STANDARDS APPLICABLE TO
CLASS I HAZARDOUS WASTE INJECTION WELLS

Section	
730.161	Applicability and Definitions
730.162	Minimum Criteria for Siting
730.163	Area of Review
730.164	Corrective Action for Wells in the Area of Review
730.165	Construction Requirements
730.166	Logging, Sampling, and Testing Prior to New Well Operation
730.167	Operating Requirements
730.168	Testing and Monitoring Requirements
730.169	Reporting Requirements
730.170	Information to be Evaluated
730.171	Closure
730.172	Post-Closure Care
730.173	Financial Responsibility for Post-Closure Care

SUBPART H: CRITERIA AND STANDARDS APPLICABLE TO CLASS VI WELLS

<u>Section</u>	
<u>730.181</u>	<u>Applicability</u>
<u>730.182</u>	<u>Required Class VI Injection Well Permit Information</u>

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<u>730.183</u>	<u>Minimum Criteria for Siting</u>
<u>730.184</u>	<u>Area of Review and Corrective Action</u>
<u>730.185</u>	<u>Financial Responsibility</u>
<u>730.186</u>	<u>Injection Well Construction Requirements</u>
<u>730.187</u>	<u>Logging, Sampling and Testing Prior to Injection Well Operation</u>
<u>730.188</u>	<u>Injection Well Operating Requirements</u>
<u>730.189</u>	<u>Mechanical Integrity</u>
<u>730.190</u>	<u>Testing and Monitoring Requirements</u>
<u>730.191</u>	<u>Reporting Requirements</u>
<u>730.192</u>	<u>Injection Well Plugging</u>
<u>730.193</u>	<u>Post-Injection Site Care and Site Closure</u>
<u>730.194</u>	<u>Emergency and Remedial Response</u>
<u>730.195</u>	<u>Alternative Class VI Injection Well Depth Requirements</u>

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].

SOURCE: Adopted in R81-32 at 6 Ill. Reg. 12479, effective March 3, 1984; amended in R82-19 at 7 Ill. Reg. 14426, effective March 3, 1984; recodified at 10 Ill. Reg. 14174; amended in R89-2 at 14 Ill. Reg. 3130, effective February 20, 1990; amended in R89-11 at 14 Ill. Reg. 11959, effective July 9, 1990; amended in R93-6 at 17 Ill. Reg. 15646, effective September 14, 1993; amended in R94-5 at 18 Ill. Reg. 18391, effective December 20, 1994; amended in R95-4 at 19 Ill. Reg. 10047, effective June 27, 1995; amended in R00-11/R01-1 at 24 Ill. Reg. 18680, effective December 7, 2000; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1281, effective December 20, 2006; amended at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 730.101 Applicability, Scope, and Effective Date

- a) This Part sets forth technical criteria and standards for the Underground Injection Control (UIC) Program. This Part must be read in conjunction with 35 Ill. Adm. Code 702, 704, and 705, which also apply to the UIC program. 35 Ill. Adm. Code 702 and 704 prescribe the regulatory requirements for the UIC permit program. 35 Ill. Adm. Code 704 further outlines hazardous waste management requirements and sets forth the financial assurance requirements applicable to Class I hazardous waste injection wells and requirements applicable to certain types of Class V injection wells. 35 Ill. Adm. Code 705 describes the procedures the Agency must use for issuing UIC permits.

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- b) On and after February 1, 1984, any underground injection that is not authorized by rule or by permit is unlawful.
- c) Electronic reporting. The filing of any document pursuant to any provision of this Part as an electronic document is subject to 35 Ill. Adm. Code 720.104.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 3 and 145.11(a)(33)(2010), as added at 70 Fed. Reg. 59848 (Oct. 13, 2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 730.103 Definitions

The following definitions apply to the underground injection control program.

"Abandoned well" means a well whose use has been permanently discontinued or that is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

"Act" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, as amended by P.L. 95-609, 42 USC 6901).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or the Administrator's designee.

"Agency" means the Illinois Environmental Protection Agency.

"Application" means the Agency forms for applying for a permit, including any additions, revisions, or modifications to the forms. For RCRA, application also includes the information required by the Agency pursuant to 35 Ill. Adm. Code 703.182-703.188 and 703.200 (contents of Part B of the RCRA application).

"Aquifer" means a geologic formation, group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Area of review" means the area surrounding an "injection well" described according to the criteria set forth in Section 730.106 or, in the case of an area

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permit, the project area plus a circumscribing area the width of which is either 402 meters (one-quarter mile) or a number calculated according to the criteria set forth in Section 730.106.

"Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground or to prevent water, gas, or other fluid from entering or leaving the hole.

"Catastrophic collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

"Cementing" means the operation whereby a cement slurry is pumped into a drilled hole or forced behind the casing.

"Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta and which sometimes has an open bottom or perforated sides.

"Confining bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

"Confining zone" means a geologic formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

"Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

"Conventional mine" means an open pit or underground excavation for the production of minerals.

"Date of approval by USEPA of the Illinois UIC program" means February 1, 1984.

"Director" means the Director of the Illinois Environmental Protection Agency or the Administrator's designee.

"Disposal well" means a well used for the disposal of waste into a subsurface stratum.

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"Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, that is completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

"Effective date of the UIC program" means February 1, 1984.

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

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

"Exempted aquifer" means an "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 35 Ill. Adm. Code 704.123, 704.104, and 702.105.

"Existing injection well" means an "injection well" other than a "new injection well."

"Experimental technology" means a technology that has not been proven feasible under the conditions in which it is being tested.

"Facility or activity" means any HWM facility, UIC injection well, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the "State" RCRA or UIC program.

"Fault" means a surface or zone of rock fracture along which there has been displacement.

"Flow rate" means the volume per unit time of the flow of a gas or other fluid substance that emerges from an orifice, pump or turbine or which passes along a conduit or channel.

"Fluid" means material or substance that flows or moves, whether in a semisolid, liquid sludge, gas, or any other form or state.

"Formation" means a body of rock characterized by a degree of lithologic homogeneity that is prevailing, but not necessarily, tabular and is mappable on

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the earth's surface or traceable in the subsurface.

"Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.

"Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 35 Ill. Adm. Code 721.

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

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

"Hazardous waste management facility" or "HWM facility" means all contiguous land, and structures, other appurtenances and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

"HWM facility" means Hazardous waste management facility.

"Illinois" means the State of Illinois.

"Improved sinkhole" means a naturally occurring karst depression or other natural crevice that is found in volcanic terrain and other geologic settings that have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

"Injection well" means a well into which fluids are being injected.

"Injection zone" means a geologic formation, group of formations, or part of a formation receiving fluids through a well.

"Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under RCRA, UIC, or the Environmental Protection Act.

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"Packer" means a device lowered into a well that can be expanded to produce a fluid-tight seal.

"Permit" means an authorization, license, or equivalent control document issued by the Agency to implement the requirements of this Part and 35 Ill. Adm. Code 702 through 705. Permit does not include RCRA interim status (Subpart C of 35 Ill. Adm. Code 703), UIC authorization by rule (Subpart C of 35 Ill. Adm. Code 704), or any permit that has not yet been the subject of final Agency action, such as a draft permit or a proposed permit.

"Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

"Plugging record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration, and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations that are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

"Point of injection," for a Class V injection well, means the last accessible sampling point prior to waste fluids being released into the subsurface environment through the well. For example, the point of injection of a Class V septic system might be the distribution box—the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

"Pressure" means the total load or force per unit area acting on a surface.

"Project" means a group of wells in a single operation.

"Radioactive Waste" means any waste that contains radioactive material in concentrations that exceed those listed in Table II, column 2 in appendix B to 10 CFR 20 (Water Effluent Concentrations), incorporated by reference in 35 Ill. Adm. Code 720.111.

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

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"Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities, provided the waste is not mixed with industrial waste.

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

"Septic system" means a well that is used to emplace sanitary waste below the surface and which is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sole or principal source aquifer" means an aquifer that has been designated by the Administrator pursuant to Section 1424(a) or (e) of SDWA (42 USC 300h-3(a) or (e)).

"State" means the State of Illinois.

"Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

"Subsidence" means the lowering of the natural land surface in response to: earth movements; lowering of fluid pressure, removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

"Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

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"Surface casing" means the first string of well casing to be installed in the well.

"Total dissolved solids" or "TDS" means the total dissolved (filterable) solids, as determined by use of the method specified in 40 CFR 136.3 (Identification of Test Procedures; the method for filterable residue), incorporated by reference in 35 Ill. Adm. Code 720.111.

"UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act (42 USC 300h through 300h-8), including the approved Illinois program.

"Underground injection" means a "well injection."

"Underground source of drinking water" or "USDW" means an aquifer or its portion of which the following is true:

It supplies any public water system; or

It contains a sufficient quantity of groundwater to supply a public water system; and

It currently supplies drinking water for human consumption; or

It contains less than 10,000 mg/ℓ total dissolved solids; and

It is not an exempted "aquifer."

"USDW" means underground source of drinking water.

"Well" means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; a dug hole whose depth is greater than the largest surface dimension; an improved sinkhole; or a subsurface fluid distribution system.

"Well injection" means the subsurface emplacement of fluids through a well.

"Well monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

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"Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

"Well stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for wastewater to move more readily into the formation, and includes surging, jetting, blasting, acidizing, and hydraulic fracturing.

BOARD NOTE: Derived from 40 CFR 146.3 ~~(2010)~~(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 730.104 Criteria for Exempted Aquifers

An aquifer or a portion ~~of an aquifer thereof~~ that meets the criteria for an "underground source of drinking water" in Section 730.103 ~~is may be determined by the Board pursuant to 35 Ill. Adm. Code 704.103, 704.123, and 702.105 to be~~ an "exempted aquifer" ~~for a Class I, Class III or Class V injection well~~ if ~~the Board determines pursuant to 35 Ill. Adm. Code 704.123 that the aquifer #~~ meets the criteria of either subsections (a) and (b) or (a) and (c) of this Section. ~~For a Class VI injection well, the Board must determine that the well meets the criteria of subsection (d) of this Section.~~

- a) ~~The aquifer#~~ does not currently serve as a source of drinking water; and
- b) ~~The aquifer#~~ cannot now and will not in the future serve as a source of drinking water because one or more of the following is true of the aquifer:
 - 1) ~~The aquifer#~~ is mineral, hydrocarbon, or geothermal energy producing, or a permit applicant can demonstrate, as part of a permit application for a Class II or III injection well, that the aquifer contains minerals or hydrocarbons that are expected to be commercially producible considering their quantity and location;
 - 2) ~~The aquifer#~~ is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical;
 - 3) ~~The aquifer#~~ is so contaminated that it would be economically or technologically impractical to render that water fit for human

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consumption; or

- 4) The aquifer is located over a Class III injection well mining area subject to subsidence or catastrophic collapse; or
- c) The total dissolved solids content of the groundwater in the aquifer is more than 3,000 and less than 10,000 mg/ℓ, and the aquifer is not reasonably expected to supply a public water system.
- d) The areal extent of an aquifer exemption for a Class II enhanced oil recovery or enhanced gas recovery well is expanded for the exclusive purpose of Class VI injection for geologic sequestration pursuant to 35 Ill. Adm. Code 704.123(d) if the Agency determines that the aquifer meets the following criteria:
 - 1) The aquifer does not currently serve as a source of drinking water;
 - 2) The total dissolved solids content of the ground water in the aquifer is greater than 3,000 mg/ℓ and less than 10,000 mg/ℓ; and
 - 3) The aquifer is not reasonably expected to supply a public water system.

BOARD NOTE: Derived from 40 CFR 146.4 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 730.105 Classification of Injection Wells

Injection wells are classified as follows:

- a) Class I injection wells. A Class I injection well is any of the following:
 - 1) A Class I hazardous waste injection well that is used by a generator of hazardous waste or an owner or operator of a hazardous waste management facility to inject hazardous waste beneath the lowermost formation containing an underground source of drinking water within 402 meters (one-quarter mile) of the well bore.
 - 2) An industrial or municipal disposal well that injects fluids beneath the

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lowermost formation containing an underground source of drinking water within 402 meters (one-quarter mile) of the well bore.

- 3) A radioactive waste disposal well that injects fluids below the lowermost formation containing an underground source of drinking water within 402 meters (one-quarter mile) of the well bore.
- b) Class II injection wells. A Class II injection well is one that injects any of the following types of fluids:
- 1) Fluids that are brought to the surface in connection with conventional oil or natural gas production and which may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
 - 2) Fluids that are used for enhanced recovery of oil or natural gas; and
 - 3) Fluids that are used for storage of hydrocarbons that are liquid at standard temperature and pressure.
- c) Class III injection wells. A Class III injection well is one that injects fluid for extraction of minerals, including one used in any of the following activities:
- 1) Mining of sulfur by the Frasch process;
 - 2) In situ production of uranium or other metals. This category includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines, such as stopes leaching, is included in Class V; or
 - 3) Solution mining of salts or potash.
- BOARD NOTE: Class III injection well would include a well used for the recovery of geothermal energy to produce electric power, but does not include a well used in heating or aquaculture that falls under Class V.
- d) Class IV injection wells. A Class IV injection well is any of the following:
- 1) A well used by a generator of hazardous waste or of radioactive waste, by

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an owner or operator of a hazardous waste management facility, or by an owner or operator of a radioactive waste disposal site to dispose of hazardous waste or radioactive waste into a formation that contains an underground source of drinking water within 402 meters (one-quarter mile) of the well.

- 2) A well used by a generator of hazardous waste or of radioactive waste, by an owner or operator of a hazardous waste management facility, or by an owner or operator of a radioactive waste disposal site to dispose of hazardous waste or radioactive waste above a formation that contains an underground source of drinking water within 402 meters (one-quarter mile) of the well.
- 3) A well used by a generator of hazardous waste or an owner or operator of a hazardous waste management facility to dispose of hazardous waste that cannot be classified pursuant to subsection (a)(1), (d)(1), or (d)(2) of this Section (e.g., wells used to dispose of hazardous wastes into or above a formation that contains an aquifer that has been exempted pursuant to Section 730.104).

e) Class V injection wells. A Class V injection well is any not included in Class I, Class II, Class III, ~~or Class IV~~, or Class VI. Specific types of Class V injection wells include the following:

- 1) Air conditioning return flow wells used to return the water used in a heat pump for heating or cooling to the supply aquifer;
- 2) Cesspools, including multiple dwelling, community, or regional cesspools, or other devices that receive wastes that have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools or to non-residential cesspools that receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day;
- 3) Cooling water return flow wells used to inject water previously used for cooling;
- 4) Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

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- 5) Dry wells used for the injection of wastes into a subsurface formation;
- 6) Recharge wells used to replenish the water in an aquifer;
- 7) Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- 8) Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines whether what is injected is a radioactive waste or not;
- 9) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, or to nonresidential septic system wells that are used solely for the disposal of sanitary waste and which have the capacity to serve fewer than 20 persons a day;
- 10) Subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;
- 11) Radioactive waste disposal wells other than Class IV injection wells;
- 12) Injection wells associated with the recovery of geothermal energy for heating, aquaculture, or production of electric power;
- 13) Wells used for solution mining of conventional mines such as stopes leaching;
- 14) Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts; and
- 15) Injection wells used in experimental technologies.

f) Class VI injection wells. A Class VI injection well is any of the following:

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- 1) An injection well that is not experimental in nature and that is used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;
- 2) An injection well that is used for geologic sequestration of carbon dioxide and that has been granted a permit that includes alternative injection well depth requirements pursuant to Section 730.195; or
- 3) An injection well that is used for geologic sequestration of carbon dioxide and that has received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 730.104 and 35 Ill. Adm. Code 704.123(d).

BOARD NOTE: Derived from 40 CFR 146.5 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART C: CRITERIA AND STANDARDS APPLICABLE
TO CLASS II INJECTION WELLS

**Section 730.121 Adoption of Criteria and Standards Applicable to Class II Injection Wells
by the Illinois Department of Natural Resources, Office of Mines and Minerals**

The criteria and standards for Class II injection wells will be adopted by the Illinois Department of Natural Resources, Office of Mines and Minerals pursuant to Section 1425 of the SDWA (42 USC 300h-4).

BOARD NOTE: This Section corresponds with subpart C of 40 CFR 146 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART G: CRITERIA AND STANDARDS APPLICABLE TO
CLASS I HAZARDOUS WASTE INJECTION WELLS

Section 730.172 Post-Closure Care

- a) The owner or operator of a Class I hazardous waste injection well must prepare,

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maintain, and comply with a plan for post-closure care that meets the requirements of subsection (b) of this Section and is specified by permit condition. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

- 1) The owner or operator must submit the plan as a part of the permit application and, upon approval by the Agency, such plan must be a condition of any permit issued.
- 2) The owner or operator must submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required pursuant to Section 730.171(c).
- 3) The plan must assure financial responsibility, as required in Section 730.173.
- 4) The plan must include the following information:
 - A) The pressure in the injection zone before injection began;
 - B) The anticipated pressure in the injection zone at the time of closure;
 - C) The predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW;
 - D) The predicted position of the waste front at closure;
 - E) The status of any cleanups required pursuant to Section 730.164; and
 - F) The estimated cost of proposed post-closure care.
- 5) At the request of the owner or operator, or on its own initiative, the Agency may modify the post-closure plan after submission of the closure report following the procedures in 35 Ill. Adm. Code 705.128.

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- b) The owner or operator must undertake each of the following activities:
- 1) It must continue and complete any cleanup action required pursuant to Section 730.164, if applicable;
 - 2) It must continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Agency must extend the period of post-closure monitoring if it determines in writing that the well may endanger a USDW;
 - 3) It must submit a survey plat to the local zoning authority designated by permit condition. The plat must indicate the location of the well relative to permanently surveyed benchmarks. A copy of the plat must be submitted to USEPA, Region 5;
 - 4) It must notify the Illinois Department of Natural Resources, Office of Mines and Minerals, the State Department of Public Health, and any unit of local government authorized to grant permits under the Water Well Construction Code [415 ILCS 30] in the area where the well is located as to the depth and location of the well and the confining zone; and
 - 5) It must retain, for a period of three years following well closure, records reflecting the nature, composition, and volume of all injected fluids. Owners or operators must deliver the records to the Agency at the conclusion of the retention period.
- c) Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument that is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:
- 1) The fact that land has been used to manage hazardous waste;
 - 2) The names of the Illinois Department of [Natural Resources, Office of Mines and Minerals](#) and the local zoning authority with which the plat was

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filed, as well as the address of USEPA Region 5; and

- 3) The type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.
- d) In addition to the requirements stated in this Section, each owner of a Class I hazardous waste injection well must comply with any other State or federal law or local ordinance that requires the reporting of any potential environmental or physical impairment of real property to subsequent or prospective owners.

BOARD NOTE: The Responsible Property Transfer Act of 1988 [765 ILCS 90] (RPTA) formerly required the disclosure and recordation of any environmental impairment of real property in Illinois. The General Assembly repealed that statute in P.A. 92-299, Section 5, effective August 9, 2001. Section 10 of that repeal provided for continued maintenance of documents prepared and recorded under RPTA prior to its repeal.

BOARD NOTE: Derived from 40 CFR 146.72 (2010), as amended at 75 Fed. Reg. 77303 (Dec. 10, 2010)(2005).

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART H: CRITERIA AND STANDARDS APPLICABLE TO CLASS VI WELLS

Section 730.181 Applicability

- a) This Subpart H establishes criteria and standards for Class VI carbon dioxide geologic sequestration injection wells.
- b) This Subpart H applies to any injection well that is used to inject carbon dioxide specifically for the purpose of geologic sequestration.
- c) This Subpart H also applies to the owner or operator of a permit- or rule-authorized Class I, Class II or Class V experimental carbon dioxide injection well that seeks to apply for a Class VI geologic sequestration permit for its well. An owner or operator that seeks to convert an existing Class I, Class II or Class V experimental injection well to a Class VI geologic sequestration well must demonstrate to the Agency that the well was engineered and constructed to meet the requirements of Section 146.86(a) and to ensure protection of USDWs, in lieu

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of requirements at Sections 146.86(b) and 146.87(a). By December 10, 2011, the owner or operator of either a Class I injection well that was previously permitted for the purpose of geologic sequestration or a Class V experimental technology injection well that is no longer being used for experimental purposes and that will continue injection of carbon dioxide for the purpose of geologic sequestration must apply for a Class VI permit. A converted well must still meet all other requirements of this Part.

- d) Definitions. The following definitions apply to this Subpart H. To the extent that these definitions conflict with those that appear in 35 Ill. Adm. Code 702.110 or Section 730.103, the definitions of this Section govern for Class VI wells:

"Area of review" means the region surrounding the geologic sequestration project where a USDW may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and displaced fluids, and is based on available site characterization, monitoring and operational data, as set forth in Section 730.184.

"Carbon dioxide plume" means the sub-surface three-dimensional extent underground of an injected carbon dioxide stream.

"Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This Subpart H does not apply to any carbon dioxide stream that meets the definition of a hazardous waste in 35 Ill. Adm. Code 721.103.

"Confining zone" means a geologic formation, a group of formations or a part of a formation that stratigraphically overlies an injection zone and that acts as barrier to fluid movement. For a Class VI injection well that is operating under a permit that includes alternative injection well depth requirements, "confining zone" means a geologic formation, a group of formations or a part of a formation that stratigraphically overlies and underlies the injection zone.

"Corrective action" means the use of Agency-approved methods to ensure that wells within an area of review do not serve as conduits for the movement of fluids into a USDW.

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"Geologic sequestration" means the long-term containment of a gaseous, liquid or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.

"Geologic sequestration project" means any of the following three types of injection wells:

An injection well or wells that are used to emplace a carbon dioxide stream beneath the lowermost formation containing a USDW;

An injection well or wells that are used for geologic sequestration of carbon dioxide and that have been granted a permit that includes alternative injection well depth requirements pursuant to requirements at Section 730.195; or

An injection well or wells that are used for geologic sequestration of carbon dioxide and that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 730.104 and 35 Ill. Adm. Code 704.123(d).

A geologic sequestration project includes the subsurface three-dimensional extent of the carbon dioxide plume, the associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region.

"Injection zone" means a geologic formation, a group of formations or a part of a formation that is of sufficient areal extent, thickness, porosity and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.

"Post-injection site care" means appropriate monitoring and other actions (including corrective action) needed following cessation of injection to ensure that no USDW is endangered, as required under Section 730.193.

"Pressure front" means the zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For the purposes of this Subpart H, the pressure front of a carbon dioxide plume refers to a zone where there is a

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pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.

"Site closure" means the point or time, as determined by the Agency pursuant to Section 730.193, at which the owner or operator of a geologic sequestration site is released from post-injection site care responsibilities.

"Transmissive fault or fracture" means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

BOARD NOTE: This Section corresponds with 40 CFR 146.81, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.182 Required Class VI Injection Well Permit Information

This Section sets forth the information that the Agency must consider when authorizing a Class VI injection well. For a converted Class I, Class II or Class V experimental injection well, certain maps, cross-sections and tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Agency and sufficiently identified as to be retrieved. In cases where USEPA issues the permit, all the information in this Section must be submitted to the USEPA, Region 5.

- a) Prior to the issuance of a permit for the construction of a new Class VI injection well or the conversion of an existing Class I, Class II or Class V injection well to a Class VI injection well, the owner or operator must submit, pursuant to Section 730.191(e), and the Agency must consider, the following:
- 1) The information required by 35 Ill. Adm. Code 702.123(a) through (f);
 - 2) A map showing the injection well for which a permit is sought and the applicable area of review consistent with Section 730.184. Within the area of review, the map must show the number or name and location of all injection wells, producing wells, abandoned wells, plugged wells or dry holes; deep stratigraphic boreholes; Agency- or USEPA-approved subsurface cleanup sites; surface bodies of water, springs, mines (surface and subsurface), quarries and water wells; and other pertinent surface features, including structures intended for human occupancy, state

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boundaries and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

- 3) Information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, including the following documents and information:
 - A) Maps and cross sections of the area of review;
 - B) The location, orientation and properties of known or suspected faults and fractures that may transect the confining zones in the area of review and a determination that the faults and fractures would not interfere with containment;
 - C) Data on the depth, areal extent, thickness, mineralogy, porosity, permeability and capillary pressure of the injection and confining zones; including geology and facies changes based on field data, which may include geologic cores, outcrop data, seismic surveys, well logs and names and lithologic descriptions;
 - D) Geomechanical information on fractures, stress, ductility, rock strength and in situ fluid pressures within the confining zones;
 - E) Information on the seismic history that includes the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment; and
 - F) Geologic and topographic maps and cross sections that illustrate regional geology, hydrogeology and the geologic structure of the local area;
- 4) A tabulation of all wells within the area of review that penetrate the injection or confining zones. This data must include a description of each well's type, construction, date drilled, location, depth, applicable records of plugging and completion, and any additional information that the Agency may require to evaluate the request for a permit;

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- 5) Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all USDWs, water wells and springs within the area of review, their positions relative to the injection zones, and the direction of water movement, where known;
- 6) Baseline geochemical data on subsurface formations that includes all USDWs in the area of review;
- 7) Proposed operating data for the proposed geologic sequestration site that includes that following items of information:
 - A) The average and maximum daily rate and volume or mass and the total anticipated volume or mass of the carbon dioxide stream;
 - B) The average and maximum injection pressures;
 - C) The sources of the carbon dioxide stream; and
 - D) An analysis of the chemical and physical characteristics of the carbon dioxide stream;
- 8) A proposed program for pre-operational formation testing that fulfills the requirements of Section 730.187 to obtain an analysis of the chemical and physical characteristics of the injection zones and confining zones;
- 9) A proposed stimulation program, a description of stimulation fluids to be used, and a determination that stimulation will not interfere with containment;
- 10) A proposed procedure to outline steps necessary to conduct injection operation;
- 11) Schematics or other appropriate drawings of the surface and subsurface construction details of the well;
- 12) Injection well construction procedures that fulfill the requirements of Section 730.186;

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- 13) A proposed area of review and corrective action plan that fulfills the requirements of Section 730.184;
 - 14) A demonstration that is sufficient to support an Agency determination that the applicant has met the financial responsibility requirements under Section 730.185;
 - 15) A proposed testing and monitoring plan, as required by Section 730.190;
 - 16) A proposed injection well plugging plan, as required by Section 730.192(b);
 - 17) A proposed post-injection site care and site closure plan, as required by Section 730.193(a);
 - 18) At the Agency's discretion, a demonstration of an alternative post-injection site care timeframe, as required by Section 730.193(c);
 - 19) A proposed emergency and remedial response plan, as required by Section 730.194(a);
 - 20) A list of contacts, submitted to the Agency, for those states identified to be within the area of review of the Class VI project based on information provided pursuant to subsection (a)(2) of this Section; and
 - 21) Any other information requested by the Agency that would support an Agency determination whether to issue the requested permit.
- b) Pursuant to this Section, and as required by 40 CFR 145.23(f)(13), the Agency must notify any states that the Agency determines are within the area of review of the Class VI project based on information submitted pursuant to subsections (a)(2) and (a)(20) of this Section of the permit application in writing.
- c) Prior to granting a permit for the operation of a Class VI injection well, the Agency must consider the following information:
- 1) The final area of review based on modeling using data obtained during the logging and testing of the well and the formation required by subsections (c)(2), (c)(3), (c)(4), (c)(6), (c)(7) and (c)(10) of this Section;

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- 2) Any relevant updates to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted pursuant to subsection (a)(3) of this Section, based on data obtained during the logging and testing of the well and the formation required by subsections (c)(3), (c)(4), (c)(6), (c)(7) and (c)(10) of this Section;
- 3) Information on the compatibility of the carbon dioxide stream with fluids in the injection zones and minerals in both the injection and the confining zones, based on the results of the formation testing program, and with the materials used to construct the well;
- 4) The results of the formation testing program required by subsection (a)(8) of this Section;
- 5) Final injection well construction procedures that fulfill the requirements of Section 730.186;
- 6) The status of any corrective action on wells in the area of review;
- 7) All available logging and testing program data on the well required by Section 730.187;
- 8) A demonstration of mechanical integrity pursuant to Section 730.189;
- 9) Any updates to the proposed area of review and corrective action plan, the testing and monitoring plan, the injection well plugging plan, the post-injection site care and site closure plan, or the emergency and remedial response plan that the applicant has submitted pursuant to subsection (a) of this Section that are necessary to address new information collected during logging and testing of the well and the formation, as required by this Section, and any updates to the alternative post-injection site care timeframe demonstration submitted pursuant to subsection (a) of this Section, that are necessary to address new information collected during the logging and testing of the well and the formation as required by this Section; and
- 10) Any other information requested by the Agency.

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- d) An owner or operator that seeks a permit that includes alternative injection well depth requirements to the generally applicable requirement to inject below the lowermost USDW must also refer to Section 730.195 and submit a supplemental report, as required at Section 730.195(a). The supplemental report is not part of the permit application.

BOARD NOTE: This Section corresponds with 40 CFR 146.82, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.183 Minimum Criteria for Siting

- a) The owner or operator of a Class VI injection well must sufficiently demonstrate to support an Agency determination that the wells will be sited in areas with a suitable geologic system. The owner or operator must sufficiently demonstrate that the geologic system comprises both of the following elements:
- 1) An injection zone of sufficient areal extent, thickness, porosity and permeability to receive the total anticipated volume of the carbon dioxide stream; and
 - 2) Confining zones free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected carbon dioxide stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without initiating or propagating fractures in the confining zones.
- b) The Agency may require the owner or operator of a Class VI injection well to identify and characterize additional zones that will impede vertical fluid movement; that are free of faults and fractures that may interfere with containment; that allow for pressure dissipation; and that provide additional opportunities for monitoring, mitigation and remediation.

BOARD NOTE: This Section corresponds with 40 CFR 146.83, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 730.184 Area of Review and Corrective Action

- a) The area of review is the region surrounding the geologic sequestration project when injection activity may endanger a USDW. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and that is based on available site characterization, monitoring and operational data.
- b) The owner or operator of a Class VI injection well must prepare, maintain and comply with a plan to delineate the area of review for a proposed geologic sequestration project; must periodically reevaluate the delineation; and must perform corrective action that meets the requirements of this Section and that is sufficient to support an Agency determination that the corrective action is acceptable. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the permit application to the Agency, the owner or operator must submit an area of review and corrective action plan that includes the following information:
- 1) The method that the owner or operator will use for delineating the area of review that meets the requirements of subsection (c) of this Section, including the model that the owner or operator will use, assumptions that the owner or operator will make, and the site characterization data on which the owner or operator will base the model;
- 2) A description of each of the following:
- A) The minimum fixed frequency, not to exceed five years, at which the owner or operator proposes to reevaluate the area of review;
- B) The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation as determined by the minimum fixed frequency established pursuant to subsection (b)(2)(A) of this Section;
- C) How monitoring and operational data (e.g., injection rate, pressure, etc.) will be used to inform an area of review reevaluation; and

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- D) How the owner or operator will conduct corrective action to meet the requirements of subsection (d) of this Section, including the following information:
- i) What corrective action the owner or operator will perform prior to injection;
 - ii) What, if any, portions of the area of review the owner or operator will address with corrective action on a phased basis and how that phasing will be determined;
 - iii) How the owner or operator will adjust corrective action if there are changes in the area of review; and
 - iv) How the owner or operator will guarantee site access for future corrective action.
- c) The owner or operator of a Class VI injection well must perform the following actions to delineate the area of review and identify all wells that require corrective action:
- 1) The owner or operator must predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and formation fluids in the subsurface from the commencement of injection activities until the plume movement ceases, until pressure differentials sufficient to cause the movement of injected fluids or formation fluids into a USDW are no longer present, or until the end of a fixed time period determined by the Agency. The model must fulfill the following requirements:
 - A) The model must be based on detailed geologic data collected to characterize the injection zones, confining zones and any additional zones; and anticipated operating data, including injection pressures, rates and total volumes over the proposed life of the geologic sequestration project;

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- B) The model must take into account any geologic heterogeneities, other discontinuities, data quality and their possible impact on model predictions; and
 - C) The model must consider potential migration through faults, fractures and artificial penetrations.
- 2) Using methods approved by the Agency, the owner or operator must identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zones and must provide a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Agency may require; and
 - 3) The owner or operator must determine which abandoned wells in the area of review have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs, including use of materials compatible with the carbon dioxide stream.
- d) The owner or operator of a Class VI injection well must perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between USDWs, including use of materials compatible with the carbon dioxide stream, where appropriate.
 - e) At the minimum fixed frequency, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, the owner or operator of a Class VI injection well must fulfill each of the following requirements:
 - 1) The owner or operator must reevaluate the area of review in the same manner specified in subsection (c)(1) of this Section;
 - 2) The owner or operator must identify all wells in the reevaluated area of review that require corrective action in the same manner specified in subsection (c) of this Section;

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- 3) The owner or operator must perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in subsection (d) of this Section; and
- 4) The owner or operator must submit an amended area of review and corrective action plan or demonstrate through monitoring data and modeling results sufficiently to support an Agency finding that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Agency, must be incorporated into the permit, and are subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.262 or 704.264, as appropriate.
- f) The emergency and remedial response plan (as required by Section 730.194) and the demonstration of financial responsibility (as described by Section 730.185) must account for the area of review delineated as specified in subsection (c)(1) of this Section or the most recently evaluated area of review delineated pursuant to subsection (e) of this Section, regardless of whether corrective action in the area of review is phased.
- g) The owner or operator must retain all modeling inputs and data used to support area of review reevaluations under subsection (e) of this Section for 10 years.

BOARD NOTE: This Section corresponds with 40 CFR 146.84, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.185 Financial Responsibility

- a) The owner or operator of an injection well to which this Subpart H applies must demonstrate and maintain financial responsibility that the Agency has determined fulfills the following conditions:
- 1) The financial responsibility instruments used must be from the following list of qualifying instruments:
- A) A trust fund;

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- B) A surety bond;
 - C) A letter of credit;
 - D) Insurance;
 - E) Self insurance (i.e., the financial test and corporate guarantee);
 - F) An escrow account;
 - G) Any other instruments that the Agency determines are satisfactory.
- 2) The qualifying instruments must be sufficient to cover the following costs:
- A) The costs of corrective action (that meets the requirements of Section 730.184);
 - B) The costs of injection well plugging (that meets the requirements of Section 730.192);
 - C) The costs of post-injection site care and site closure (that meets the requirements of Section 730.193); and
 - D) The costs of emergency and remedial response (that meets the requirements of Section 730.194).
- 3) The financial responsibility instruments must be sufficient to address endangerment of underground sources of drinking water.
- 4) The qualifying financial responsibility instruments must comprise protective conditions of coverage.
- A) Protective conditions of coverage must include, at a minimum, cancellation, renewal and continuation provisions; specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and have the ability to pass the bond rating when applicable.

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- i) Cancellation. For purposes of this Subpart H, the owner or operator must provide that its financial mechanism may not cancel, terminate or fail to renew, except for failure to pay the financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Agency. The cancellation must not be final for 120 days after receipt of cancellation notice by the owner or operator and the Agency. The owner or operator must provide an alternative financial responsibility demonstration within 60 days after notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days after notification by the Agency.
- ii) Renewal. For purposes of this Subpart H, an owner or operator must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed, as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of an instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.
- iii) Cancellation, termination or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that any of the following occurs on or before the date of expiration: the Agency deems the facility abandoned; or the permit is revoked or a new permit is denied; closure is ordered by the Agency or a court of competent jurisdiction; the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11 of the United States Code; or the amount due on the instrument is fully paid.

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- B) This subsection (a)(4)(B) would correspond with 40 CFR 706.85(a)(4)(ii) if such existed. USEPA codified a paragraph (a)(4)(i) without a paragraph (a)(4)(ii). Illinois codification requirements do not allow codification of a subsection level unless multiple subsections exist at that level. This statement maintains structural consistency with the corresponding federal rules.
- 5) The qualifying financial responsibility instruments must be approved by the Agency.
- A) The Agency must consider and approve the financial responsibility demonstration for all the phases of the geologic sequestration project prior to issuing a Class VI injection well permit (Section 730.182).
- B) The owner or operator must provide any updated information related to their financial responsibility instruments on an annual basis and if there are any changes, the Agency must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instruments used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Agency's review of the financial responsibility demonstration.
- C) The Agency must disapprove the use of a financial instrument if the Agency determines that it is not sufficient to meet the requirements of this Section.
- 6) The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.
- A) In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase (e.g., well plugging), such combination must be limited to instruments that are not based on financial strength or performance (i.e., self insurance or performance bond), for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account and insurance. In this case, it is the combination of

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mechanisms, rather than the single mechanism, that must provide financial responsibility for an amount at least equal to the current cost estimate.

- B) When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party provider fulfills either of the following:
- i) The provider must have passed financial strength requirements of subsection (b)(6)(E) of this Section based on credit ratings; or
 - ii) The provider must have met a minimum rating, minimum capitalization, and have the ability to pass the bond rating set forth in subsection (b)(6)(E) of this Section, when applicable.
- C) An owner or operator using certain types of third-party instruments must establish a standby trust fund to enable the Agency to be party to the financial responsibility agreement without the Agency being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.
- D) An owner or operator may deposit money to an escrow account to cover financial responsibility requirements. This account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.
- E) An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects if the owner or operator or its guarantor fulfill the following requirements:
- i) The owner or operator or its guarantor must meet a tangible net worth of an amount approved by the Agency;

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- ii) The owner or operator or its guarantor must have a net working capital and tangible net worth each at least six times the sum of the current well plugging, post-injection site care and site closure cost;
 - iii) The owner or operator or its guarantor must have 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 well plugging, post-injection site care and site closure cost;
 - iv) The owner or operator or its guarantor must submit a report of its bond rating and financial information annually; and
 - v) The owner or operator or its guarantor must either have a bond rating test of AAA, AA, A, or BBB, as issued by Standard & Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's, or meet all of the following five financial ratio thresholds: a ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; a ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.
- F) An owner or operator that is not able to meet the corporate financial test criteria of subsection (a)(6)(E) of this Section may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The corporate parent's demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.
- G) An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities that require financial responsibility. This insurance policy must be obtained from a third-party provider.

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- b) The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.
- 1) The owner or operator must maintain financial responsibility and resources until both of the following events have occurred:
- A) The Agency has received and approved the completed post-injection site care and site closure plan; and
- B) The Agency has approved site closure.
- 2) The owner or operator may be released from a financial instrument in the following circumstances:
- A) The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required, and the owner or operator has fulfilled all of its financial obligations, as determined by the Agency, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required; or
- B) The owner or operator has submitted a replacement financial instrument, and the owner or operator has received written approval from the Agency that accepts the new financial instrument and that releases the owner or operator from the previous financial assurance instrument.
- c) The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection wells, post-injection site care, site closure and emergency and remedial response.
- 1) The cost estimate must be performed for each phase separately, and the cost estimate must be based on the costs to the Agency of hiring a third-party to perform the required activities. A third-party is a party who is not within the corporate structure of the owner or operator.

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- 2) During the active life of the geologic sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with subsection (a) of this Section, and the owner or operator must provide this adjustment to the Agency. The owner or operator must also provide to the Agency written updates of adjustments to the cost estimate within 60 days after any amendments to the area of review and corrective action plan (Section 730.184), the injection well plugging plan (Section 730.192), the post-injection site care and site closure plan (Section 730.193), and the emergency and remedial response plan (Section 730.194).
- 3) The Agency must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after any of the following events has occurred: the Agency has approved the request to modify the area of review and corrective action plan (Section 730.184), the Agency has approved the injection well plugging plan (Section 730.192), the Agency has approved the post-injection site care and site closure plan (Section 730.193), or the Agency has approved the emergency and response plan (Section 730.194), if the change in the plan increases the cost. If the change to the plan decreases the cost, any withdrawal of funds must be approved by the Agency. Any decrease to the value of the financial assurance instrument must first be approved by the Agency. The revised cost estimate must be adjusted for inflation as specified at subsection (c)(2) of this Section.
- 4) Within 60 days after an increase in the current cost estimate to an amount greater than the face amount of a financial instrument currently in use, the owner or operator must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the owner or operator may reduce the face amount of the financial assurance instrument to the amount of the current cost estimate only in accordance with a written approval from the Agency.

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- d) The owner or operator must notify the Agency by certified mail of adverse financial conditions, such as bankruptcy, that may affect the ability to carry out injection well plugging and post-injection site care and site closure.
- 1) In the event that the owner or operator or the third-party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the Agency of the proceeding by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code that names the owner or operator as debtor.
 - 2) The guarantor of a corporate guarantee must make the notification to the Agency required by this subsection (d) if the guarantor is named as debtor, as required under the terms of the corporate guarantee.
 - 3) An owner or operator who fulfills the requirements of subsection (a) of this Section by obtaining a trust fund, surety bond, letter of credit, escrow account or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the pertinent financial assurance instrument. The owner or operator must establish other financial assurance within 60 days after such an event.
- e) The owner or operator must provide an adjustment of the cost estimate to the Agency within 60 days after notification of an Agency determination during the annual evaluation of the qualifying financial responsibility instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action (as required by Section 730.184), injection well plugging (as required by Section 730.192), post-injection site care and site closure (as required by Section 730.193), and emergency and remedial response (as required by Section 730.194).
- f) The Agency must approve the use and length of pay-in-periods for trust funds or escrow accounts.

BOARD NOTE: This Section corresponds with 40 CFR 146.85, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 730.186 Injection Well Construction Requirements

- a) General. The owner or operator must ensure that its Class VI injection wells are constructed and completed to fulfill the following requirements:
- 1) The well construction and completion must prevent the movement of fluids into or between USDWs or into any unauthorized zone;
 - 2) The well construction and completion must permit the use of appropriate testing devices and workover tools; and
 - 3) The well construction and completion must permit continuous monitoring of the annulus space between the injection tubing and long-string casing.
- b) Casing and cementing of Class VI injection wells.
- 1) The casing, cement and other materials used in the construction of each Class VI injection well must have sufficient structural strength and be designed to last for the life of the geologic sequestration project. All well materials must be compatible with fluids with which the materials may be expected to come into contact, and the owner or operator must submit sufficient documentation to the Agency to support a determination that the casing, cement and other materials meet or exceed standards developed for these materials by the American Petroleum Institute, ASTM International, or a comparable industry standards organization. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs. In order to allow the Agency to determine and specify casing and cementing requirements, the owner or operator must provide the following information to the Agency:
 - A) The depth to the injection zones;
 - B) The injection pressure, external pressure, internal pressure and axial loading;
 - C) The hole size;

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- D) The size and grade of all casing strings (the wall thickness, external diameter, nominal weight, length, joint specification, and construction material);
 - E) The corrosiveness of the carbon dioxide stream and formation fluids;
 - F) The down-hole temperatures;
 - G) The lithology of the injection and confining zones;
 - H) The type or grade of cement and cement additives; and
 - D) The quantity, chemical composition and temperature of the carbon dioxide stream.
- 2) The surface casing must extend through the base of the lowermost USDW and be cemented to the surface through the use of a single or multiple strings of casing and cement.
 - 3) At least one long-string casing, using a sufficient number of centralizers, must extend to the injection zone and must be cemented by circulating cement to the surface in one or more stages.
 - 4) The circulation of cement may be accomplished by staging. The Agency must approve an alternative method of cementing when it determines that the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate, by using logs, that the cement does not allow fluid movement behind the well bore.
 - 5) The cement and cement additives must be compatible with the carbon dioxide stream and formation fluids and of sufficient quality and quantity to maintain integrity over the design life of the geologic sequestration project. The integrity and location of the cement must be verified that it uses technology capable of evaluating cement quality radially and that identifies the location of channels to ensure that USDWs are not endangered.
- c) Tubing and packer.

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- 1) The tubing and packer materials used in the construction of a Class VI injection well must be compatible with fluids with which the materials may be expected to come into contact, and the owner or operator must submit sufficient documentation to the Agency to support a determination that the tubing and packer meet or exceed standards developed for these materials by the American Petroleum Institute, ASTM International, or a comparable industry standards organization.
- 2) The owner or operator of a Class VI injection well must inject fluids through tubing with a packer set at a depth opposite a cemented interval at the location approved by the Agency.
- 3) In order for the Agency to determine and specify requirements for tubing and packer, the owner or operator must submit the following information to the Agency:
 - A) The depth of setting;
 - B) The characteristics of the carbon dioxide stream (the chemical content, corrosiveness, temperature and density) and formation fluids;
 - C) The maximum proposed injection pressure;
 - D) The maximum proposed annular pressure;
 - E) The proposed injection rate (intermittent or continuous) and the volume or mass of the carbon dioxide stream;
 - F) The size of the tubing and casing; and
 - G) The tubing tensile, burst and collapse strengths.

BOARD NOTE: This Section corresponds with 40 CFR 146.86, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

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Section 730.187 Logging, Sampling and Testing Prior to Injection Well Operation

- a) During the drilling and construction of a Class VI injection well, the owner or operator must run appropriate logs, surveys and tests to determine or verify the depth, thickness, porosity, permeability and lithology of all relevant geologic formations and the salinity of any formation fluids in those formations, to ensure conformance with the injection well construction requirements under Section 730.186 and to establish accurate baseline data against which future measurements may be compared. The owner or operator must submit to the Agency a descriptive report prepared by a knowledgeable log analyst that includes an interpretation of the results of the logs and tests. At a minimum, the logs and tests must include the following information items:
- 1) Deviation checks made during drilling on all holes constructed by drilling a pilot hole that is enlarged by reaming or another method. These checks must be at sufficiently frequent intervals to determine the location of the borehole and to ensure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling;
 - 2) Before and upon installation of the surface casing, the following:
 - A) The resistivity, spontaneous potential and caliper logs before the casing is installed; and
 - B) A cement bond and variable density log, to evaluate cement quality radially, and a temperature log after the casing is set and cemented;
 - 3) Before and upon installation of the long-string casing, the following:
 - A) The resistivity, spontaneous potential, porosity, caliper, gamma ray, fracture finder logs and any other logs the Agency requires for the given geology before the casing is installed; and
 - B) A cement bond and variable density log and a temperature log, after the casing is set and cemented;
 - 4) A series of tests designed to demonstrate the internal and external mechanical integrity of injection wells, which may include the following:

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- A) A pressure test with liquid or gas;
 - B) A tracer survey, such as oxygen-activation logging;
 - C) A temperature or noise log; and
 - D) A casing inspection log; and
 - 5) Any alternative methods that provide equivalent or better information and that are required by or approved of by the Agency.
- b) The owner or operator must take whole cores or sidewall cores of the injection zone and confining system and formation fluid samples from all injection zones, and the owner or operator must submit a detailed report prepared by a log analyst to the Agency that includes the following information: well log analyses (including well logs), core analyses and formation fluid sample information. The Agency must accept information on cores from nearby wells if the Agency determines that the owner or operator has demonstrated that core retrieval is not possible and the cores are representative of conditions at the well. The Agency must require the owner or operator to core other formations in the borehole if the Agency determines that coring those other formations is necessary for evaluation of the well project.
- c) The owner or operator must record the fluid temperature, pH, conductivity, reservoir pressure and static fluid level of each injection zone.
- d) At a minimum, the owner or operator must determine or calculate the following information concerning the injection and confining zones:
- 1) The fracture pressure;
 - 2) Other physical and chemical characteristics of the injection and confining zones; and
 - 3) The physical and chemical characteristics of the formation fluids in each injection zone.
- e) Upon completion, but prior to operation, the owner or operator must conduct the following tests to verify hydrogeologic characteristics of each injection zone:

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- 1) A pressure fall-off test and a pump test; or
- 2) A pressure fall-off test and injectivity tests.
- f) The owner or operator must provide the Agency with the opportunity to witness all logging and testing by this Subpart H. The owner or operator must submit a schedule of these activities to the Agency no later than 30 days prior to conducting the first test, and the owner or operator must submit any changes to the schedule to the Agency no later than 30 days prior to the next scheduled test.

BOARD NOTE: This Section corresponds with 40 CFR 146.87, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.188 Injection Well Operating Requirements

- a) Except during injection well stimulation, the owner or operator must ensure that injection pressure does not exceed 90 percent of the fracture pressure of the injection zones, so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zones. In no case may injection pressure initiate fractures in the confining zones or cause the movement of injection or formation fluids that endangers a USDW. Pursuant to the requirements of Section 730.182(a)(9), all stimulation programs must be approved by the Agency as part of the permit application and incorporated into the permit.
- b) Injection between the outermost casing that protects any USDW and the well bore is prohibited.
- c) The owner or operator must fill the annulus between the tubing and the long-string casing with a non-corrosive fluid approved by the Agency. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the Agency determines that such a requirement might harm the integrity of the well or endanger any USDW.
- d) Other than during periods of well workover (maintenance) approved by the Agency in which the sealed tubing-casing annulus is disassembled for

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maintenance or corrective procedures, the owner or operator must maintain mechanical integrity of the injection well at all times.

- e) The owner or operator must install and use the equipment indicated in subsection (e)(1) of this Section and the appropriate of subsection (e)(2) or (e)(3) of this Section:
- 1) Continuous recording devices that monitor each of the following parameters:
 - A) The carbon dioxide injection pressure;
 - B) The rate, volume or mass, and temperature of the carbon dioxide stream;
 - C) The pressure on the annulus between the tubing and the long-string casing; and
 - D) The annulus fluid volume.
 - 2) For onshore wells, alarms and automatic surface shut-off systems or, at the discretion of the Agency, down-hole shut-off systems (e.g., automatic shut-off valves, check valves, etc.) or other mechanical devices that provide equivalent protection.
 - 3) For wells located offshore but within State territorial waters, alarms and automatic down-hole shut-off systems designed to alert the operator and shut-in the well when operating parameters, such as annulus pressure, injection rate or other parameters, diverge beyond permitted ranges or gradients specified in the permit.
- f) If a shutdown is triggered (down-hole or at the surface), or if a loss of mechanical integrity is discovered, the owner or operator must immediately investigate and identify the cause of the shutoff as expeditiously as possible. If, upon that investigation, or if monitoring required under subsection (e) of this Section otherwise indicates that the well may be lacking mechanical integrity, the well appears to be lacking mechanical integrity, the owner or operator must undertake each of the following actions:

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- 1) The owner or operator must immediately cease injection;
- 2) The owner or operator must take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;
- 3) The owner or operator must notify the Agency of the event within 24 hours;
- 4) The owner or operator must restore and demonstrate the mechanical integrity of the well to the satisfaction of the Agency prior to resuming injection; and
- 5) The owner or operator must notify the Agency when injection can be expected to resume.

BOARD NOTE: This Section corresponds with 40 CFR 146.88, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.189 Mechanical Integrity

- a) A Class VI injection well has mechanical integrity if both of the following conditions exist:
 - 1) There is no significant leak in the casing, tubing or packer; and
 - 2) There is no significant fluid movement into a USDW through channels adjacent to the injection well bore.
- b) To evaluate the absence of significant leaks under subsection (a)(1) of this Section, the owner or operator must, following an initial annulus pressure test, continuously monitor each of the following parameters:
 - 1) The injection pressure, rate and injected volumes;
 - 2) The pressure on the annulus between the tubing and the long-string casing; and

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- 3) The annulus fluid volume, as specified in Section 730.188(e);
- c) At least once per year, the owner or operator must use one of the following methods to determine the absence of significant fluid movement under subsection (a)(2) of this Section:
- 1) An approved tracer survey, such as an oxygen-activation log; or
- 2) A temperature or noise log.
- d) If required by the Agency, at a frequency specified in the testing and monitoring plan required by Section 730.190, the owner or operator must run a casing inspection log to determine the presence or absence of corrosion in the long-string casing.
- e) The Agency must require any requested alternative test that the Agency has determined is necessary to evaluate mechanical integrity under subsections (a)(1) or (a)(2) of this Section after obtaining the written approval of USEPA.

BOARD NOTE: Corresponding 40 CFR 146.89(e) provides that the Agency must submit a written request to USEPA setting forth the proposed test and all technical data supporting its use to obtain approval for a new mechanical integrity test. USEPA stated that it will approve the request if USEPA determines that the proposed test will reliably demonstrate the mechanical integrity of wells for which its use was proposed. USEPA stated that it will publish any alternative method that USEPA has approved in the Federal Register, and the Agency must approve use of the published method if the Agency has determined that the method is appropriate to evaluate mechanical integrity, unless USEPA restricts its use at the time of approval by USEPA.

- f) In conducting and evaluating the tests enumerated in this Section or others that the Agency has required by permit, the owner or operator and the Agency must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Agency, the owner or operator must include a description of the tests and the methods used. In making its evaluation, the Agency must review monitoring and other test data submitted since the previous evaluation.

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- g) The Agency must require additional or alternative tests if the Agency determines that the results presented by the owner or operator pursuant to subsections (a) through (d) of this Section are not satisfactory to demonstrate that there is no significant leak in the casing, tubing, or packer or that there is no significant movement of fluid into a USDW resulting from the injection activity, as required by subsections (a)(1) and (a)(2) of this Section.

BOARD NOTE: This Section corresponds with 40 CFR 146.89, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.190 Testing and Monitoring Requirements

The owner or operator of a Class VI injection well must prepare, maintain and comply with a testing and monitoring plan that will verify that the geologic sequestration project is operating as permitted, and that the project is not endangering USDWs. The requirement to maintain and implement an approved testing and monitoring plan is directly enforceable, regardless of whether the requirement is a condition of the permit. The owner or operator must submit the testing and monitoring plan to the Agency with the permit application, and the owner or operator must include a description of how it will meet the requirements of this Section, including accessing sites for all necessary monitoring and testing during the life of the project. Testing and monitoring associated with geologic sequestration projects must, at a minimum, include the following parameters and devices:

- a) Analyses of the carbon dioxide stream with sufficient frequency to yield data representative of the chemical and physical characteristics of the stream;
- b) Installation and use of continuous recording devices to monitor injection pressure, rate and volume, except during well workovers, as defined in Section 730.188(d); the pressure on the annulus between the tubing and the long-string casing; and the annulus fluid volume added;
- c) Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components fulfill the Agency-approved minimum standards for material strength and performance, as provided in Section 730.186(b), by performing one of the following tests:

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- 1) Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream;
 - 2) Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or
 - 3) Using an alternative method approved by the Agency;
- d) Periodic monitoring of the groundwater quality and geochemical changes above the confining zones that may be a result of carbon dioxide movement through the confining zones or additional identified zones, including the following information:
- 1) The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations and other factors; and
 - 2) The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data that has been collected pursuant to Section 730.182(a)(6) and on any modeling results in the area of review evaluation required by Section 730.184(c).
- e) The annual demonstration of external mechanical integrity required by Section 730.189(c) at least once per year until the injection well is plugged; and, if required by the Agency, a casing inspection log undertaken pursuant to Section 730.189(d), at a frequency established in the testing and monitoring plan;
- f) A pressure fall-off test at least once every five years, unless the Agency has required more frequent testing based on site-specific information;
- g) Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (i.e., the pressure front) by using the following types of methods:
- 1) Direct methods in the injection zones; and
 - 2) Indirect methods (e.g., seismic, electrical, gravity or electromagnetic surveys or down-hole carbon dioxide detection tools), unless the Agency

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has determined, based on site-specific geology, that these methods are not appropriate;

- h) The Agency must require surface air monitoring or soil gas monitoring if the Agency determines that this monitoring is needed to detect movement of carbon dioxide that could endanger a USDW.
- 1) The design of Class VI injection well surface air or soil gas monitoring must be based on potential risks to USDWs within the area of review;
 - 2) The monitoring frequency and spatial distribution of surface air monitoring or soil gas monitoring must be decided using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review delineation or compliance with the prohibition against movement of fluid into a USDW set forth in 35 Ill. Adm. Code 704.122;
 - 3) If the Agency requires surface air or soil gas monitoring, the Agency has determined that monitoring undertaken to comply with subpart RR of 40 CFR 98 accomplishes the goals of subsections (h)(1) and (h)(2) of this Section, and the owner or operator fulfills the carbon dioxide release reporting requirements set forth in Section 730.191(c)(5), the Agency must approve the use of monitoring undertaken to comply with subpart RR of 40 CFR 98. After approval by the Agency, compliance with subpart RR of 40 CFR 98 pursuant to this subsection (h)(3) is deemed a condition of the Class VI injection well permit;
- i) Any additional monitoring that the Agency has determined is necessary to support, upgrade and improve the computational modeling of the area of review evaluation that is required by Section 730.184(c) and to determine compliance with the prohibition against movement of fluid into a USDW set forth in 35 Ill. Adm. Code 704.122;
- j) The owner or operator must periodically review the testing and monitoring plan to incorporate monitoring data collected under this Subpart H, operational data collected pursuant to Section 730.188, and the most recent area of review reevaluation performed pursuant to Section 730.184(e). The owner or operator must review the testing and monitoring plan at least once in every five-year period. Based on this review, the owner or operator must submit an amended

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testing and monitoring plan or demonstrate to the Agency that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan must be approved by the Agency, must be incorporated into the permit and are subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.261 or 704.264, as appropriate. The owner or operator must submit amended plans or demonstrations to the Agency as follows:

- 1) Within one year after an area of review reevaluation;
 - 2) Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the Agency; or
 - 3) When required by the Agency.
- k) A quality assurance and surveillance plan for all testing and monitoring requirements.

BOARD NOTE: This Section corresponds with 40 CFR 146.90, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.191 Reporting Requirements

The owner or operator of a Class VI injection well must, at a minimum, provide the following reports to the Agency for each permitted Class VI injection well, as specified in subsection (e) of this Section:

- a) Semi-annual reports containing the following information:
 - 1) A description of any deviations in the physical, chemical and other relevant characteristics of the carbon dioxide stream from the proposed operating data submitted to the Agency pursuant to Sections 730.182(a)(7) and (c)(3) and 730.186(b)(1) and (c)(3);
 - 2) The monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure;

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- 3) A description of any event that exceeds operating parameters for the annulus pressure or injection pressure specified in the permit;
 - 4) A description of any event that triggers a shut-off device required pursuant to Section 730.188(e) and the response undertaken by the owner or operator;
 - 5) The monthly volume or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project;
 - 6) The monthly annulus fluid volume added; and
 - 7) The results of the monitoring required by Section 730.190.
- b) Report the results within 30 days after completion of any of the following:
- 1) Any results of periodic tests of mechanical integrity;
 - 2) Any well workover; and
 - 3) Results of any other test of the injection well that the owner or operator has conducted as required by the Agency.
- c) Report any of the following events within 24 hours after the event:
- 1) The owner or operator has discovered any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to a USDW;
 - 2) The owner or operator has discovered any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;
 - 3) The owner or operator has discovered any triggering of a shut-off system (i.e., down-hole or at the surface);
 - 4) The owner or operator has discovered any failure to maintain mechanical integrity; or

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- 5) The owner or operator has discovered any release of carbon dioxide to the atmosphere or biosphere through surface air or soil gas monitoring or other monitoring technologies that the Agency has required pursuant to Section 730.190(h).
- d) An owner or operator must notify the Agency in writing 30 days in advance of any of the following:
 - 1) Any planned well workover;
 - 2) Any planned stimulation activities, other than stimulation for formation testing conducted pursuant to Section 730.182; and
 - 3) Any other planned test of the injection well conducted by the owner or operator.
- e) In corresponding 40 CFR 146.91(e), USEPA has stated that owners or operators must submit all required reports, submittals and notifications under this Subpart H to USEPA in an electronic format approved by USEPA.
- f) The owner or operator must retain records as follows:
 - 1) The owner or operator must retain all data collected pursuant to Section 730.182 for Class VI permit applications throughout the life of the geologic sequestration project and for 10 years following site closure.
 - 2) The owner or operator must retain data on the nature and composition of all injected fluids collected pursuant to Section 730.190(a) until 10 years after site closure. The Agency may require the owner or operator to deliver the records to the Agency at the conclusion of the retention period.
 - 3) The owner or operator must retain monitoring data collected pursuant to Section 730.190(b) through (i) for 10 years after it is collected.
 - 4) The owner or operator must retain well plugging reports, post-injection site care data, including, if appropriate, data and information used to develop the demonstration of the alternative post-injection site care

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timeframe, and the site closure report collected pursuant to requirements at Section 730.193(f) and (h) for 10 years following site closure.

- 5) The Agency may require the owner or operator to retain any records required by this Subpart H for a period that is longer than 10 years after site closure. Any Agency requirement that the owner or operator retain records for a longer period must be made in writing, the writing must recite a definite longer period, and the Agency must state the reasons for the determination to require the longer period. An owner or operator may appeal any Agency determination made pursuant to this subsection (f)(5) to the Board pursuant to Section 40 of the Act [415 ILCS 5/40].

BOARD NOTE: This Section corresponds with 40 CFR 146.91, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.192 Injection Well Plugging

- a) Prior to the well plugging, the owner or operator must flush each Class VI injection well with a buffer fluid, determine bottomhole reservoir pressure and perform a final external mechanical integrity test.
- b) Well plugging plan. The owner or operator of a Class VI injection well must prepare, maintain and comply with a well plugging plan that is acceptable to the Agency. The requirement to maintain and implement an approved well plugging plan is directly enforceable regardless of whether the requirement is a condition of the permit. The owner or operator must submit the well plugging plan as part of the permit application, and the well plugging plan must include the following information:
- 1) Appropriate tests or measures for determining bottomhole reservoir pressure;
 - 2) Appropriate testing methods to ensure external mechanical integrity, as specified in Section 730.189;
 - 3) The type and number of plugs to be used;

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- 4) The placement of each plug, including the elevation of the top and bottom of each plug;
 - 5) The type, grade and quantity of material to be used in plugging. The material must be compatible with the carbon dioxide stream; and
 - 6) The method of placement of the plugs.
- c) Notice of intent to plug. The owner or operator must notify the Agency in writing, and USEPA electronically pursuant to Section 730.191(e), at least 60 days before beginning the plugging of a well. The owner or operator must also provide the revised well plugging plan at the time of this notice if any changes have been made to the original well plugging plan. The Agency must allow for a shorter notice period if the Agency determines that the shorter notice period is adequate to complete Agency review of the well plugging plan or that well plugging must occur more promptly. The Agency must approve any amendments to the injection well plugging plan and incorporate the amendments into the permit, and the incorporation of the amendments into the permit is subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.262 or 704.264, as appropriate.
- d) Plugging report. Within 60 days after plugging, the owner or operator must submit a plugging report to the Agency and electronically to USEPA pursuant to Section 730.191(e). The plugging report must be certified as accurate by the owner or operator and by the person who performed the plugging operation (if other than the owner or operator). The owner or operator must retain the well plugging report for 10 years following site closure.

BOARD NOTE: This Section corresponds with 40 CFR 146.92, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.193 Post-Injection Site Care and Site Closure

- a) The owner or operator of a Class VI injection well must prepare, maintain and comply with a plan for post-injection site care and site closure that the Agency has determined meets the requirements of subsection (a)(2) of this Section. The

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requirement to maintain and implement an approved plan is directly enforceable, regardless of whether the requirement is a condition of the permit.

- 1) The owner or operator must submit the post-injection site care and site closure plan to the Agency as a part of the permit application.
- 2) The post-injection site care and site closure plan must include the following information:
 - A) The pressure differential between pre-injection and predicted post-injection pressures in the injection zones;
 - B) The predicted position of the carbon dioxide plume and associated pressure front at site closure, as demonstrated in the area of review evaluation required by Section 730.184(c)(1);
 - C) A description of the proposed post-injection monitoring location, methods and frequency;
 - D) A proposed schedule for submitting post-injection site care monitoring results to the Agency pursuant to Section 730.191(e); and
 - E) The duration of the post-injection site care timeframe and, if approved by the Agency, the demonstration of the alternative post-injection site care timeframe that ensures non-endangerment of USDWs.
- 3) Upon cessation of injection, the owner or operator of a Class VI injection well must either submit an amended post-injection site care and site closure plan or demonstrate to the Agency through monitoring data and modeling results that no amendment to the plan is needed. The Agency must approve any amendments to the post-injection site care and site closure plan and incorporate the amendments into the permit, and the incorporation of the amendments into the permit is subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.262 or 704.264, as appropriate.

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- 4) At any time during the life of the geologic sequestration project, the owner or operator may modify and resubmit the post-injection site care and site closure plan for Agency approval. The owner or operator must resubmit the plan to the Agency within 30 days after making any modification.
- b) The owner or operator must monitor the site following the cessation of injection to show the position of the carbon dioxide plume and pressure front and demonstrate that no USDW is being endangered.

 - 1) Following the cessation of injection, the owner or operator must continue to conduct monitoring as specified in the Agency-approved post-injection site care and site closure plan for at least 50 years or for the duration of the alternative timeframe approved by the Agency pursuant to requirements in subsection (c) of this Section, unless he/she makes a demonstration under subsection (b)(2) of this Section. The monitoring must continue until the geologic sequestration project no longer poses an endangerment to USDWs and the demonstration under subsection (b)(2) of this Section is submitted and approved by the Agency.
 - 2) If the Agency determines, based on monitoring and other site-specific data, that the geologic sequestration project no longer poses an endangerment to any USDW before 50 years or prior to the end of the approved alternative timeframe, the Agency must either approve an amendment to the post-injection site care and site closure plan to reduce the frequency of monitoring or authorize site closure before the end of the 50-year period or prior to the end of the approved alternative timeframe.
 - 3) Prior to authorization for site closure, the owner or operator must submit to the Agency for review and approval a demonstration, based on monitoring and other site-specific data, that no additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to any USDW.
 - 4) If the owner or operator cannot make the demonstration required by subsection (b)(3) of this Section (i.e., the Agency has determined that additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to any USDW or the Agency has not approved the demonstration) at the end of the 50-year period or at the end of the approved alternative timeframe, the owner or operator must

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submit to the Agency a plan to continue post-injection site care until the owner or operator has made a demonstration that the Agency can approve.

- c) Demonstration of alternative post-injection site care timeframe. If the Agency determines in consultation with USEPA during the permitting process that an alternative post-injection site care timeframe other than the 50-year default is appropriate and ensures non-endangerment of any USDW, the Agency must approve the alternative post-injection site care timeframe. The Agency must base its determination on significant, site-specific data and information, including all data and information collected pursuant to Sections 730.182 and 730.183, and the Agency must determine based on substantial evidence that the geologic sequestration project will no longer pose a risk of endangerment to any USDW at the end of the alternative post-injection site care timeframe.
- 1) A demonstration of an alternative post-injection site care timeframe must include consideration and documentation of the following:
- A) The results of computational modeling performed pursuant to delineation of the area of review, as required by Section 730.184;
 - B) The predicted timeframe for pressure decline within the injection zone and any other zones, such that formation fluids may not be forced into any USDW, or the timeframe for pressure decline to pre-injection pressures;
 - C) The predicted rate of carbon dioxide plume migration within the injection zone and the predicted timeframe for the cessation of migration;
 - D) A description of the site-specific processes that will result in carbon dioxide trapping, including immobilization by capillary trapping, dissolution and mineralization at the site;
 - E) The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase and mineral phase;
 - F) The results of laboratory analyses, research studies or field or site-specific studies to verify the information required in subsections (c)(1)(D) and (c)(1)(E) of this Section;

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- G) A characterization of the confining zones, including a demonstration that each confining zone is free of transmissive faults, fractures and micro-fractures and is of appropriate thickness, permeability and integrity to impede fluid movement (e.g., carbon dioxide, formation fluids, etc.);
 - H) The presence of potential conduits for fluid movement, including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project or any other projects in proximity to the predicted or modeled final extent of the carbon dioxide plume and area of elevated pressure;
 - I) A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;
 - J) The distance between the injection zone and the nearest USDWs above and below the injection zone; and
 - K) Any additional site-specific factors required by the Agency.
- 2) Information submitted to support the demonstration required by subsection (c)(1) of this Section must meet the following criteria:
- A) All analyses and tests performed to support the demonstration must be accurate and reproducible, and they must have been performed in accordance with the established quality assurance standards;
 - B) Estimation techniques must be appropriate, and USEPA-certified test protocols must have been used when available;
 - C) Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream, and injection and site conditions over the life of the geologic sequestration project;
 - D) Predictive models must be calibrated using existing information (e.g., at Class I, Class II or Class V experimental technology injection well sites) when sufficient data are available;

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- E) Reasonably conservative values and modeling assumptions must be used and disclosed to the Agency whenever values are estimated on the basis of known historical information instead of site-specific measurements;
 - F) The owner or operator must perform an analysis to identify and assess aspects of the alternative post-injection site care timeframe demonstration that contribute significantly to uncertainty. The owner or operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;
 - G) An approved quality assurance and quality control plan must address all aspects of the demonstration; and,
 - H) Any additional criteria required by the Agency.
- d) Notice of intent for site closure. The owner or operator must notify the Agency in writing at least 120 days before site closure. At the time of this notice, if any changes have been made to the original post-injection site care and site closure plan, the owner or operator must also provide the revised plan. The Agency may allow for a shorter notice period. The Agency must allow for a shorter notice period if the Agency determines that the shorter notice period is adequate to complete Agency review of the post-injection site care and site closure plan or that well closure must occur more promptly.
- e) After the Agency has authorized site closure, the owner or operator must plug all monitoring wells in a manner that will not allow movement of injection or formation fluids that endangers a USDW.
- f) The owner or operator must submit a site closure report to the Agency within 90 days after site closure, which must thereafter be retained at a location designated by the Agency for at least 10 years. The report must include the following records and documentation:
- 1) Documentation of the injection and monitoring well plugging as required by Section 730.192 and subsection (e) of this Section. The owner or operator must provide a copy of a survey plat that the owner or operator

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has submitted to the local zoning authority designated by the Agency. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The owner or operator must also submit a copy of the plat to USEPA Region 5;

- 2) Documentation of appropriate notification and information to all State and local authorities that have authority over drilling activities within the area of review, to enable those State and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zones; and

BOARD NOTE: The Illinois Department of Natural Resources, Office of Mines and Minerals, Oil and Gas Division and the Illinois Department of Public Health each have some role in regulating well drilling, depending on the type of well. Other State agencies may also have a role. Further, units of local government and agencies of a sister state may regulate well drilling if a portion of the area of review lies within their jurisdiction. The owner or operator must assure that all applicable regulatory entities receive the required notification and information.

- 3) Records reflecting the nature, composition and volume of the carbon dioxide stream.
- g) Each owner or operator of a Class VI injection well must record a notation on the deed to the facility property or any other document that is normally examined during title search that will in perpetuity provide the following information to any potential purchaser of the property:
- 1) The fact that land has been used to sequester carbon dioxide;
 - 2) The name of the county with which the survey plat was filed, as well as the addresses of the Agency and USEPA Region 5; and
 - 3) The volume of fluid injected, the injection zone or zones into which the fluid was injected, and the period over which injection occurred.
- h) The owner or operator must retain records collected during the post-injection site care period for at least 10 years following site closure. The owner or operator must deliver the records to the Agency at the conclusion of the retention period,

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and the records must thereafter be retained at a location designated by the Agency for that purpose.

BOARD NOTE: This Section corresponds with 40 CFR 146.93, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.194 Emergency and Remedial Response

- a) As part of the permit application, the owner or operator must provide the Agency with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids that may cause an endangerment to a USDW during the construction, operation and post-injection site care periods of the injection well. The requirement to maintain and implement an approved emergency and remedial response plan is directly enforceable regardless of whether the requirement is a condition of the permit.
- b) If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must undertake the following actions:
- 1) The owner or operator must immediately cease injection;
 - 2) The owner or operator must take all steps reasonably necessary to identify and characterize any release;
 - 3) The owner or operator must notify the Agency within 24 hours after obtaining the evidence; and
 - 4) The owner or operator must implement the emergency and remedial response plan approved by the Agency.
- c) The Agency must allow the operator to resume injection prior to remediation if the Agency has determined that the injection operation will not endanger any USDW.
- d) The owner or operator must periodically review the emergency and remedial response plan developed pursuant to subsection (a) of this Section. The owner or

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operator must review the emergency and remedial response plan at least once in every five year period. Based on this review, the owner or operator must submit an amended emergency and remedial response plan or demonstrate to the Agency that no amendment to the emergency and remedial response plan is needed. The Agency must approve any amendments to the emergency and remedial response plan and incorporate the amendments into the permit, and the incorporation of the amendments into the permit is subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.262 or 704.264, as appropriate. The owner or operator must submit any amended plans or demonstrations to the Agency as follows:

- 1) Within one year of an area of review reevaluation;
- 2) Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the Agency; or
- 3) When required by the Agency.

BOARD NOTE: This Section corresponds with 40 CFR 146.94, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010).

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 730.195 Alternative Class VI Injection Well Depth Requirements

This Section specifies the requirements for application of alternative injection well depth requirements for Class VI injection wells that meet certain criteria. This Section sets forth information that an owner or operator seeking application of alternative Class VI injection well depth requirements must submit to the Agency; the information that the Agency must consider when determining whether any well is suitable for application of alternative injection well depth requirements; the procedure for Agency-USEPA Region 5 communication and Agency determination whether a well is suitable for application of alternative injection well depth requirements; and the additional requirements that apply to an owner or operator of a Class VI injection well that has been granted a permit that includes alternative injection well depth requirements.

- a) When seeking a permit that includes alternative injection well depth requirements to the requirement to inject below the lowermost USDW, the owner or operator

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must submit a supplemental report concurrent with the permit application. The supplemental report must include the following information:

- 1) The following demonstrations with regard to the injection zones:
 - A) Each is laterally continuous;
 - B) None is a USDW;
 - C) None is hydraulically connected to a USDW;
 - D) None outcrops;
 - E) Each has adequate injectivity, volume and sufficient porosity to safely contain the injected carbon dioxide and formation fluids;
and
 - F) Each has appropriate geochemistry.
- 2) A demonstration that each injection zone is bounded by laterally continuous impermeable confining units above and below the injection zone that are adequate to prevent fluid movement and pressure buildup outside of the injection zone and that the confining units are free of transmissive faults and fractures. The report must further characterize the regional fracture properties and contain a demonstration that these fractures will not interfere with injection, serve as conduits or endanger USDWs.
- 3) A demonstration, using computational modeling, that no fluid movement will endanger any USDW above or below the injection zone. This modeling should be conducted in conjunction with the area of review determination required by Section 730.184, and the modeling is subject to the area of review delineation and well identification requirements set forth in Section 730.184(c) and the periodic reevaluation requirements set forth in Section 730.184(e).
- 4) The following demonstrations with regard to well design and construction, in conjunction with the alternative injection well depth requirements:

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- A) Well design and construction will ensure isolation of the injectate in lieu of the prohibition against movement of fluids set forth in 730.186(a)(1); and
- B) Well design and construction will meet the well construction requirements set forth in subsection (f) of this Section.
- 5) A description of how the owner or operator will tailor the monitoring and testing and any additional plans to the geologic sequestration project to ensure protection of USDWs above and below each injection zone if the Agency issues a permit that includes alternative injection well depth requirements.
- 6) Information on the location of all the public water supplies that will be affected, or which are reasonably likely to be affected, by the carbon sequestration project, and all public water supplies that distribute water drawn from any USDW in the area of review.
- 7) Any other information that the Agency determines is necessary to inform the USEPA Region 5's decision to issue a waiver, as required by subsection (b) of this Section.
- b) To inform the USEPA Region 5's decision on whether to grant a waiver of the injection depth requirements pursuant to 40 CFR 146.95, which would allow the Agency to issue a permit that includes alternative injection well depth requirements, the Agency must submit the following documentation to USEPA Region 5:
 - 1) An evaluation of the following information as it relates to siting, construction and operation of a geologic sequestration project under a permit that includes alternative injection well depth requirements:
 - A) The integrity of the upper and lower confining units;
 - B) The suitability of the injection zones (e.g., lateral continuity, lack of transmissive faults and fractures, known current or planned artificial penetrations into the injection zones or formations below the injection zone, etc.);

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- C) The potential capacity of the geologic formations to sequester carbon dioxide, accounting for the availability of alternative injection sites;
 - D) All other site characterization data, the proposed emergency and remedial response plan and a demonstration of financial responsibility;
 - E) An assessment of community needs, demands and supply from drinking water resources;
 - F) An assessment of planned needs and potential or future use of USDWs and non-USDWs in the area of review;
 - G) An assessment of planned or permitted water, hydrocarbon or mineral resource exploitation potential of the proposed injection formations and other formations both above and below the injection zone to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zones or formations;
 - H) The proposed plan for securing alternative water resources or treating USDW formation waters in the event of contamination related to the Class VI injection well activity; and,
 - I) Any other applicable considerations or information that the Agency determines is necessary to aid a determination by USEPA Region 5 to grant a waiver that would allow the Agency to issue a permit that includes alternative injection well depth requirements.
- 2) Consultation with the Agency's Division of Public Water Supply and all agencies of a sister state that have public water system supervision authority over lands within the area of review of a well for which a waiver that would allow the Agency to issue a permit that includes alternative injection well depth requirements is sought.
- 3) Any written waiver-related information submitted by the Agency's Division of Public Water Supply and all agencies of a sister state that have public water system supervision authority to the Agency.

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- c) Pursuant to 35 Ill. Adm. Code 705.163 and concurrent with the Class VI injection well permit application notice process, the Agency must give public notice that the owner or operator has sought a permit that includes alternative injection well depth requirements. The notice must clearly state the following information:
- 1) The depth of the proposed injection zones;
 - 2) The location of the injection wells;
 - 3) The name and depth of each USDW within the area of review;
 - 4) A map of the area of review;
 - 5) The names of any public water supplies that will be affected, or which are reasonably likely to be affected, by the carbon sequestration project, and all public water supplies that distribute water drawn from any USDW in the area of review; and
 - 6) The results of consultation with the Agency's Division of Public Water Supply and all agencies of a sister state that have public water system supervision authority, as required by subsection (b)(2) of this Section.
- d) Following the public notice required by subsection (c) of this Section, the Agency must provide all information received through the waiver application process to USEPA Region 5. USEPA has stated in corresponding 40 CFR 146.95(d) that, based on this information, the USEPA Region 5 must provide written concurrence or non-concurrence regarding the Agency issuing a permit that includes alternative injection well depth requirements.
- 1) If USEPA Region 5 determines that additional information is required to support a decision, the Agency must provide that information. At its discretion, USEPA Region 5 may require that public notice of the new information be initiated.
 - 2) The Agency must not issue a permit that includes alternative injection well depth requirements without having first received the written concurrence of USEPA Region 5.

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- e) USEPA has stated in corresponding 40 CFR 146.95(e) that if the Agency issues a permit that includes alternative injection well depth requirements, USEPA will post the following information on its Office of Water website within 30 days after permit issuance:
- 1) The depth of the proposed injection zones;
 - 2) The location of the injection wells;
 - 3) The name and depth of all USDWs within the area of review;
 - 4) A map of the area of review;
 - 5) The names of any public water supplies that will be affected, or which are reasonably likely to be affected, by the carbon sequestration project, and all public water supplies that distribute water drawn from any USDW in the area of review; and
 - 6) The date of permit issuance.
- f) Upon receipt of a permit that includes alternative injection well depth requirements for geologic sequestration, the owner or operator of the covered Class VI injection well must comply with the following requirements:
- 1) All requirements of Sections 730.184, 730.185, 730.187, 730.188, 730.189, 730.191, 730.192 and 730.194;
 - 2) All requirements of Section 730.186, with the following modified requirements:
 - A) The owner or operator must ensure that each Class VI injection well operating under the alternative injection well depth requirements is constructed and completed to prevent movement of fluids into any unauthorized zone that includes a USDW, in lieu of the requirements of Section 730.186(a)(1).
 - B) The casing and cementing program must be designed to prevent the movement of fluids into any unauthorized zone that includes a USDW, in lieu of the requirements of Section 730.186(b)(1).

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- C) The surface casing must extend through the base of the nearest USDW directly above the injection zone. The surface casing must be cemented to the surface. Alternatively, the Agency must require that the casing extend through another formation above the injection zone and below the nearest USDW above the injection zone if the Agency determines that doing so is necessary to prevent movement of fluids into a USDW.
- 3) All requirements of Section 730.190, with the following modified requirements:
- A) The owner or operator must monitor the groundwater quality, geochemical changes and pressure in the first USDWs immediately above and below each injection zone; and in any other formation that the Agency determines is necessary to detect potential movement of fluids into a USDW.
- B) The owner or operator must conduct testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (i.e., the pressure front) by using direct methods to monitor for pressure changes in the injection zones. The owner or operator must use indirect methods (e.g., seismic, electrical, gravity or electromagnetic surveys or down-hole carbon dioxide detection tools) that the Agency determines are necessary based on site-specific geology.
- 4) All requirements of Section 730.193, with the following modified post-injection site care monitoring requirements:
- A) The owner or operator must monitor the groundwater quality, geochemical changes and pressure in the first USDWs immediately above and below each injection zone; and in any other formation that the Agency determines is necessary to detect potential movement of fluids into a USDW.
- B) The owner or operator must conduct testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (i.e., the pressure front) by using

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direct methods in the injection zones. The owner or operator must use indirect methods (e.g., seismic, electrical, gravity or electromagnetic surveys or down-hole carbon dioxide detection tools) that the Agency determines are necessary to detect potential movement of fluids into a USDW;

- 5) Any additional requirements that the Agency determines are necessary to ensure protection of USDWs above and below the injection zones.

BOARD NOTE: This Section corresponds with 40 CFR 146.95, as added at 75 Fed. Reg. 77303 (Dec. 10, 2010). The corresponding federal rule calls the administrative permission to allow a well to inject at an alternative depth (i.e., above the lowermost USDW) a "waiver". While the Board has retained the use of "waiver" with regard to USEPA review of alternative depth requirements, the Board has changed this to some variant of "permit that includes alternative injection well depth requirements". While the Agency cannot "waive" standards embodied in Board regulations, the Agency can issue a permit that applies alternative standards that are contained in the regulations. The Board believes that this rule includes standards sufficient to guide an Agency permit determination.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Public Schools Evaluation, Recognition and Supervision
- 2) Code Citation: 23 Ill. Adm. Code 1
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
1.420	Amendment
1.APPENDIX D	Amendment
- 4) Statutory Authority: 105 ILCS 5/2-3.6 and 10-20.19a
- 5) A Complete Description of the Subjects and Issues Involved: Under the American Recovery and Reinvestment Act of 2009 (ARRA), \$500 million is available on a competitive basis to states to design and implement early learning and development systems that are comprehensive in scope and coordinated among the various state agencies charged with administering the systems. As set forth in ARRA, the goals of the Race to the Top-Early Learning Challenge (RTT-ELC) are to:
 - increase the number and percentage of low-income and disadvantaged children who are enrolled in high-quality early learning programs;
 - design and implement an integrated system of high-quality early learning programs and services; and
 - ensure that any use of assessments conforms with the recommendations of the National Research Council's reports on early childhood.

The State Board of Education is serving as the lead agency for the RTT-ELC application, and as such, has committed to modifying its policies for birth to age 5 programs through the initiation of rulemaking in Part 1 and 23 Ill. Adm. Code 235. A portion of the grant will be used to continue the agency's efforts to develop and implement a kindergarten readiness tool to continually assess a student's progress during the school year. Under its authority to prescribe rules for the operation of kindergartens [105 ILCS 5/10-20.19a], the agency proposes that Section 1.420(h) be amended to require that, starting in the 2014-15 school year, any school district offering kindergarten (whether full or half day) administer the Kindergarten Individual Development Survey, or KIDS, provided that sufficient funding is available for the test administration and to make available a professional development system for administrators and teachers.

As proposed, Section 1.420(h)(3) requires that school districts identified to participate in a pilot of KIDS in the 2012-13 school year or a limited statewide implementation in the 2013-14 school year be able to challenge their participation if they believe that they have

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capacity issues that would make participation difficult. Failure to participate also could put in jeopardy funding from either an early childhood block grant or general State aid, as proposed.

Staff have indicated, however, that interest is high among school districts in participating in the roll-out of KIDS and anticipate that a sufficient number of districts will volunteer in each of the two years. Additionally, Section 235.70 of early childhood rules is being amended to require that all Preschool for All grantees administer KIDS in the 2013-14 school year, which will provide a strong pool from which to start choosing districts for the limited statewide implementation.

Additionally, acknowledgement that the Illinois Learning Standards apply to kindergarten will be made in Section 1.Appendix D, State Goals for Learning. This Section lists the goals and standards for all students, including the common core standards that are for kindergarten through grade 12 in English language arts and math. The remaining goals and standards for kindergarten are the same as those for other grade levels, with any benchmarks (which are not in the rules) applying specifically to the kindergarten level.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes; see Section 1.420(s).
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 90 days of the publication of this Notice to:

Shelley Helton
Agency Rules Coordinator
Illinois State Board of Education

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100 North First Street, S-493
Springfield, Illinois 62777-0001

217/782-5270

Comments may also be submitted electronically, addressed to:

rules@isbe.net

- 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 2 most recent Agendas because: the application requirements for the RTT-ELC were not made available until after the agenda was published.

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER a: PUBLIC SCHOOL RECOGNITION

PART 1

PUBLIC SCHOOLS EVALUATION, RECOGNITION AND SUPERVISION

SUBPART A: RECOGNITION REQUIREMENTS

Section

- 1.10 Public School Accountability Framework
- 1.20 Operational Requirements
- 1.30 State Assessment
- 1.40 Adequate Yearly Progress
- 1.50 Calculation of Participation Rate
- 1.60 Subgroups of Students; Inclusion of Relevant Scores
- 1.70 Additional Indicators for Adequate Yearly Progress
- 1.75 Student Information System
- 1.77 Educator Certification System
- 1.80 Academic Early Warning and Watch Status
- 1.85 School and District Improvement Plans; Restructuring Plans
- 1.88 Additional Accountability Requirements for Districts Serving Students of Limited English Proficiency Under Title III
- 1.90 System of Rewards and Recognition – The Illinois Honor Roll
- 1.95 Appeals Procedure
- 1.100 Waiver and Modification of State Board Rules and School Code Mandates
- 1.110 Appeal Process Under Section 22-60 of the School Code

SUBPART B: SCHOOL GOVERNANCE

Section

- 1.210 Powers and Duties (Repealed)
- 1.220 Duties of Superintendent (Repealed)
- 1.230 Board of Education and the School Code (Repealed)
- 1.240 Equal Opportunities for all Students
- 1.242 Temporary Exclusion for Failure to Meet Minimum Academic or Attendance Standards
- 1.245 Waiver of School Fees

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- 1.250 District to Comply with 23 Ill. Adm. Code 180 (Repealed)
- 1.260 Commemorative Holidays to be Observed by Public Schools (Repealed)
- 1.270 Book and Material Selection (Repealed)
- 1.280 Discipline
- 1.285 Requirements for the Use of Isolated Time Out and Physical Restraint
- 1.290 Absenteeism and Truancy Policies

SUBPART C: SCHOOL DISTRICT ADMINISTRATION

Section

- 1.310 Administrative Qualifications and Responsibilities
- 1.320 Evaluation of Certified Staff in Contractual Continued Service
- 1.330 Hazardous Materials Training

SUBPART D: THE INSTRUCTIONAL PROGRAM

Section

- 1.410 Determination of the Instructional Program
- 1.420 Basic Standards
- 1.430 Additional Criteria for Elementary Schools
- 1.440 Additional Criteria for High Schools
- 1.445 Required Course Substitute
- 1.450 Special Programs (Repealed)
- 1.460 Credit Earned Through Proficiency Examinations
- 1.462 Uniform Annual Consumer Education Proficiency Test (Repealed)
- 1.465 Ethnic School Foreign Language Credit and Program Approval
- 1.470 Adult and Continuing Education
- 1.480 Correctional Institution Educational Programs

SUBPART E: SUPPORT SERVICES

Section

- 1.510 Transportation
- 1.515 Training of School Bus Driver Instructors
- 1.520 School Food Services (Repealed)
- 1.530 Health Services
- 1.540 Pupil Personnel Services (Repealed)

SUBPART F: STAFF CERTIFICATION REQUIREMENTS

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Section

- 1.610 Personnel Required to be Qualified
- 1.620 Accreditation of Staff (Repealed)
- 1.630 Noncertificated Personnel
- 1.640 Requirements for Different Certificates (Repealed)
- 1.650 Transcripts of Credits
- 1.660 Records of Professional Personnel

SUBPART G: STAFF QUALIFICATIONS

Section

- 1.705 Requirements for Supervisory and Administrative Staff
 - 1.710 Requirements for Elementary Teachers
 - 1.720 Requirements for Teachers of Middle Grades
 - 1.730 Minimum Requirements for Secondary Teachers and Specified Subject Area Teachers in Grades Six (6) and Above through June 30, 2004
 - 1.735 Requirements to Take Effect from July 1, 1991, through June 30, 2004
 - 1.736 Requirements to Take Effect from July 1, 1994, through June 30, 2004
 - 1.737 Minimum Requirements for the Assignment of Teachers in Grades 9 through 12 Beginning July 1, 2004
 - 1.740 Standards for Reading through June 30, 2004
 - 1.745 Requirements for Reading Teachers and Reading Specialists at all Levels as of July 1, 2004
 - 1.750 Standards for Media Services through June 30, 2004
 - 1.755 Requirements for Library Information Specialists Beginning July 1, 2004
 - 1.760 Standards for Pupil Personnel Services
 - 1.762 Supervision of Speech-Language Pathology Assistants
 - 1.770 Standards for Special Education Personnel
 - 1.780 Standards for Teachers in Bilingual Education Programs
 - 1.781 Requirements for Bilingual Education Teachers in Prekindergarten, Kindergarten and any of Grades 1-12
 - 1.782 Requirements for Teachers of English as a Second Language in Prekindergarten, Kindergarten and any of Grades 1-12
 - 1.783 Requirements for Administrators of Bilingual Education Programs
 - 1.790 Substitute Teacher
-
- 1.APPENDIX A Professional Staff Certification
 - 1.APPENDIX B Certification Quick Reference Chart (Repealed)

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- 1.APPENDIX C Glossary of Terms (Repealed)
- 1.APPENDIX D State Goals for Learning
- 1.APPENDIX E Evaluation Criteria – Student Performance and School Improvement Determination (Repealed)
- 1.APPENDIX F Criteria for Determination – Student Performance and School Improvement (Repealed)
- 1.APPENDIX G Criteria for Determination – State Assessment (Repealed)

AUTHORITY: Implementing Sections 2-3.25, 2-3.25g, 2-3.44, 2-3.96, 10-17a, 10-20.14, 10-22.43a, 14C-8, 21-0.01, 22-60, 26-13, 27-3.5, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, 27-23.3 and 27-23.8 and authorized by Section 2-3.6 of the School Code [105 ILCS 5/2-3.25, 2-3.25g, 2-3.44, 2-3.96, 10-17a, 10-20.14, 10-22.43a, 14C-8, 21-0.01, 22-60, 26-13, 27-3.5, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, 27-23.3, 27-23.8 and 2-3.6].

SOURCE: Adopted September 21, 1977; codified at 7 Ill. Reg. 16022; amended at 9 Ill. Reg. 8608, effective May 28, 1985; amended at 9 Ill. Reg. 17766, effective November 5, 1985; emergency amendment at 10 Ill. Reg. 14314, effective August 18, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 3073, effective February 2, 1987; amended at 12 Ill. Reg. 4800, effective February 26, 1988; amended at 14 Ill. Reg. 12457, effective July 24, 1990; amended at 15 Ill. Reg. 2692, effective February 1, 1991; amended at 16 Ill. Reg. 18010, effective November 17, 1992; expedited correction at 17 Ill. Reg. 3553, effective November 17, 1992; amended at 18 Ill. Reg. 1171, effective January 10, 1994; emergency amendment at 19 Ill. Reg. 5137, effective March 17, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 6530, effective May 1, 1995; amended at 19 Ill. Reg. 11813, effective August 4, 1995; amended at 20 Ill. Reg. 6255, effective April 17, 1996; amended at 20 Ill. Reg. 15290, effective November 18, 1996; amended at 22 Ill. Reg. 22233, effective December 8, 1998; emergency amendment at 24 Ill. Reg. 6111, effective March 21, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 12985, effective August 14, 2000; amended at 25 Ill. Reg. 8159, effective June 21, 2001; amended at 25 Ill. Reg. 16073, effective November 28, 2001; amended at 26 Ill. Reg. 1157, effective January 16, 2002; amended at 26 Ill. Reg. 16160, effective October 21, 2002; amended at 28 Ill. Reg. 8486, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 13637, effective September 27, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 1891, effective January 24, 2005; amended at 29 Ill. Reg. 11811, effective July 13, 2005; amended at 29 Ill. Reg. 12351, effective July 28, 2005; amended at 29 Ill. Reg. 15789, effective October 3, 2005; amended at 29 Ill. Reg. 19891, effective November 23, 2005; amended at 30 Ill. Reg. 8480, effective April 21, 2006; amended at 30 Ill. Reg. 16338, effective September 26, 2006; amended at 30 Ill. Reg. 17416, effective October 23, 2006; amended at 31 Ill. Reg. 5116, effective March 16, 2007; amended at 31 Ill. Reg. 7135, effective April 25, 2007; amended at 31 Ill. Reg. 9897, effective June 26, 2007; amended at 32 Ill. Reg. 10229, effective June 30, 2008; amended at 33 Ill. Reg. 5448,

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effective March 24, 2009; amended at 33 Ill. Reg. 15193, effective October 20, 2009; amended at 34 Ill. Reg. 2959, effective February 18, 2010; emergency amendment at 34 Ill. Reg. 9533, effective June 24, 2010, for a maximum of 150 days; amended at 34 Ill. Reg. 17411, effective October 28, 2010; amended at 35 Ill. Reg. 1056, effective January 3, 2011; amended at 35 Ill. Reg. 2230, effective January 20, 2011; amended at 35 Ill. Reg. 12328, effective July 6, 2011; amended at 35 Ill. Reg. 16743, effective September 29, 2011; amended at 36 Ill. Reg. _____, effective _____.

SUBPART D: THE INSTRUCTIONAL PROGRAM

Section 1.420 Basic Standards

- a) Class schedules shall be maintained in the administrative office in each attendance center of a school district.
- b) Every school district shall have an organized plan for recording pupil progress and/or awarding credit, including credit for courses completed by correspondence, on line, or from other external sources, that can be disseminated to other schools within the State.
- c) Every school district shall:
 - 1) Provide curricula and staff inservice training to help eliminate unconstitutional and unlawful discrimination in our schools and society. School districts shall utilize the resources of the community in achieving the stated objective of elimination of discrimination and to enrich the instructional program.
 - 2) Include in its instructional program concepts designed to improve students' understanding of and their relationships with individuals and groups of different ages, sexes, races, national origins, religions, and socio-economic backgrounds.
- d) Boards shall adopt and implement a policy for the distribution of teaching assignments, including study hall and extra class duties and responsibilities.
- e) Every school system shall conduct supervisory and inservice programs for its professional staff. The staff shall be involved in planning, conducting, and evaluating supervisory and inservice programs.

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- f) Sections 10-19, 18-8.05, 18-12, and 18-12.5 of the School Code [105 ILCS 5/10-19, 18-8.05, 18-12, and 18-12.5] establish certain requirements regarding the school year and the school day. School districts shall observe these requirements when preparing their calendars and when calculating average daily attendance for the purpose of claiming general State financial aid.
- 1) Section 18-8.05(F)(2)(c) of the School Code provides that, with the approval of the State Superintendent of Education, four or more clock-hours of instruction may be counted as a day of attendance when the regional superintendent certifies that, due to a condition beyond the control of the district, the district has been forced to use multiple sessions. The State Superintendent's approval will be granted when the district demonstrates that, due to a condition beyond the control of the district, its facilities are inadequate to house a program offering five clock-hours daily to all students.
- A) The district superintendent's request to the State Superintendent shall be accompanied by an assurance that the local school board has approved the plan for multiple sessions, including the date of the meeting at which this occurred, and evidence of the approval of the responsible regional superintendent.
- B) Each request shall include a description of the circumstances that resulted in the need for multiple sessions; information on the buildings and grades affected; the intended beginning and ending dates for the multiple sessions; a plan for remedying the situation leading to the request; and a daily schedule showing that each student will be in class for at least four clock-hours.
- C) Approval for multiple sessions shall be granted for the school year to which the request pertains. Each request for renewed approval shall conform to the requirements of subsections (f)(1)(A) and (B) of this Section.
- D) Students who are in attendance for at least 150 minutes of school work but fewer than 240 minutes may be counted for a half day of attendance. Students in attendance for fewer than 150 minutes of school work shall not be counted for purposes of calculating

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average daily attendance.

- 2) Section 18-8.05(F)(2)(h) of the School Code allows for a determination under rules of the State Board regarding the necessity for a second year's attendance at kindergarten for certain students so they may be included in a district's calculation of average daily attendance. Districts may count such students when they determine through an assessment of their individual educational development that a second year of kindergarten is warranted.
- 3) A school district shall be considered to have conducted a legal school day, which is eligible to be counted for General State Aid, when the following conditions are met during a work stoppage.
 - A) Fifty percent or more of the district's students are in attendance, based on the average daily attendance during the most recent full month of attendance prior to the work stoppage.
 - B) Educational programs are available at all grade levels in the district, in accordance with the minimum standards set forth in this Part.
 - C) All teachers hold certificates that are registered with the Regional Superintendent for their county of employment. Other than substitute teachers, certification appropriate to the grade level and subject area(s) of instruction is held by all teachers.
- 4) Sections 18-12 and 18-12.5 of the School Code set forth requirements for a school district to claim General State Aid in certain circumstances when one or more, but not all, of the district's school buildings are closed either for a full or partial day. A school district shall certify the reasons for the closure in an electronic format specified by the State Superintendent within 30 days from the date of the incident. In addition, the certification submitted for reasons of a public health emergency under Section 18-12.5 of the School Code shall be accompanied by a signed statement from the local health department to the State Superintendent that includes:
 - A) the name of the building that is being recommended for closure;

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- B) the specific public health emergency that warrants the closure; and
 - C) the anticipated building closure dates recommended by the health department.
- 5) Attendance for General State Aid Purposes
- A) For purposes of determining average daily attendance on the district's General State Aid claim, students in full-day kindergarten and first grade may be counted for a full day of attendance only when they are in attendance for four or more clock hours of school work; provided, however, that students in attendance for more than two clock hours of school work but less than four clock hours may be counted for a half day of attendance. Students in attendance for fewer than two hours of school work shall not be counted for purposes of calculating average daily attendance.
 - B) For purposes of determining average daily attendance on the district's General State Aid claim, students enrolled full time in grades 2 through 12 may be counted for a full day of attendance only when they are in attendance for five or more clock hours of school work; provided, however, that students in attendance for more than two and one-half clock hours of school work but less than five clock hours may be counted for a half day of attendance. Students in attendance for fewer than two and one-half hours of school work shall not be counted for purposes of calculating average daily attendance.
 - C) For purposes of determining average daily attendance for General State Aid received under Sections 18-12 and 18-12.5 of the School Code, "immediately preceding school day" shall include school days in the previous school year in instances in which the building closure occurs before three or more days of instruction have been provided in the school year for which attendance is being counted.
 - D) For the purposes of determining average daily attendance for General State Aid under Section 10-29 of the School Code [105 ILCS 5/10-29], a school district operating a remote educational program shall document, and make available to the State

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Superintendent of Education or his or her designee upon request, a written or online record of instructional time for each student enrolled in the program that provides sufficient evidence of the student's active participation in the program (e.g., log in and log off process, electronic monitoring, adult supervision, two-way interaction between teacher and student, video cam).

- g) Each school board shall annually prepare a calendar for the school term, specifying the opening and closing dates and providing a minimum term of at least 185 days to ensure 176 days of actual pupil attendance, computable under Section 18-8.05 of the School Code (see Section 10-19 of the School Code).
- h) Local boards of education shall establish and maintain kindergartens for the instruction of children (see Sections 10-20.19a and 10-22.18 of the School Code [105 ILCS 5/10-20.19a and 10-22.18]).
 - 1) School districts may establish a kindergarten of either half-day or full-day duration. If the district establishes a full-day kindergarten, it must also provide a half-day kindergarten for those students whose parents or guardians request a half-day program.
 - 2) If a school district that establishes a full-day kindergarten also has 20 or more students whose parents request a half-day program, the district must schedule half-day classes, separate and apart from full-day classes, for those children. If there are fewer than 20 children whose parents request a half-day program, those students may be enrolled in either the morning or afternoon session of a full-day program provided that the following conditions are met.
 - A) Distinctive curriculum plans for the half-day and full-day kindergarten programs must be developed by the school district, made available to parents to assist the parents in selecting the appropriate program for their child, and maintained in district files.
 - B) A common core of developmental, readiness and academic activities must be made available to all kindergarten students in the district regardless of the amount of time they attend school.
 - C) All support services (e.g., health counseling and transportation)

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provided by the district must be equally available to full-day and half-day students.

- 3) Each school district offering a kindergarten program, whether full-day or half-day, shall administer the Illinois Kindergarten Individual Development Survey (KIDS) annually, beginning in the 2014-15 school year. A school district is not obligated to administer KIDS in any school year in which the State does not provide funding sufficient for the cost of the test administration and establishment of a professional development system for teachers and administrators.
- A) A school district may be asked to participate in a pilot of the KIDS in the 2012-13 school year or a limited statewide implementation in the 2013-14 school year, provided that the cost of participating in the pilot shall be paid by the State. Selection of school districts will be made to ensure a representative sample and will be based upon factors such as demographics, economics and geographic location. The State Superintendent of Education shall notify each school district selected to participate in the pilot no later than July 1, 2012, or July 1, 2013, for the pilot or the limited statewide implementation, respectively.
- B) Within 15 calendar days after receiving notification required under subsection (h)(3)(A) of this Section, a school district may petition the State Superintendent to be excused from participating in the pilot or limited statewide implementation. The written petition shall state the reasons why the school district believes it lacks the capacity to administer the KIDS. The State Superintendent shall notify the school district of his or her acceptance or rejection of the petition no later than 15 days after it is received.
- C) A district's refusal to participate in the pilot or limited statewide implementation may result in the withdrawal of grant approval or reduction in grant funding, if the district is a recipient of funding under Section 1C-2 of the School Code [105 ILCS 5/1C-2) and 23 Ill. Adm. Code 235 (Early Childhood Block Grant), or a reduction in general State aid.

- i) Career Education

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- 1) The educational system shall provide students with opportunities to prepare themselves for entry into the world of work.
 - 2) Every district shall initiate a Career Awareness and Exploration Program that should enable students to make more meaningful and informed career decisions. This program should be available at all grade levels.
- j) Co-Curricular Activities
- 1) Programs for extra classroom activities shall provide opportunities for all students.
 - 2) The desires of the student body in the area of co-curricular activities shall be of critical importance. At all times, activities of this nature shall be carefully supervised by a school-approved sponsor.
- k) Consumer Education and Protection
- 1) A program in consumer education shall include at least the topics required by Section 27-12.1 of the School Code [105 ILCS 5/27-12.1].
 - 2) The superintendent of each unit or high school district shall maintain evidence showing that each student has received adequate instruction in consumer education prior to the completion of the 12th grade. Consumer education may be included in course content of other courses, or it may be taught as a separate required course.
 - 3) The minimal time allocation shall not be less than nine weeks or the equivalent for grades 9-12 and shall include installment purchasing, budgeting, comparison of prices and an understanding of the roles of consumers interacting with agriculture, business, trade unions, and government in formulating and achieving the goals of the mixed free enterprise system.
 - 4) Teachers instructing in consumer education courses shall hold certification valid for the grade levels taught and have completed at least three semester hours in consumer education courses.

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- l) Conservation of Natural Resources
Each district shall provide instruction on *current problems and needs in the conservation of natural resources, including, but not limited to, air pollution, water pollution, waste reduction and recycling, the effect of excessive use of pesticides, preservation of wilderness areas, forest management, protection of wildlife, and humane care of domestic animals* (Section 27-13.1 of the School Code [105 ILCS 5/27-13.1]).
- m) Every school district has the responsibility to prepare students for full citizenship. To this end each school district should encourage student discussion and communication in areas of local, State, national and international concern.
- n) Health Education
 - 1) Each school system shall provide a program in compliance with the Critical Health Problems and Comprehensive Health Education Act [105 ILCS 110].
 - A) There is no specific time requirement for grades K-6; however, health education shall be a part of the formal regular instructional program at each grade level.
 - B) The minimal time allocation shall not be less than one semester or equivalent during the middle or junior high experience.
 - C) The minimal time allocation shall not be less than one semester or equivalent during the secondary school experience.
 - D) If health education is offered in conjunction with another course on a "block of time" basis in a middle school, a junior high school, or a high school, instruction may be offered in any combination of the grade levels in the school, provided that the total time devoted to health education is the equivalent of one full semester's work.
 - 2) Nothing in this Section shall be construed as requiring or preventing the establishment of classes or courses in comprehensive sex education or family life education as authorized by Sections 27-9.1 and 27-9.2 of the School Code [105 ILCS 5/27-9.1 and 27-9.2].

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- o) **Library Media Programs**
Each school district shall provide a program of library media services for the students in each of its schools. Each district's program shall meet the requirements of this subsection (o).
- 1) **General**
The program shall include an organized collection of resources that circulate to students and staff in order to supplement classroom instruction, foster reading for pleasure, enhance information literacy, and support research, as appropriate to students of all abilities in the grade levels served. No later than the beginning of the 2014-15 school year, a district that relies solely upon the collection of a local public library shall maintain evidence that students receive instruction, direction, or assistance in locating and using resources that are applicable to these purposes from an individual who is qualified under Section 1.755 of this Part and who is acting on behalf of the school district.
- 2) **Financial Resources**
Each district's annual budget shall include an identifiable allocation for resources and supplies for the program, except that a unit district serving fewer than 400 students or an elementary or high school district serving fewer than 200 students may demonstrate that it is meeting its students' needs through alternate means that the district has determined are adequate in light of local circumstances.
- 3) **Facilities**
If there is no single location within a particular attendance center that is specifically devoted to a library media center, such as where classroom collections have been established instead, the district shall ensure that equitable access to library media resources is made available to students in all the grade levels served. If students' only access to library media resources is achieved by visiting a location outside their attendance center, the district shall maintain records demonstrating that all students' regular schedules include time for this purpose.
- 4) **Staff**
Nothing in this subsection (o)(4) shall be construed as prohibiting districts or schools from sharing the services of individuals qualified under Section 1.755 of this Part, and nothing in this subsection (o) shall be construed as

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permitting an individual who is not qualified as a library information specialist to assume that role. No later than the beginning of the 2009-10 school year, each district shall assign responsibility for overall direction of its program of library media services to an employee who holds an elementary, a secondary, a special K-12, a special preschool-age 21, an early childhood, or an administrative certificate. Except as otherwise provided in subsection (o)(4)(A) of this Section, the individual to whom this responsibility is assigned shall meet the requirements of Section 1.755 of this Part, and the individual to whom this responsibility is assigned shall not provide the services described in Section 1.755 of this Part unless he or she meets the requirements of that Section.

- A) In the event that no employee of the district holds any of the qualifications enumerated in Section 1.755 of this Part, the individual to whom direction of the program is assigned shall be required to participate annually in professional development consisting of:
- i) undergraduate or graduate coursework in library science offered by a regionally accredited institution of higher education; or
 - ii) one or more workshops, seminars, conferences, institutes, symposia, or other similar training events that are offered by the Illinois State Library, a regional library system, or another professional librarians' organization; or
 - iii) one or more "library academies" if these are made available by or at the direction of the State Superintendent of Education.
- B) A district that is otherwise unable to fulfill the requirements of this subsection (o)(4) shall ensure that the overall direction of the library media program (e.g., selection and organization of materials, provision of instruction in information and technology literacy, structuring the work of library paraprofessionals) is accomplished with the advice of an individual who is qualified pursuant to Section 1.755 of this Part.

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- p) Physical Education
- 1) Appropriate activity related to physical education shall be required of all students each day unless otherwise permitted by Section 27-6 of the School Code [105 ILCS 5/27-6]. The time schedule shall compare favorably with other courses in the curriculum. Safety education as it relates to the physical education program should be incorporated.
 - 2) There shall be a definite school policy regarding credit earned each semester in physical education with provisions for allowable variables in special cases.
 - 3) If a district determines that it is difficult to implement a program of physical education that involves all students daily, the administration should consult one of the program service personnel from the State Board of Education for assistance in the development of an acceptable program.
 - 4) *The physical education and training course offered in grades 5 through 10 may include health education (Section 27-5 of the School Code [105 ILCS 5/27-5]).*
 - 5) *Special activities in physical education shall be provided for pupils whose physical or emotional condition, as determined by a person licensed under the Medical Practice Act [225 ILCS 60], prevents their participation in the courses provided for normal children (Section 27-6 of the School Code).*
 - 6) Pursuant to Section 27-6 of the School Code, a student who presents an appropriate excuse from his or her parent or guardian or from a person licensed under the Medical Practice Act of 1987 shall be excused from participation in physical education. Each school board shall honor excuses signed by persons licensed under the Medical Practice Act of 1987 and shall establish a policy defining the types of parental excuses it will deem "appropriate" for this purpose, which shall include, but need not be limited to, reliance upon religious prohibitions. A board shall, however, have no authority to honor parental excuses based upon students' participation in athletic training, activities, or competitions conducted outside the auspices of the school district. For each type of excuse that will be considered "appropriate", the school board shall identify in its

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policy any evidence or support it will require. For example, a board may require a signed statement from a member of the clergy corroborating the religious basis of a request.

- 7) In addition, pursuant to Section 27-6(b) of the School Code, each school board that chooses to excuse pupils enrolled in grades 9 through 12 from engaging in physical education courses under that subsection shall establish a policy to excuse pupils on an individual basis and shall have the policy on file in the local district office. The district shall maintain records showing that, in disposing of each request to be excused from physical education, the district applied the criteria set forth in Section 27-6 to the student's individual circumstances.
- q) Pupil Personnel Services
To assure provision of Pupil Personnel Services, the local district shall conduct a comprehensive needs assessment to determine the scope of the needs in the areas of:
- 1) Guidance and Counseling Needs;
 - 2) Psychological Needs;
 - 3) Social Work Needs;
 - 4) Health Needs.
- r) Social Sciences and History
Each school system shall provide history and social sciences courses that do the following:
- 1) analyze the principles of representative government, the Constitutions of both the United States and the State of Illinois, the proper use of the flag, and how these concepts have related and currently do relate in actual practice in our world (see Section 27-21 of the School Code [105 ILCS 5/27-21]);
 - 2) *include in the teaching of United States history the role and contributions of ethnic groups in the history of this country and the State* (Section 27-21 of the School Code);

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- 3) *include in the teaching of United States history the role of labor unions and their interaction with government in achieving the goals of a mixed free-enterprise system* (Section 27-21 of the School Code);
 - 4) *include the study of that period in world history known as the Holocaust* (Section 27-20.3 of the School Code [105 ILCS 5/27-20.3]);
 - 5) *include the study of the events of Black history, including the individual contributions of African-Americans and their collective socio-economic struggles* (Section 27-20.4 of the School Code [105 ILCS 5/27-20.4]);
 - 6) *include the study of the events of women's history in America, including individual contributions and women's struggles for the right to vote and for equal treatment* (Section 27-20.5 of the School Code [105 ILCS 5/27-20.5]); and
 - 7) *include the study of the events related to the forceful removal and illegal deportation of Mexican-American U.S. citizens during the Great Depression* (Section 27-21 of the School Code).
- s) Protective eye devices shall be provided to and worn by all students, teachers, and visitors when participating in or observing dangerous vocational arts and chemical-physical courses of laboratories as specified in Section 1 of the Eye Protection in School Act [105 ILCS 115/1]. Such eye protective devices shall meet the nationally accepted standards set forth in "Practice for Occupational and Educational Eye and Face Protection", ANSI Z87.1-2003, issued by the American National Standards Institute, Inc., 1819 L Street, NW, Suite 600, Washington, D.C. 20036. No later additions or amendments to these standards are incorporated by this Part.
- t) Each school district shall provide instruction as required by Sections 27-3.5, 27-13.2, 27-13.3, 27-23.3, and 27-23.8 of the School Code [105 ILCS 5/27-3.5, 27-13.2, 27-13.3, 27-23.3, and 27-23.8].

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 1. APPENDIX D State Goals for Learning

The State Goals for Learning are broad statements of what students in kindergarten through grade 12 should know and be able to do as a result of their public education. The Illinois Learning Standards provide more specific definition of the essential knowledge and skills desired of Illinois students. The State Assessmentstate-assessment and the Illinois Kindergarten Individual Development Survey areis designed to measure students' mastery of the Illinois Learning Standards, so that a clear connection will emerge between students' learning and the goals and standards of the State of Illinois.

ENGLISH LANGUAGE ARTS AND LITERACY IN HISTORY/SOCIAL STUDIES,
SCIENCE, AND TECHNICAL SUBJECTS

There are no State Goals for Learning in this area. The applicable standards shall be the "Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects" (2010) published by the Common Core State Standards Initiative and posted at <http://www.corestandards.org/the-standards/english-language-arts-standards>. No later amendments to or editions of these standards are incorporated by this Section.

MATHEMATICS

There are no State Goals for Learning in this area. The applicable standards shall be the "Common Core State Standards for Mathematics" (2010) published by the Common Core State Standards Initiative and posted at <http://www.corestandards.org/the-standards/mathematics>. No later amendments to or editions of these standards are incorporated by this Section.

SCIENCE

State Goal 11: Understand the processes of scientific inquiry and technological design to investigate questions, conduct experiments and solve problems.

Standards:

Know and apply the concepts, principles and processes of scientific inquiry.

Know and apply the concepts, principles and processes of technological design.

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State Goal 12: Understand the fundamental concepts, principles and interconnections of the life, physical and earth/space sciences.

Standards:

Know and apply concepts that explain how living things function, adapt and change.

Know and apply concepts that describe how living things interact with each other and with their environment.

Know and apply concepts that describe properties of matter and energy and the interactions between them.

Know and apply concepts that describe force and motion and the principles that explain them.

Know and apply concepts that describe the features and processes of the Earth and its resources.

Know and apply concepts that explain the composition and structure of the universe and Earth's place in it.

State Goal 13: Understand the relationships among science, technology and society in historical and contemporary contexts.

Standards:

Know and apply the accepted practices of science.

Know and apply concepts that describe the interaction between science, technology and society.

SOCIAL SCIENCE

State Goal 14: Understand political systems, with an emphasis on the United States.

Standards:

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Understand and explain basic principles of the United States government.

Understand the structures and functions of the political systems of Illinois, the United States and other nations. (NOTE: Not applicable to kindergarten.)

Understand election processes and responsibilities of citizens.

Understand the roles and influences of individuals and interest groups in the political systems of Illinois, the United States and other nations.

Understand United States foreign policy as it relates to other nations and international issues. (NOTE: Not applicable to kindergarten.)

Understand the development of United States political ideas and traditions. (NOTE: Not applicable to kindergarten.)

State Goal 15: Understand economic systems, with an emphasis on the United States.

Standards:

Understand how different economic systems operate in the exchange, production, distribution and consumption of goods and services.

Understand that scarcity necessitates choices by consumers.

Understand that scarcity necessitates choices by producers. (NOTE: Not applicable to kindergarten.)

Understand trade as an exchange of goods or services.

Understand the impact of government policies and decisions on production and consumption in the economy. (NOTE: Not applicable to kindergarten.)

State Goal 16: Understand events, trends, individuals and movements shaping the history of Illinois, the United States and other nations.

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Standards:

Apply the skills of historical analysis and interpretation.

Understand the development of significant political events.

Understand the development of economic systems. (NOTE: Not applicable to kindergarten.)

Understand Illinois, United States and world social history. (NOTE: Not applicable to kindergarten.)

Understand Illinois, United States and world environmental history. (NOTE: Not applicable to kindergarten.)

State Goal 17: Understand world geography and the effects of geography on society, with an emphasis on the United States.

Standards:

Locate, describe and explain places, regions and features on the Earth.

Analyze and explain characteristics and interactions of the Earth's physical systems. (NOTE: Not applicable to kindergarten.)

Understand relationships between geographic factors and society.

Understand the historical significance of geography.

State Goal 18: Understand social systems, with an emphasis on the United States.

Standards:

Compare characteristics of culture as reflected in language, literature, the arts, traditions and institutions.

Understand the roles and interactions of individuals and groups in society.

Understand how social systems form and develop over time. (NOTE: Not

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applicable to kindergarten.)

PHYSICAL DEVELOPMENT AND HEALTH

State Goal 19: Acquire movement skills and understand concepts needed to engage in health-enhancing physical activity.

Standards:

Demonstrate physical competency in individual and team sports, creative movement and leisure and work-related activities.

Analyze various movement concepts and applications.

Demonstrate knowledge of rules, safety and strategies during physical activity.

State Goal 20: Achieve and maintain a health-enhancing level of physical fitness based upon continual self-assessment.

Standards:

Know and apply the principles and components of health-related fitness.

Assess individual fitness levels.

Set goals based on fitness data and develop, implement and monitor an individual fitness improvement plan.

State Goal 21: Develop team-building skills by working with others through physical activity.

Standards:

Demonstrate individual responsibility during group physical activities.

Demonstrate cooperative skills during structured group physical activity.

State Goal 22: Understand principles of health promotion and the prevention and treatment of illness and injury.

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Standards:

Explain the basic principles of health promotion, illness prevention and safety.

Describe and explain the factors that influence health among individuals, groups and communities.

Explain how the environment can affect health.

State Goal 23: Understand human body systems and factors that influence growth and development.

Standards:

Describe and explain the structure and functions of the human body systems and how they interrelate.

Explain the effects of health-related actions on the body systems.

Describe factors that affect growth and development.

State Goal 24: Promote and enhance health and well-being through the use of effective communication and decision-making skills.

Standards:

Demonstrate procedures for communicating in positive ways, resolving differences and preventing conflict.

Apply decision-making skills related to the protection and promotion of individual health.

Demonstrate skills essential to enhancing health and avoiding dangerous situations.

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State Goal 25: Know the language of the arts.

Standards:

Understand the sensory elements, organizational principles and expressive qualities of the arts.

Understand the similarities, distinctions and connections in and among the arts.

State Goal 26: Through creating and performing, understand how works of art are produced.

Standards:

Understand processes, traditional tools and modern technologies used in the arts.

Apply skills and knowledge necessary to create and perform in one or more of the arts.

State Goal 27: Understand the role of the arts in civilizations, past and present.

Standards:

Analyze how the arts function in history, society and everyday life.
(NOTE: Not applicable to kindergarten.)

Understand how the arts shape and reflect history, society and everyday life.
(NOTE: Not applicable to kindergarten.)

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Early Childhood Block Grant
- 2) Code Citation: 23 Ill. Adm. Code 235
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
235.20	Amendment
235.30	Amendment
235.40	Amendment
235.45	New Section
235.50	Amendment
235.60	Amendment
235.70	Amendment
235.APPENDIX A	Amendment
235.APPENDIX B	Amendment
235.APPENDIX C	New Section
- 4) Statutory Authority: 105 ILCS 5/1C-2
- 5) A Complete Description of the Subjects and Issues Involved: Under the American Recovery and Reinvestment Act of 2009 (ARRA), \$500 million is available on a competitive basis to states to design and implement early learning and development systems that are comprehensive in scope and coordinated among the various state agencies charged with administering the systems. As set forth in ARRA, the goals of the Race to the Top-Early Learning Challenge (RTT-ELC) are to:
 - increase the number and percentage of low-income and disadvantaged children who are enrolled in high-quality early learning programs;
 - design and implement an integrated system of high-quality early learning programs and services; and
 - ensure that any use of assessments conforms with the recommendations of the National Research Council's reports on early childhood.

The State Board of Education is serving as the lead agency for the RTT-ELC application, and has committed to modifying its policies for birth to age 5 programs through the initiation of rulemaking in Part 235 and 23 Ill. Adm. Code 1. The State Board has responsibility for two grant programs – Prevention Initiative and Preschool for All (PFA) – that serve, respectively, at-risk infant and toddlers and their families, and children from ages 3 to 5, with an emphasis on those who are determined to be at risk of academic failure or who are from low-income families. As a way to coordinate these programs with those early childhood programs offered through or licensed by DHS or DCFS, the

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agency proposes that prevention initiative or PFA grantees participate in Tiered Rating and Improvement System and in the Gateways to Opportunity staff registry and credentialing system. (See new Section 235.45 and Section 235.20(c)(10).) DCFS also is proposing amendments to its administrative rules to require the participation in these systems of those childcare providers that it regulates.

It is anticipated that each of these systems will be modified in the coming months to take into consideration the components unique to the State Board's programs, in particular those of the PFA program. Modifications to the systems, particularly regarding staff qualifications, will preserve the standards and criteria that apply to the State Board's early childhood block grant recipients that contribute to the program's high level of quality.

A portion of the grant also will be used to continue the agency's efforts to develop and implement a kindergarten readiness tool to continually assess a student's progress during the school year. As a condition of funding, it is proposed that each PFA program participate in the limited statewide implementation of the Kindergarten Individual Development Survey, or KIDS, in the 2013-14 school year.

Additionally, the program standards contained in Part 235 for 0-3 programs have been expanded to address programs serving children ages 3 to 5 (see Section 235.Appendix B), as well. Developmental guidelines for infants and toddlers also are being proposed in new Section 235.Appendix C, and the existing learning and developmental standards for children ages 3 to 5 in Appendix A have been updated and now align to the recently adopted Illinois Learning Standards for English language arts and mathematics, commonly referred to as the common core standards.

Other changes include the following:

- requesting in Section 235.20(c)(4) that applicants provide information about other similar programs operating in the same service area, including the number of children estimated to be served, if that figure is known;
- setting in Section 235.30(a)(1)(C) minimum criteria for procedures used to assess the progress of children enrolled in a PFA program; and
- clarifying in Section 235.50(a)(1)(A) that consideration in the proposal review process will be given to applicants serving areas where the need for services exceeds the available resources, when that information is available to an applicant.

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

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- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes; see Section 235.20(c)(3).
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 90 days of the publication of this Notice to:

Shelley Helton
Agency Rules Coordinator
Illinois State Board of Education
100 North First Street, S-493
Springfield, Illinois 62777-0001

217/782-5270

Comments may also be submitted electronically, addressed to:

rules@isbe.net

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Childcare providers and other entities with experience in providing educational, health, social and/or child development services to young children and their families
- B) Reporting, bookkeeping or other procedures required for compliance: See Section 235.70 for requirements.
- C) Types of professional skills necessary for compliance: None

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- 14) Regulatory Agenda in which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent Agendas because: the application requirements for the RTT-ELC were not made available until after the agenda was published.

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 235

EARLY CHILDHOOD BLOCK GRANT

SUBPART A: PRESCHOOL EDUCATION AND
PREVENTION INITIATIVE PROGRAMS

Section

235.10	Purpose; Eligible Applicants
235.20	Application Procedure and Content for New or Expanding Programs
235.30	Additional Program Components for Preschool Education Proposals
235.40	Additional Program Components for Prevention Initiative Proposals
235.45	Tiered Quality Rating and Improvement System
235.50	Proposal Review and Approval for New or Expanding Programs
235.55	Proposal Review Process and Additional Funding Priorities for Preschool Education Programs
235.60	Application Content and Approval for Continuation Programs
235.70	Terms of the Grant

SUBPART B: PRESCHOOL FOR ALL CHILDREN PROGRAM

Section

235.100	Purpose; Eligible Applicants (Repealed)
235.110	Application Procedure and Content for New or Expanding Programs (Repealed)
235.120	Proposal Review and Approval for New or Expanding Programs (Repealed)
235.130	Application Content and Approval for Continuation Programs (Repealed)
235.140	Terms of the Grant (Repealed)

SUBPART C: SOCIAL AND EMOTIONAL CONSULTATION SERVICES

Section

235.200	Implementation and Purpose; Eligible Applicants
235.210	Application Procedure and Content
235.220	Proposal Review and Approval of Proposals

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235.APPENDIX A Illinois Early Learning and Development Standards – Children Age 3 to Kindergarten Enrollment Age

235.APPENDIX B Illinois Birth to Five-Three Program Standards

235.APPENDIX C Illinois Early Learning and Development Guidelines – Children from Birth to Age 3

AUTHORITY: Authorized by Section 1C-2 of the School Code [105 ILCS 5/1C-2] and implementing Sections 2-3.71 and 2-3.89 of the School Code [105 ILCS 5/2-3.71 and 2-3.89].

SOURCE: Adopted at 16 Ill. Reg. 10181, effective June 10, 1992; expedited correction at 16 Ill. Reg. 15186, effective June 10, 1992; amended at 26 Ill. Reg. 903, effective January 15, 2002; old Part repealed at 30 Ill. Reg. 4618 and new Part adopted at 30 Ill. Reg. 4620, effective February 28, 2006; emergency amendment adopted at 30 Ill. Reg. 11793, effective June 26, 2006, for a maximum of 150 days; emergency expired November 22, 2006; amended at 30 Ill. Reg. 19383, effective November 28, 2006; amended at 32 Ill. Reg. 13357, effective July 25, 2008; amended at 33 Ill. Reg. 4027, effective February 23, 2009; amended at 34 Ill. Reg. 11615, effective July 26, 2010; amended at 35 Ill. Reg. 3742, effective February 17, 2011; amended at 36 Ill. Reg. _____, effective _____.

SUBPART A: PRESCHOOL EDUCATION AND
PREVENTION INITIATIVE PROGRAMS

Section 235.20 Application Procedure and Content for New or Expanding Programs

Each applicant that is proposing a program that has not received funding in the year previous to the current application or is seeking additional funds to expand its currently funded program shall submit to the State Board of Education a proposal that includes the components specified in this Section. For purposes of this Section, an "expanded" program includes one in which the applicant is proposing to serve additional children and their families or to offer initiatives not provided under its currently funded program.

- a) Grants for new or expanded programs shall be offered in years in which the level of available funding is such that one or more new or expanded programs can be supported, along with those currently funded programs that seek continuation funding in accordance with Section 235.60 of this Part.
- b) When sufficient funding is available, the State Superintendent of Education shall issue one or more Requests for Proposals (RFP) specifying the information that applicants shall include in their proposals, informing applicants of any bidders'

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conferences, and requiring that proposals be submitted no later than the date specified in the RFP. The RFP shall provide at least 45 calendar days in which to submit proposals.

- c) All proposals submitted in response to an RFP shall include the following components:
- 1) A cover page completed on a form supplied by the State Board of Education and signed by the school district superintendent or official authorized to submit the proposal or, in the case of a joint application, by the superintendent from each of the school districts and each authorized official of other eligible entities participating in the joint proposal.
 - 2) For applicants other than public school districts, a description that includes the following:
 - A) the applicant's mission statement, organizational structure, and goals or policies regarding early childhood programs;
 - B) the applicant's existing competencies to provide early childhood education programs, to include a list of any early childhood accreditations that have been achieved and, if applicable, the most current rating the applicant has received through the Illinois Department of Human Service's Quality Rating System (see <http://www.inccrra.org/>) or after July 1, 2012, through the Tiered Quality Rating and Improvement System (see Section 235.45 of this Part); and
 - C) in the case of a joint application, the goals and objectives of the collaboration and a brief description of each partner's experience in providing services similar to those to be provided under the Early Childhood Block Grant program.
 - 3) A description of how the comprehensive services to be provided are aligned with:
 - A) the applicable Illinois Early Learning and Development Standards, as set forth in Appendix A or Appendix C of this Part;

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- B) the Illinois Birth to Five Program Standards as set forth in Appendix B of this Part; and
- C) for proposed preschool education programs that will serve English language learners, the "English Language Proficiency Standards for English Language Learners in PreKindergarten through Grade 12" (2007), published by the Board of Regents of the University of Wisconsin System on behalf of the WIDA Consortium and posted at <http://www.wida.us/standards/elp.aspx>. No later amendments to or editions of these standards are incorporated by this Section.

~~4)3)~~ A description of the need for the program, which shall include:

- A) current demographic or descriptive information regarding the community in which the families and children reside (including information on the prevalence of homelessness); and
- B) the process that was used to determine the need for the program in the community in relation to other similar services that may be operating in the same geographic area; this description must list, to the extent known, the other services offered and an estimate of the number of children being served.

~~5)4)~~ A description of the population to be served, as defined in Section 235.10(a) of this Part, for each program to be funded under the Early Childhood Block Grant. This description shall include:

- A) how the eligible population will be recruited;
- B) the geographic area to be served; and
- C) the estimated number of children and/or families to be enrolled.

~~6)5)~~ A description of the procedures to be used to screen children and their families to determine their need for services. Results of the screening shall be made available to the program staff and parents of the children screened. All screening procedures shall include:

- A) research-based criteria to determine at what point performance on the screening instrument indicates that children are at risk of

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academic failure as well as to assess other environmental, economic and demographic information that indicates a likelihood that the children would be at risk;

- B) screening instruments/activities that are:
 - i) related to and able to measure the child's development in at least the following areas (as appropriate for the age of the child): vocabulary, visual-motor integration, language and speech development, English proficiency, fine and gross motor skills, social skills and cognitive development; and
 - ii) formally validated with evidence that the instruments/activities reliably and accurately detect children who are at risk for developmental delays and do not incorrectly identify children disproportionately as being at risk of academic failure;
 - C) written parental permission for the screening;
 - D) parent interview (to be conducted in the parents' home language, if necessary), including at least the following:
 - i) for preschool education programs, a summary of the child's health history and social development; or
 - ii) for prevention initiative programs, information about the parents, such as age, educational achievement and employment history;
 - E) vision and hearing screening, in accordance with 77 Ill. Adm. Code 685 (Vision Screening) and 675 (Hearing Screening); and
 - F) where practicable, provision for the inclusion of program teaching staff in the screening process.
- 7)6 A description of the parent education and involvement component that will be provided, which shall include activities in each of the following areas:

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- A) communication between the home and the preschool education program that is regular, two-way and meaningful;
- B) parenting skills are promoted and supported;
- C) recognition that parents play an integral role in assisting student learning;
- D) parents are welcome in the program, and their support and involvement are sought; and
- E) parents are full partners in the decisions that affect children and families.

| ~~8)7~~ A description of how the program will coordinate with other programs, as specified in the RFP, that are in operation in the same area and that are concerned with the education, welfare, health and safety needs of young children. A copy of the written agreement between the program and any Head Start program operating in the same area shall be executed by the date and contain the information specified in Section 2-3.71(a)(4.5) of the School Code. If the Head Start program is either unable or unwilling to enter into a written agreement, the program shall notify the State Board of Education of this fact no later than December 31 of each fiscal year.

| ~~9)8~~ A description of the full-time and part-time professional and nonprofessional staff to be paid by the program, indicating that program administrators, early childhood teachers, counselors, psychologists, psychiatrists and social workers are appropriately qualified.

- A) Teachers of children ages 3 to 5 years must hold an initial, initial alternative, standard, master, provisional, provisional alternative, resident teacher, or visiting international teacher early childhood certificate. (See Section 2-3.71(a)(3) of the School Code and 23 Ill. Adm. Code 1.Appendix A.)
- B) By July 1, 2014, noncertificated staff employed to assist in instruction provided to children ages 3 to 5 years shall meet the requirements set forth in 23 Ill. Adm. Code 25.510(c).

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- C) Teachers of children ages 3 to 5 years who are assigned to a transitional bilingual program or a transitional program of instruction that is administered by a school district, either in an attendance center or a non-school-based facility, shall meet the requirements set forth in 23 Ill. Adm. Code 228.35 (Transitional Bilingual Education), as applicable.
- D) By July 1, 2017, directors of child care centers offering preschool programs funded under Section 2-3.71 of the School Code and this Part shall have a minimum of a baccalaureate degree in child development or early childhood education or the equivalent and a Gateways to Opportunity Level II Illinois Director Credential issued pursuant to Section 10-70 of the Department of Human Services Act [20 ILCS 1305/10-70] (see <http://ilgateways.com/en/illinois-director-credential>). As used in this subsection (c)(9)(D), equivalent to baccalaureate degree in child development or early childhood education is defined as a baccalaureate in any discipline with a minimum of 24 semester hours of credit in child development, early childhood education, or early childhood special education, including relevant field experience.
- E) Beginning July 1, 2012, an applicant must submit an assurance that each staff member who will provide services to children enrolled in an early childhood classroom funded under this Part and who does not hold a certificate or approval issued by the State Board of Education pursuant to Article 21 of the School Code [105 ILCS 5/Art. 21] and 23 Ill. Adm. Code 25 (Certification) has registered in the Illinois Department of Human Services' "Gateways to Opportunity" registry (see <http://registry.ilgateways.com>).
- 10)9) A description of staff development assessment procedures and ongoing professional development activities to be conducted.
- 11)40) A description of the required program components, as set forth in either Section 235.30 or 235.40 of this Part.
- 12)44) Other information, as specified in the RFP, such as daily schedules (including the number of hours per day and days per week the program will operate), classroom locations, facility information (e.g., owner's

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name, terms of lease arrangement, size of classrooms and other areas to be used by the program), if applicable.

~~13)~~¹²⁾ The plan for ensuring that the program provides either a snack, in the case of a half-day program, or a meal, in the case of a full-day program, for participating children.

~~14)~~¹³⁾ A budget summary and payment schedule, as well as a budget breakdown, i.e., a detailed explanation of each line item of expenditure. The budget shall specify that no more than 5 percent of the total grant award shall be used for administrative and general expenses not directly attributed to program activities, except that a higher limit not to exceed 10 percent may be negotiated with an applicant that has provided evidence that the excess administrative expenses are beyond its control and that it has exhausted all available and reasonable remedies to comply with the limitation.

~~15)~~¹⁴⁾ A description of how the applicant will ensure that no fees will be charged of parents or guardians and their children who are enrolled and participate in Early Childhood Block Grant programs.

~~16)~~¹⁵⁾ A plan for evaluating the proposed programs and activities to be included in the Early Childhood Block Grant, which shall correspond to the applicable specifications set forth in the RFP.

~~17)~~¹⁶⁾ Such certifications, assurances and program-specific terms of the grant as the State Superintendent of Education may require, to be signed by each applicant that is a party to the application and submitted with the proposal. (Also see Section 235.70 of this Part.)

- d) Applicants may be requested to clarify various aspects of their proposals. The contents of the approved proposal shall be incorporated into a grant agreement to be signed by the State Superintendent of Education or designee and the school district superintendent or, in the case of an entity that is not the school district, the person legally authorized to submit the proposal and bind the applicant to its contents.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 235.30 Additional Program Components for Preschool Education Proposals

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- a) In addition to the requirements set forth in Section 235.20, applications for funding for preschool education programs and activities, as defined in Section 235.10(a)(1) of this Part, must provide:
- ~~1)~~ a description of how the comprehensive services to be provided are aligned with the Illinois Early Learning Standards as set forth in Appendix A of this Part;
 - ~~1)2)~~ a description of how the proposed educational program is developmentally appropriate for each child, which shall:
 - A) be accepted based upon evidence in the proposal that the results of the individualized assessment profile for each child will be the basis for determining that child's educational program;
 - B) address the domains of development specified in Section ~~235.20(c)(6)235.20(e)(5)(B)~~ and how a language and literacy development program shall be implemented for each child based on that child's individual assessment; and
 - C) address how student progress will be assessed and documented to ensure that the educational program meets the needs of the student and provides a system whereby that student's parents are routinely advised of their child's progress; beginning July 1, 2013, the procedures to assess student progress shall be formally validated with evidence that the procedures reliably and accurately assess a child's progress relative to his or her individual needs and the standards set forth in Section 235.Appendix A of this Part.
 - ~~2)3)~~ the maximum number of children to be screened for program eligibility and, for those children that are screened, the maximum to be served by the educational program. The maximum number must be served in each classroom if, following completion of screening, the program has a waiting list of eligible children;
 - ~~3)4)~~ the child/staff ratio for each classroom, which shall not exceed a ratio of 10 children to one adult, with no more than 20 children being served in each classroom;

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- ~~4)5)~~ a description of how the program will ensure that those children who are age-eligible for kindergarten are enrolled in school upon leaving the preschool education program;
- ~~5)6)~~ for school district applicants, a description of the steps to be taken to ensure that the provisions of Article 14C of the School Code [105 ILCS 5/Art. 14C] and 23 Ill. Adm. Code 228 (Transitional Bilingual Education) are met; ~~and~~
- ~~6)7)~~ a description of the provisions to be made to allow for the participation of children with disabilities in the program; ~~and-~~
- ~~7)~~ as applicable, the information required under Section 235.45(c) of this Part if an unfavorable monitoring report was issued since the last proposal or continuation application was approved or, if the report was favorable, of the plan for continuous improvement.
- b) Each applicant also shall describe whether the program qualifies as a program serving primarily at-risk children or a program serving primarily children whose families meet the income guidelines set forth in Section 2-3.71(a)(4.5) of the School Code.
- 1) A program serving "primarily at-risk children" is one that:
- A) has 80 percent or more of the enrolled children identified as being at risk of academic failure (see Sections 235.10(a)(3) and 235.20(c)(6)235.20(e)(5) of this Part);
- B) gives priority for enrollment to academically at-risk students over those students who have not been identified as academically at risk; and
- C) has taken specific proactive measures to ensure that parents of children who may be at risk of academic failure are aware of the opportunity to enroll in the preschool education program.
- 2) A program serving "primarily children whose families meet income guidelines" is one that has 80 percent or more of the enrolled children from families meeting the income guidelines and does not qualify under

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subsection (b)(1) of this Section as serving primarily academically at-risk children.

- 3) Each applicant shall estimate the percentage of children to be enrolled who are considered to be at risk of academic failure or whose families meet income guidelines, as applicable.
- c) Programs serving primarily at-risk children shall describe:
- 1) the process to ensure that, if the program has a waiting list of children to be enrolled, all children identified as being at risk of academic failure are enrolled before other children not identified as being at risk; and
 - 2) the specific proactive measures the program has taken or will take to ensure that parents of children who may be at risk of academic failure are made aware of the opportunity to participate in the preschool education program.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 235.40 Additional Program Components for Prevention Initiative Proposals

In addition to the requirements set forth in Section 235.20, applications for funding for prevention initiative programs and activities, as defined in Section 235.10(a)(2) of this Part, must provide:

- a) evidence that the program is derived from research on successful prevention services for at-risk families, including specific references to research that discusses the types of services and strategies to be offered by the program as effective in addressing the needs of the families to be served;
- ~~b) a description of how the comprehensive services to be provided are aligned with the Illinois Birth to Three Program Standards set forth in Appendix B of this Part;~~
- ~~b)e)~~ the steps to be taken to ensure that the program will serve those children and families most in need of prevention initiative activities and services;
- ~~c)d)~~ the steps to be taken to coordinate services in the area, including a description of how the community will be involved and how case management services will be used;

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- d)e) a description of how services will be targeted to family needs, to include how a family needs assessment will be conducted and used to implement an individual family service plan for each family served in the program;
- e)f) a description of the intensity of services that will be offered (e.g., the number of hours that are available for families to participate in activities and services);
- f)g) the steps to be taken to encourage families to attend regularly and remain in the program a sufficient time to make sustainable changes; and
- g)h) a referral system that ensures that to place 3-year-old children are placed into other early childhood education programs that meet their specific developmental needs and the services to be provided to ensure a successful transition into those other programs.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 235.45 Tiered Quality Rating and Improvement System

Beginning in school year 2012-13, each grantee that operates a preschool education program funded under this Part shall participate in the Tiered Quality Rating and Improvement System. The system is designed to measure the quality of a grantee's program by examining the program's environment, program administration, national accreditations and staff qualifications. Factors assessed include, but are not limited to, space and furnishings, activities, student-staff interaction, program structure and classroom organization, fiscal management, planning and evaluation, family partnerships, technology, certification and other credentialing and professional development and training.

- a) Each grantee shall enroll in the system no later than July 1, 2012.
- b) Each grantee, including a school district or regional office of education, shall be considered to have achieved a "4-star rating" in the system by virtue of meeting the requirements for funding under Section 2-3.71 of the School Code and this Part.
 - 1) The grantee's "4-star rating" shall be in effect for three years, except as provided in subsection (c) of this Section. The grantee's submission of a continuation application shall constitute the annual compliance report

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required of each program participating in the system. (See Section 235.60 of this Part.)

- 2) A grantee that operates the preschool education program outside of a school district facility shall reapply for a "star rating" and participate in a monitoring visit pursuant to subsection (c) of this Section if it changes facility locations during the three-year approval period.
- c) Each grantee shall participate in the monitoring component of the Tiered Quality Rating and Improvement System once every three years. The monitoring findings may result in a lowering of a grantee's "4-star rating" if evidence is presented that the grantee is no longer meeting the criteria required to maintain that rating. In these instances, the grantee, for the next funding cycle, shall include, either in its proposal submitted under Section 235.20 of this Part or the continuation application submitted under Section 235.60 of this Part, a copy of the monitoring report and the steps to be taken to correct any deficiencies identified by the monitor.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 235.50 Proposal Review and Approval for New or Expanding Programs

- a) Proposals submitted for funding to establish a new program or expand an existing program shall be evaluated in accordance with the following criteria.
 - 1) Population to be Served (30 points)
 - A) The proposal clearly indicates that the area to be served has a high number of children and families determined to be the most in need of the services provided by the Early Childhood Block Grant program, as indicated by high levels of poverty, illiteracy, unemployment, limited-English proficiency, or other need-related indicators, such as the school district's rate of dropouts, retention, truancy, teenage pregnancies and homeless students, high rates of infant mortality, birth trauma, low birth weight or prematurity, and high rates of child abuse and neglect, and that there exists in the area to be served an insufficient number of other programs and services to fully serve all children and families who potentially could be at risk.

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- B) Criteria and indicators for identifying children and families who are eligible for the program are clearly established and likely to target those children and families most in need of services.
 - C) Effective recruitment strategies are proposed that are likely to ensure that the maximum number of eligible children and families are enrolled in the program.
- 2) Quality of Proposed Program (40 points)
- A) The proposed program and activities will sufficiently meet the identified needs of the population to be served and include child and parent activities designed to enhance child development and parent effectiveness and, ultimately, school readiness.
 - B) The program proposal provides for effective linkages among parents, education, health and social service agencies, and child care providers and includes a plan for coordination of services with other educational programs serving young children and their families.
 - C) The proposed program is built upon effective research about early childhood education and aligned to the applicable Illinois early learning standards (see Appendices A and B of this Part).
 - D) The evaluation strategies include measurable outcomes for children and families that are designed to effectively gauge the success of the program and yield sufficient data that can be used to improve the program.
- 3) Experience and Qualifications (20 points)
- A) Proposed staff hold the appropriate certifications and/or licenses for their positions and have the qualifications and experience necessary to successfully implement a high-quality early childhood program.
 - B) The staff development plan adequately addresses the needs of the project staff, offers a varied and full range of staff development experiences and provides sufficient opportunities for learning so as

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to allow staff to incorporate the training into program delivery activities.

- C) In addition, an eligible applicant other than a school district has presented evidence that it:
- i) holds the appropriate licensure to operate as a day care facility;
 - ii) holds early childhood accreditations or has other relevant experience that demonstrates success in implementing and administering programs similar to the ones funded under the Early Childhood Block Grant Program; and
 - iii) has a successful track record with similar grants or contracts.
- 4) The program is cost-effective as evidenced by the cost of proposed services in relation to the numbers to be served and the services to be provided. (10 points)
- b) The selection of proposals for funding may be based in part on geographic distribution and/or the need to provide resources to school districts and communities with varying demographic characteristics.
- c) Priority consideration may be given to proposals with specific areas of emphasis, as identified by the State Superintendent of Education in a particular RFP.
- d) For a previously funded applicant, progress toward correcting any deficiencies contained in an unfavorable monitoring report issued under Section 235.45(c) of this Part shall be taken into consideration in the review process.
- e) The State Superintendent of Education shall determine the amount of individual grant awards. The final award amounts shall be based upon:
- 1) the total amount of funds available for the Early Childhood Block Grant; and
 - 2) the resources requested in the top-ranked proposals, as identified pursuant to subsections (a), (b) and (c) of this Section.

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 235.60 Application Content and Approval for Continuation Programs

The requirements of this Section shall apply to those applicants seeking funding to continue preschool education and prevention initiative programs beyond the initial grant period.

- a) In order to continue to operate an Early Childhood Block Grant Program, a grantee each year shall electronically submit an application for continuation. The application shall include at least the following:
 - 1) an overview of the program, addressing the program components outlined in Section 235.20 of this Part and either Section 235.30 or Section 235.40 of this Part, as applicable for preschool education or prevention initiative programs;
 - 2) a summary of the self-assessment of the program's alignment with the criteria specific to the grantee's "star rating" achieved under the Tiered Quality Rating and Improvement System (see Section 235.45 of this Part);
 - 3) as applicable, the information required under Section 235.45(c) of this Part if an unfavorable monitoring report was issued since the last proposal or continuation application was approved or, if the report was favorable, of the plan for continuous improvement;
 - 4)2) budget summary and payment schedule, as well as a budget breakdown, i.e., a detailed explanation of each line item of expenditure; and
 - 5)3) the certifications and assurances referred to in Section 235.20(c)(17)235.20(e)(16) of this Part applicable to the renewal period.
- b) An Early Childhood Education Block Grant Program shall be approved for continuation provided that:
 - 1) a need continues to exist for the program, as evidenced by the number or proportion of children and families to be served;
 - 2) the program components proposed will be effective in assisting at-risk children and families;

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- 3) the proposed budget is cost-effective, as evidenced by the cost of proposed services in relation to the numbers to be served and the services to be provided; and
- 4) in the year previous to the continuation application, the applicant complied with the terms and conditions of any grant it received pursuant to this Subpart A.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 235.70 Terms of the Grant

- a) Expenditure reports must be filed electronically with the Division of Funding and Disbursements four times a year.
- b) Each grantee shall submit evaluation information and other reports containing program-related data in a format specified on forms provided by the State Board of Education, providing specifying:
 - 1) descriptive statistics on the population served, eligibility, screening procedures and staff qualifications and training, including any social and emotional consultation services provided pursuant to Subpart C of this Part;
 - 2) descriptive information, including type and quality of the educational program, amount and extent of interagency collaboration, and parent education and involvement;
 - 3) the extent to which program objectives have been accomplished; and
 - 4) any similar program-related information that the State Superintendent of Education may request upon 30 days' written notice.
- c) An annual program review shall be conducted for each new project to ensure program quality, to assist in program improvement and to provide technical assistance.

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- d) All equipment purchased by the grantee for the program with Early Childhood Block Grant funds must be documented on a form supplied by the State Board of Education and be maintained in the grantee's files.
- e) A time distribution worksheet shall be kept for any staff member in a part-time position.
- f) Grantees shall use funds provided under the Early Childhood Block Grant *to supplement, not supplant, funds received from any other source.* (Sections 2-3.71 and 2-3.89 of the School Code)
- g) Grant funds may not be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.
- h) Prior to final funding approval, each grantee shall:
- 1) present evidence that ~~staffall teachers providing instruction~~ meet the requirements of Section ~~235.20(c)(9)235.20(e)(8)(A) and (e)(8)(C)~~ of this Part, as applicable, and
 - 2) if subject to licensure requirements of the Illinois Department of Children and Family Services (DCFS), present evidence that it holds the appropriate licensure (also see Section 235.10(b) of this Part).
- i) ~~Reporting: All preschool education program~~ grantees must report the following to the Illinois State Board of Education no later than October 15 of each year. ~~Other reports shall be submitted in a format specified by and according to the timeline set forth by the State Superintendent of Education.~~
- 1) The percentage of children enrolled in the program who have been identified as being at risk of academic failure.
 - 2) The percentage of children enrolled in the program who are from families whose incomes are less than four times the federal poverty level (FPL), established by U.S. Department of Health and Human Services.
 - 3) The percentage of children enrolled in the program who do not qualify under either category.

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- j) Each grantee shall enter information and other data relative to the students participating in the preschool education program into the Student Information System in accordance with the provisions of 23 Ill. Adm. Code 1.75 (Student Information System).
- k) Failure of a grantee to enroll the required percentage of children (80 percent) in the particular prioritization category for which the proposal was funded (i.e., at-risk status or income levels) shall result in the amount of grant award being reduced proportionate to the decrease in percentage of children enrolled.
- l) School district grantees with programs serving homeless children must comply with all applicable provisions of the federal McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.). Non-school district grantees should, to the extent possible, ensure that homeless children enrolled in their programs receive the support necessary for successful and continued participation, including, without limitation, arranging for appropriate transportation when necessary.
- m) No funds may be used to help support or sustain any institution controlled by any church or sectarian denomination (see Article X, Section 3 of the Illinois Constitution).
- n) Each grantee that operates a program in a facility licensed by DCFS shall require all employees and volunteers who are persons subject to background checks, as defined by 89 Ill. Adm. Code 385.20 (Definitions), to authorize DCFS to perform a Child Abuse and Neglect Tracking System (CANTS) background check. The grantee shall maintain evidence of completion of required CANTS checks for all persons subject to background checks and copies of the evidence of completion shall be provided to the administrator of the DCFS-~~licensed~~license facility. The requirement applies to any paid or unpaid individual, including any certified teacher employed by a school district or other entity but working in the facility, who is used to perform essential staff duties as evidenced by being counted in the staff-child ratio or being allowed to be alone with children in a licensed child care facility outside the visual or auditory supervision of facility staff.
- o) Each school district offering a preschool education program authorized under Section 2-3.71 of the School Code and this Part shall administer the Illinois Kindergarten Individual Development Survey (KIDS) beginning in the 2013-14 school year. A school district is not obligated to administer KIDS in any school year in which the State does not provide funding sufficient for the cost of the

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administration and establishment of a professional development system for teachers and administrators. (Also see 23 Ill. Adm. Code 1.420(h) (Basic Standards).)

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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**Section 235.APPENDIX A Illinois Early Learning and Development Standards –
Children Age 3 to Kindergarten Enrollment Age**

The Illinois Early Learning and Development Standards for children ages 3 to kindergarten enrollment as defined in Section 10-20.12 of the School Code~~3– and 4-year-olds~~ are broad statements that provide teachers and caregivers useful information that is directly needed as part of their daily classroom work. The standards are organized to parallel content in the Illinois State Goals for Learning (see 23 Ill. Adm. Code 1.Appendix D).

LANGUAGE ARTSState Goal 1: Acquire foundational early literacy and language skills.Standards:

Develop an appreciation for language and literacy activities.

Develop basic language skills.

Understand that language is used in a variety of ways to communicate.

State Goal 2: Develop age-appropriate early literacy reading skills and concepts.Standards:

Demonstrate comprehension of text that is read aloud or seen in print.

Identify elements pertaining to the craft and structure of types of text.

Demonstrate understanding of text organization and basic features of print.

Demonstrate beginning letter and word recognition.

Demonstrate beginning phonological awareness.

State Goal 3: Develop early writing skills and concepts.Standards:

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Use writing to represent ideas and information.

Compose information to convey meaning.

Recognize multiple purposes and types of writing.

Explore writing and conveying ideas using digital tools.

State Goal 4: Comprehend the language of others.

Standards:

Demonstrate understanding through age-appropriate responses.

Understand language and information presented in a variety of ways.

State Goal 5: Use language, including body language, for expression.

Standards:

Communicate effectively using language appropriate to the situation and audience.

Demonstrate increasingly complex and varied use of language.

MATHEMATICS

State Goal 6: Demonstrate and apply a knowledge and sense of numbers, including numeration and operations.

Standards:

Demonstrate beginning understanding of numbers, number names and numerals.

Begin to construct sets, add and subtract to create new numbers.

Begin to make reasonable estimates of numbers.

Compare quantities using appropriate vocabulary terms.

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State Goal 7: Explore measurement of objects and quantities.

Standards:

Measure and compare objects and quantities using standard and non-standard instruments and methods.

Begin to make estimates of measurements.

Explore tools used for measurement.

State Goal 8: Identify and describe common attributes, patterns and relationships in objects.

Standards:

Explore objects and patterns.

Describe and document patterns using symbols.

State Goal 9: Explore concepts of geometry and spatial relations.

Standards:

Recognize, name and replicate common shapes.

Demonstrate an understanding of location and ordinal position, using appropriate vocabulary.

SCIENCE

State Goal 10: Begin to make predictions and collect and analyze data information.

Standards:

Organize and describe data and information.

Gather information to answer questions.

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State Goal 11: Demonstrate curiosity about the world, and engage in scientific inquiry to answer questions.

Standards:

Develop skills to observe, collect information, ask questions, predict, explain and draw conclusions.

Use tools and technology to assist in scientific inquiry.

State Goal 12: Explore concepts and information about life, physical and earth sciences.

Standards:

Understand that living things grow and change.

Understand that living things rely on the environment and/or others to live and grow.

Explore the physical properties of objects.

Explore concepts of force and motion.

Explore concepts and information related to the Earth, including ways to take care of our planet.

Explore changes related to the weather and seasons.

State Goal 13: Understand basic safety rules for scientific inquiry.

Standard:

Understand rules to follow when investigating and exploring.

SOCIAL STUDIES

State Goal 14: Understand some concepts related to citizenship.

Standards:

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Understand what it means to be a member of a group and community.

Understand ways groups make choices and decisions.

Understand the role that individuals can play in a group or community.

State Goal 15: Explore economic systems and human interdependence.

Standards:

Explore roles in the economic system and workforce.

Explore issues of limited resources in the classroom and world.

Explore concepts about trade as an exchange of goods or services.

State Goal 16: Develop an awareness of the self and his or her uniqueness and individuality.

Standard:

Explore his or her self and history.

State Goal 17: Explore geography, the child's environment, and where people live, work and play.

Standard:

Explore environments and where people live.

State Goal 18: Explore people and families.

Standards:

Explore people, their similarities and their differences.

Develop an awareness of self within the context of family.

PHYSICAL DEVELOPMENT AND HEALTH

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State Goal 19: Acquire movement skills and understand concepts needed to explore the environment, support learning and engage in health-enhancing physical activity.

Standards:

Demonstrate physical competency and control of large and small muscles.

Demonstrate awareness and coordination of body movements.

Demonstrate knowledge of rules and safety during physical activity.

State Goal 20: Develop habits for life-long fitness.

Standard:

Achieve and maintain a health-enhancing level of physical fitness.

State Goal 21: Develop team-building skills by working with others through physical activity.

Standards:

Demonstrate individual responsibility during group physical activities.

Demonstrate cooperative skills during structured group physical activity.

State Goal 22: Understand principles of health promotion and the prevention and treatment of illness and injury.

Standard:

Explain the basic principles of health promotion, illness prevention, treatment and safety.

State Goal 23: Understand human body systems and factors that influence growth and development.

Standards:

Describe and explain the structure and functions of the human body systems and how they interrelate.

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Identify ways to keep the body healthy.

State Goal 24: Promote and enhance health and well-being through the use of effective communication and decision-making skills.

Standard:

Demonstrate skills essential to enhancing health and avoiding dangerous situations.

THE ARTS

State Goal 25: Gain exposure to and explore the arts.

Standards:

Investigate, explore and participate in the arts.

Display an awareness of some distinct characteristics of the arts.

State Goal 26: Understand that the arts can be used to communicate ideas and emotions.

Standard:

Understand ways to express meaning through the arts.

SOCIAL/EMOTIONAL DEVELOPMENT

State Goal 27: Develop self-awareness and self-management skills to achieve school and life success and develop positive relationships with others.

Standards:

Identify and manage one's emotions and behavior.

Recognize one's own uniqueness and personal qualities.

Demonstrate skills related to successful personal and school outcomes.

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State Goal 28: Use social-awareness and interpersonal skills to establish and maintain positive relationships.

Standards:

Develop positive relationships with peers and adults.

Recognize and appreciate individual and group similarities and differences.

Use communication and social skills to interact effectively with others.

Demonstrate an ability to prevent, manage and resolve interpersonal conflicts in constructive ways.

State Goal 29: Demonstrate decision-making skills and responsible behaviors in personal, school and community contexts.

Standards:

Begin to consider ethical, safety and societal factors in making decisions.

Apply decision-making skills to deal responsibly with daily academic and social situations.

Contribute to the well-being of one's school and community.

ENGLISH LANGUAGE LEARNER HOME LANGUAGE

State Goal 30: Use the home language to communicate within and beyond the classroom setting.

Standard:

Use the home language for use for a variety of social and academic purposes.

State Goal 31: Use the home language to make connections and reinforce knowledge and skills across academic, vocational and technical disciplines.

Standard:

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Use the home language in order to attain benchmarks across the learning areas and to build upon and develop transferable language and literacy skills.

Language Arts

Standards:

~~Understand that pictures and symbols have meaning and that print carries a message.~~

~~Understand that reading progresses from left to right and top to bottom.~~

~~Identify labels and signs in the environment.~~

~~Identify some letters, including those in own name.~~

~~Make some letter-sound matches.~~

~~Predict what will happen next using pictures and content for guides.~~

~~Begin to develop phonological awareness by participating in rhyming activities.~~

~~Recognize separable and repeating sounds in spoken language.~~

~~Retell information from a story.~~

~~Respond to simple questions about reading material.~~

~~Demonstrate understanding of literal meaning of stories by making comments.~~

~~Understand that different text forms, such as magazines, notes, lists, letters, and story books, are used for different purposes.~~

~~Show independent interest in reading-related activities.~~

~~Use scribbles, approximations of letters, or known letters to represent written language.~~

~~Dictate stories and experiences.~~

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~~Use drawing and writing skills to convey meaning and information.~~

~~Listen with understanding and respond to directions and conversations.~~

~~Speak effectively using language appropriate to the situation and audience.~~

~~Communicate needs, ideas and thoughts.~~

~~Seek answers to questions through active exploration.~~

~~Relate prior knowledge to new information.~~

~~Communicate information with others.~~

Mathematics**Standards:**

~~Use concepts that include number recognition, counting and one-to-one correspondence.~~

~~Count with understanding and recognize "how many" in sets of objects.~~

~~Solve simple mathematical problems.~~

~~Explore quantity and number.~~

~~Connect numbers to quantities they represent using physical models and representations.~~

~~Make comparisons of quantities.~~

~~Demonstrate a beginning understanding of measurement using non-standard units and measurement words.~~

~~Construct a sense of time through participation in daily activities.~~

~~Show understanding of and use comparative words.~~

~~Incorporate estimating and measuring activities into play.~~

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~~Sort and classify objects by a variety of properties.~~

~~Recognize, duplicate and extend simple patterns, such as sequences of sounds, shapes and colors.~~

~~Begin to order objects in series or rows.~~

~~Participate in situations that involve addition and subtraction using manipulatives.~~

~~Describe qualitative change, such as measuring to see who is growing taller.~~

~~Recognize geometric shapes and structures in the environment.~~

~~Find and name locations with simple words, such as "near".~~

~~Represent data using concrete objects, pictures, and graphs.~~

~~Gather data about themselves and their surroundings.~~

Science

Standards:

~~Use senses to explore and observe materials and natural phenomena.~~

~~Collect, describe and record information.~~

~~Use scientific tools such as thermometers, balance scales and magnifying glasses for investigation.~~

~~Become familiar with the use of devices incorporating technology.~~

~~Investigate and categorize living things in the environment.~~

~~Show an awareness of changes that occur in themselves and their environment.~~

~~Describe and compare basic needs of living things.~~

~~Make comparisons among objects that have been observed.~~

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~~Describe the effects of forces in nature (e.g., wind, gravity and magnetism).~~

~~Use common weather related vocabulary (e.g., rainy, snowy, sunny, windy).~~

~~Identify basic concepts associated with night/day and seasons.~~

~~Begin to understand basic safety practices.~~

~~Express wonder and ask questions about their world.~~

~~Begin to be aware of technology and how it affects their lives.~~

Social Science

Standards:

~~Recognize the reasons for rules.~~

~~Participate in voting as a way of making choices.~~

~~Develop an awareness of roles of leaders in their environment.~~

~~Identify community workers and the services they provide.~~

~~Begin to understand the use of trade to obtain goods and services.~~

~~Recall information about the immediate past.~~

~~Locate objects and places in familiar environments.~~

~~Express beginning geographic thinking.~~

~~Recognize similarities and differences in people.~~

~~Understand that each of us belongs to a family and recognize that families vary.~~

Physical Development and Health

Standards:

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~~Engage in active play using gross motor skills.~~

~~Engage in active play using fine motor skills.~~

~~Coordinate movements to perform complex tasks.~~

~~Follow simple safety rules while participating in activities.~~

~~Participate in developmental activities related to physical fitness.~~

~~Exhibit increased endurance.~~

~~Follow rules and procedures when participating in group physical activities.~~

~~Demonstrate ability to cooperate with others during group physical activities.~~

~~Participate in simple practices that promote healthy living and prevent illness.~~

~~Identify body parts and their functions.~~

~~Act independently in caring for personal hygiene needs.~~

~~Use appropriate communication skills when expressing needs, wants and feelings.~~

~~Use socially acceptable ways to resolve conflict.~~

~~Participate in activities to learn to avoid dangerous situations.~~

Fine Arts

Standards:

~~Investigate the elements of dance, drama, music and the visual arts.~~

~~Describe or respond to their own creative work or the creative work of others.~~

~~Participate in dance, drama, music and visual arts activities.~~

~~Use creative arts as an avenue for self-expression.~~

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~~Foreign Languages~~

~~Standards:~~

~~Maintain the native language for use in a variety of purposes.~~

~~Use and maintain the native language in order to build upon and develop transferable language and literacy skills.~~

~~Social/Emotional Development~~

~~Standards:~~

~~Describe self by using several basic characteristics.~~

~~Exhibit eagerness and curiosity as a learner.~~

~~Exhibit persistence and creativity in seeking solutions to problems.~~

~~Show some initiative and independence in actions.~~

~~Use appropriate communication skills when expressing needs, wants and feelings.~~

~~Begin to understand and follow rules.~~

~~Manage transitions and begin to adapt to change in routines.~~

~~Show empathy and caring for others.~~

~~Use the classroom environment purposefully and respectfully.~~

~~Engage in cooperative group play.~~

~~Begin to share materials and experiences and take turns.~~

~~Respect the rights of self and others.~~

~~Develop relationships with children and adults.~~

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(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 235.APPENDIX B Illinois Birth to FiveThree Program Standards

The Illinois Birth to FiveThree Program Standards are broad statements that reflect current knowledge, research findings and shared beliefs about high-quality, developmentally appropriate early childhood care and education in the context of programs for infants, ~~and~~ toddlers, preschoolers and their families.

Program Goal I: Organization

Standards:

All birth to fivethree programs must have a mission, vision or purpose statement based on shared beliefs and goals.

Scheduling practices and intensity of services are tailored to the goals of the program and to the individual strengths and needs of children birth to fivethree and their families.

The strengths and needs of the children and families, as well as research on best practice, determine the ratio of participants to staff and the size of program groups.

The program meets the needs of children and families of varying abilities, as well as diverse cultural, linguistic, and economic backgrounds.

The physical environment of the program is safe, healthy, and appropriate for children's development and family involvement.

The administration promotes and practices informed leadership and supervision.

The administration participates in and encourages ongoing staff development, training, and supervision.

All birth to fivethree programs must follow mandated reporting laws for child abuse and neglect and have a written policy statement addressing staff responsibilities and procedures regarding implementation.

The program budget is developed to support quality program service delivery.

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The program implements effective systems for recording and managing information about the program, its staff, its participants, and learning and developmental outcomes and uses this information to engage in continuous improvement.

Program Goal II: Curriculum and Service Provision

Standards:

The curriculum reflects the centrality of adult/child interactions in the development of infants, ~~and~~ toddlers and preschoolers.

The curriculum is aligned to the Illinois Early Learning and Development Standards for infants and toddlers and/or preschoolers and supports children's cognitive, language, social, emotional and physical development and the development of positive approaches to learning.

~~The curriculum reflects the holistic and dynamic nature of child development.~~

The ~~programeurriculum~~ prioritizes family involvement while respecting individual parental choices.

The ~~programeurriculum~~ supports and demonstrates respect for the families' unique abilities, as well as for their ethnic, cultural, and linguistic diversity.

The ~~programeurriculum~~ promotes a framework that is nurturing, predictable, and consistent, yet flexible.

The program supports children's healthy physical development.

Program Goal III: Developmental Monitoring and Program Accountability

Standards:

The program staff regularly conducts a developmental screening with an appropriate standardized tool for the purposes of identifying children with developmental delays or disabilities~~monitors children's development~~.

The program incorporates appropriate formative assessments of children, which are aligned with the curriculum, for the purposes of monitoring individual child

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development and individualization of the program and/or curriculum.

Leadership conducts regular and systematic evaluation of the program and staff to assure that the philosophy is reflected and goals of the program are being fulfilled.

Program Goal IV: Personnel

Standards:

The program leadership is knowledgeable about child development and best practice for quality birth to ~~five~~three programs.

The program leadership is effective in explaining, organizing, implementing, supervising, and evaluating birth to ~~five~~three programs.

The program leadership hires qualified staff who are competent in working with infants, ~~and~~-toddlers and preschoolers and their families.

The program leadership provides ongoing supervision that promotes staff development and enhances quality service delivery.

The program leadership provides opportunities for ongoing professional growth and development.

The program leadership promotes continuity in staffing through provision of a supportive work environment, competitive wages and benefits, and opportunities for advancement.

The program leadership and staff are knowledgeable about programs and agencies in the community that provide services for children and their families.

Program Goal V: Family and Community Partnerships

Standards:

The child is viewed in the context of the family and the family is viewed in the context of its culture and community.

The program leadership and staff seek and facilitate family participation and partnerships.

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The program assures that families have access to comprehensive services.

The program develops a partnership with families in which the family members and staff determine goals and services.

The program takes an active role in community and system planning and establishes ongoing collaborative relationships with other institutions and organizations that serve families.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 235.APPENDIX C Illinois Early Learning and Development Guidelines – Children from Birth to Age 3

The Illinois Early Learning and Development Guidelines for children from birth to age 3 are broad statements that provide parents, teachers and caregivers useful information about a child's growth and development.

SOCIAL AND EMOTIONAL DEVELOPMENT

Empathy

Standard:

Children demonstrate an emerging ability in understanding someone else's feelings and sharing in the emotional experience of others.

Social Communication

Standard:

Children demonstrate the ability to communicate with others to get intended results.

Relationship with Peers

Standard:

Children develop the desire and ability to engage with other children.

Relationship with Adults

Standard:

Children develop preferences for familiar adults and build their capacity to seek assistance to meet their needs.

Moral Development

Standard:

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Children demonstrate the ability to understand the social definition of "right" and "wrong".

Safety Awareness

Standard:

Children develop the ability to recognize risky situations and respond accordingly.

Attachment Relationships

Standard:

Children form secure attachment relationships with caregivers who are emotionally available, responsive and consistent in meeting their needs.

Emotional Expression

Standard:

Children demonstrate the ability to identify and express emotions in an effective manner.

Self-Concept

Standard:

Children develop identity of self in relation to others.

COGNITIVE DEVELOPMENT

Concept Development

Standard:

Children demonstrate the ability to connect pieces of information to understand abstract ideas.

Logic and Reasoning

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Standard:

Children demonstrate the ability to use judgments and rationale based on previous experiences in decision-making processes.

Math and Numeracy

Standard:

Children demonstrate awareness of quantity and counting.

Spatial Relationships

Standard:

Children demonstrate an awareness of how objects move and fit into space.

Memory

Standard:

Children develop the ability to acquire, store and recall past experiences and translate them into new experiences.

Symbolic Thought

Standard:

Children demonstrate the understanding of non-literal descriptors for concepts and ideas.

Science Skills and Knowledge

Standard:

Children demonstrate a basic awareness of scientific concepts.

LANGUAGE, LITERACY AND COMMUNICATION

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Early Literacy

Standard:

Children demonstrate interest and comprehension with printed materials.

Language Acquisition – Expressive Communication

Standard:

Children demonstrate the ability to use expressive vocabulary in order to communicate.

Language Acquisition – Receptive Communication

Standard:

Children demonstrate the ability to understand verbal communications.

Creative Expression

Standard:

Children demonstrate the ability to convey ideas and emotions through creative expression.

PHYSICAL DEVELOPMENT, HEALTH AND MOTOR DEVELOPMENT

Fine Motor

Standard:

Children demonstrate the ability to coordinate and move small muscles.

Gross Motor

Standard:

Children demonstrate strength, coordination and controlled use of large muscles.

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Perceptual Development

Standard:

Children demonstrate the ability to distinguish between and process sensory stimuli in their environment.

Self-care

Standard:

Children demonstrate the desire and ability to practice self-care routines.

APPROACHES TO LEARNING

Confidence and Risk Taking

Standard:

Children demonstrate the willingness to choose a variety of familiar and new experiences.

Curiosity and Initiative

Standard:

Children demonstrate an eagerness and interest in learning through verbal and nonverbal means.

Creativity, Inventiveness and Imagination

Standard:

Children demonstrate the ability to use creativity, inventiveness and imagination while they explore, play and solve problems through new experiences.

Persistence, Effort and Attentiveness

Standard:

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Children demonstrate the ability to remain engaged in experiences and develop a sense of purpose and follow-through.

Problem-solving

Standard:

Children attempt a variety of strategies to overcome obstacles and find solutions to tasks, questions and challenges.

Sensory Exploration

Standard:

Children use multiple strategies and all available senses to explore their environment.

SELF-REGULATION

Emotional Regulation/Expressions

Standard:

Children demonstrate the ability to initiate, inhibit and modulate emotional expression.

Behavioral Regulation

Standard:

Children demonstrate the ability to initiate, inhibit, and modulate behaviors in accordance with social conventions.

Attention Regulation

Standard:

Children demonstrate the ability to sustain attention through distractions and maintain engagement in activities through increasing difficulty.

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Physiological Regulation

Standard:

Children demonstrate the ability to control physical movements to produce desired results with the body and the ability to modulate biological processes to meet internal and external demands.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: State Universities Civil Service System
- 2) Code Citation: 80 Ill. Adm. Code 250
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
250.60	Amend
250.70	Amend
250.90	Amend
250.110	Amend
- 4) Statutory Authority: 110 ILCS 70
- 5) A complete description of the subjects and issues involved: Section 250.60(h) is amended by adding a new section 10 to provide for the permissive removal of names from certain registers, when a vacant position has been posted and the posting includes a timeline for removal or discontinuation of the register for that specific vacancy. Section 250.70(d) is amended to change the name from the Trainee program to the Intern program. Section 250.90(b)(2) is amended to allow for the extension of the probationary period for a comparable amount of time for any required off-site training period, as approved by the Executive Director. Section 250.110(b)(1) is amended to reflect the name change from the Trainee program to the Intern program. Section 250.110(f)(16) and (17) is amended to eliminate language regarding a rehearing and reconsideration of the final Merit Board order or decision in discharge cases, providing for appeal through the provisions in the Administrative Review Act.
- 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 amendments pending on this Part? No
- 11) Statement of Statewide Policy Objective: These proposed amendments will not create or enlarge a State mandate.

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- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments on this proposed amendment within 45 days after the date of publication to:
- Abby K. Daniels
Legal Counsel Manager
State Universities Civil Service System
1717 Philo Road, Suite 24
Urbana, IL 61802
- Phone: 217/278-3150, ext. 226
- 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: The agency did not anticipate the need for this rulemaking when the recent regulatory agenda was published.

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

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TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE A: MERIT EMPLOYMENT SYSTEMS
CHAPTER VI: STATE UNIVERSITIES CIVIL SERVICE SYSTEM

PART 250

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

Section

250.5	Definitions
250.10	Purpose, Adoption, and Amendment of Rules
250.20	The State Universities Civil Service System and its Divisions
250.30	The Classification Plan
250.40	Military Service Preference, Veterans Preference
250.50	Examinations
250.60	Eligible Registers
250.70	Nonstatus Appointments
250.80	Status Appointments
250.90	Probationary Period
250.100	Reassignments and Transfers
250.110	Separations and Demotions
250.120	Seniority
250.130	Review Procedures
250.140	Delegation of Authority and Responsibilities
250.150	Training
250.160	Suspension of Rules

AUTHORITY: Implementing and authorized by the State Universities Civil Service Act [110 ILCS 70].

SOURCE: Rules: State Universities Civil Service System, approved January 16, 1952, effective January 1, 1952; amended at 3 Ill. Reg. 13, p. 68, effective April 1, 1979; amended at 4 Ill. Reg. 10, p. 262, effective February 25, 1980; amended at 6 Ill. Reg. 2620, effective February 22, 1982; amended at 6 Ill. Reg. 7236, effective June 3, 1982; amended at 8 Ill. Reg. 4948 and 4950, effective March 29, 1984; codified at 8 Ill. Reg. 12936; amended at 8 Ill. Reg. 24732, effective December 6, 1984; amended at 9 Ill. Reg. 17422, effective October 23, 1985; amended at 11 Ill. Reg. 8942, effective May 8, 1987; amended at 12 Ill. Reg. 3457, effective February 1, 1988; amended at 12 Ill. Reg. 17079, effective October 7, 1988; amended at 13 Ill. Reg. 7324, effective May 1, 1989; amended at 13 Ill. Reg. 19427, effective February 6, 1990; amended at 18 Ill. Reg. 1901, effective January 21, 1994; amended at 20 Ill. Reg. 4440, effective February 29, 1996;

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amended at 30 Ill. Reg. 17384, effective October 23, 2006; amended at 31 Ill. Reg. 15848, effective November 13, 2007; amended at 32 Ill. Reg. 17268, effective October 16, 2008; amended at 33 Ill. Reg. 11644, effective July 22, 2009; amended at 36 Ill. Reg. _____, effective _____.

Section 250.60 Eligible Registers

- a) Establishment of Registers
 - 1) The employer shall establish three kinds of registers in each place of employment in accordance with this Part: reemployment, promotional, and original entry.
 - 2) The employer shall file with the office of the Executive Director a list on a quarterly basis containing name, class, date of examination, examination number and score of all candidates, and these records shall constitute the master record of examinations taken by the applicants of the System for that employer.
- b) Composition of Registers
 - 1) Reemployment registers shall contain names of status employees who have been laid off through reduction in force or who, because of reallocation or reclassification of positions or other causes not prejudicial to the service, have failed to gain eligibility in the new class or who have chosen not to qualify in the new class. The registers shall have the appropriate names listed according to class and in the order of seniority as earned up to the date of eligibility for a position on the reemployment register.
 - 2) Each lesser unit shall have its own reemployment register.
 - 3) Promotional registers shall be by class and shall contain names in the following categories and order:
 - A) Listed in order of total service in the class:
 - i) names of employees with status appointments, after having been certified from the promotional register, who have

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- been laid off during the probationary period through reduction in force, with credit for total service as of date of layoff; or
- ii) names of employees with status appointments, after having been certified from the promotional register and who, during the probationary period, have failed to gain eligibility following reallocation or reclassification of positions, with credit for total service as of date of ineligibility; or
 - iii) names of current employees reinstated by total service in accordance with subsection (j)(4).
- B) Listed in order of promotional examination scores: names of successful candidates in accordance with Section 250.50(b).
- 4) Original entry registers shall be by class and shall contain names in the following categories and order:
- A) Listed in order of total service to the employer: names of employees who have been, or who may be, separated from status appointments, after completion of at least six months of service to the employer, resulting from a permanent abolishment of a functional service, provided that not later than 90 days after the abolishment of the service, they have qualified for, and have received a passing score on, an original entry examination for the class; or
 - B) Listed in order of total service in the class:
 - i) names of employees with status appointments, after having been certified from the original entry register, who have been laid off during the probationary period through reduction in force, with credit for total service as of date of layoff; or
 - ii) names of employees with status appointments, after having been certified from the original entry register and who,

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during the probationary period, have failed to gain eligibility following reallocation or reclassification of positions, with credit for total service as of date of ineligibility; or

- iii) names of current employees reinstated by total service in accordance with subsection (j)(4).
- C) Listed in order of total service in the class:
- i) names of former employees restored by total service in accordance with subsection (j)(5); or
 - ii) names of employees seeking transfer, listed according to total service as of date of request for transfer.
- D) Listed in order of original entry examination scores: names of successful candidates in accordance with Section 250.50(b) and employees seeking transfer in accordance with Section 250.100(c)(3).
- c) Precedence of Registers. For appointment purposes, registers shall have precedence in the following order: reemployment, promotional, and original entry.
- d) Certification from Registers
- 1) Reemployment in positions shall be made in accordance with the register, with highest seniority taking precedence. From a reemployment register, the employer shall certify only one name for appointment.
 - 2) From the promotional register or original entry register, the employer shall certify the three names standing highest on the register at the time the vacancy is declared, or as otherwise provided under subsection (d)(3).
 - 3) When ties in scores exist on an original entry register or promotional register for a class, all candidates with a tie score, and hence of the same relative excellence, shall be equally eligible to be considered as one of the available candidates certified from the register. No person on the register

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shall be eligible or available for certification as one of the three persons standing highest on the register if three or more persons are eligible at a higher score level as a result of tie scores. The employer shall conduct a personal interview with, and shall consider, all candidates certified from the register in this manner prior to making its recommendation for selection, except that a single selecting official for the employer shall not be required to interview more than once the same candidate, as currently certified from the register, for a position of the same class.

- 4) If a total of three names is not available from the promotional register and/or original entry register, the employer shall certify those listed, and in addition may refer enough other candidates so that the employing officer has the choice of three candidates for the position. Such additional candidates as are necessary to provide the employing officer with a choice of three must be qualified for the class of the position to which referred and may be employed in accordance with Section 250.70(b)(1) and Section 250.90(b)(6).
- 5) A promotional register and/or an original entry register becomes closed for the purpose of certification of the names of candidates to a particular vacant position at a time established by the employer. Once this time has been established, it must become a matter of record, and it cannot be changed unless, when this time is reached, the employer is unable to provide to the selecting official three candidates from the promotional register and/or original entry register, and the selecting official wishes to interview three candidates prior to filling a position, whereupon a new date must be established in accordance with the aforementioned procedure. The selecting official shall interview from the registers, for any one vacancy, in accordance with the provisions of subsection (d)(3).
- 6) Candidates on an eligible register may be referred concurrently to more than one vacancy in the appropriate class, if, in the judgment of the employer, the procedure is needed to speed up employment transactions. Total referrals to a vacant position are to be limited to three available candidates, or in accordance with the provisions of subsection (d)(3).
- 7) The name of a candidate on a register, who at the time of induction into military service is an employee of an employer under the University System, shall be placed in suspension until the termination of military

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service, at which time his/her name shall be reactivated on the appropriate register in the order of his/her score on the original examination, providing the register of the class has not been voided during the period of his/her military leave.

- 8) In making a selection from among the three names certified from standing highest on the register, and in accordance with the provisions of subsection (d)(3), the employer shall not discriminate because of race, color, religious or political affiliation, or because of age or sex, when the reasonable demands of the position do not require such a distinction.
 - 9) The Executive Director may authorize specialized position certification for eligible register candidates who possess special and identified qualifications that previously have been established as job-related requirements for a specific position, as well as being fully qualified for the class. Certification from a register shall be made from the top three scoring candidates who possess the established specialized requirements.
- e) Acceptance of Candidates. The employer shall record the appointment of the candidate selected, and shall return the names passed over to the appropriate eligible register for future certification.
- f) Registers by Places of Employment
- 1) Applicants applying for examinations will be asked to specify places of employment at which they will accept employment, except as provided for in subsection (f)(4), and a statement of that place of employment preference shall constitute a refusal by the candidate of employment at other places of employment. The statement of limited availability shall not constitute a refusal to accept an offer of employment as defined in subsection (g)(5), or employment in the place or places of employment in which the candidate declares himself/herself available for employment. A candidate may amend his/her statements of availability at any time while his/her name is on a register.
 - 2) Following examination, a candidate may request the transfer of an active passing original entry examination score to a place of employment other than the one at which he/she originally wrote the examination.

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- 3) Following examination, a candidate may request the transfer of an active passing promotional examination score to any place of employment within his/her employing institution or agency.
 - 4) In an institution with multi-campus operations, in which a central administrative unit has been established by the Merit Board as a separate place of employment, promotional registers and original entry registers for that place of employment shall be an amalgamation of all promotional registers and original entry registers, respectively, of all places of employment established for that institution.
- g) Mandatory Removal of Names from Registers. The employer shall remove the names of candidates from the reemployment registers, original entry registers and promotional registers for the reasons set forth in subsections (g)(1) through (9). The reasons are:
- 1) Certification from the register to a status position in a specific class and acceptance of a status appointment in that position and class.
 - 2) Death of the candidate.
 - 3) Receipt of proof or determination by the Merit Board that the candidate lacks any of the required qualifications, or is subject to rejection for any cause specified in Section 250.50(c).
 - 4) Receipt by an employer of a written request from the candidate to remove his/her name from a register.
 - 5) Refusal, without reasonable cause, to accept three offers of status appointment by the candidate.
 - 6) Resignation of the candidate from a status position.
 - 7) Attempt by a candidate to practice any deception or fraud in connection with an examination or application for employment.
 - 8) When a change in class or testing standards or another classification plan change requires removal. In this instance, specific guidelines for the removal of names from registers shall be provided by the University

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System.

- 9) From promotional registers at the termination of the leave of absence from a position in his/her former class when a candidate accepts a position in a class outside the promotional line of the applicable registers.
- h) Permissive Removal of Names from Registers. The employer may remove the names of candidates from original entry registers and from promotional registers for the reasons set forth in this subsection (h). Names of candidates may be removed from reemployment registers for the reasons set forth in subsections (h)(1) through (7). The reasons include, but are not limited to, the following:
 - 1) Failure of a candidate to report for work without good cause within the time prescribed by the employer, after accepting a status or a temporary appointment.
 - 2) Leaving the service of any employer served by the University System by an employee with a status appointment.
 - 3) Failure to reply to the employer within seven calendar days immediately following an offer of a status or a temporary appointment by an employer.
 - 4) Notice by postal authorities of their inability to locate the candidate at his/her last known address, or verbal notice from the owner or occupant of the premises that the candidate is no longer at his/her last known address and that no forwarding address has been provided.
 - 5) Failure of a candidate, upon request, to furnish written evidence of availability for employment.
 - 6) Failure, without reasonable cause, to reply to the employer or appear for an interview within a reasonable time prescribed by the employer, when the employer has mailed either a notice of a vacancy in a status or temporary position or a letter of interest to the candidate's last known address.
 - 7) Upon the candidate's acceptance of a promotion.
 - 8) Failure of a candidate to be selected for employment after four referrals

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for a status appointment in the same class.

- 9) When candidates' names have remained on original entry registers for two consecutive years following date of most recent examination, or following date of original entry restoral on the basis of service or seniority in accordance with subsection (j)(3), (4), or (5).

10) [In classifications identified by the Executive Director, upon the expiration of the designated timeframe specified in a formal position vacancy posting.](#)

- i) Notification of Candidates of Removal of Names from Registers. Candidates whose names are removed from reemployment registers, promotional registers, and/or original entry registers in accordance with subsections (g) and (h) shall be notified in writing by the employer and provided the reason for the removal.
- j) Restoration of Names to Registers. The employer may return to an appropriate register:
- 1) Within one year after the date of removal, any name removed from a register for the reasons set forth in subsections (g)(3) or (4), or in subsection (h).
 - 2) Any name to a reemployment register as provided for in Section 250.110(b)(3)(G)(i).
 - 3) Any name of an employee to an original entry register or to a promotional register who has qualified by examination and who has been laid off during his/her probationary period, in the order of length of service in the class determined in accordance with Section 250.90(b)(4) and (5).
 - 4) The name of a current employee who has been previously employed in a class for which restoral is being requested by service and/or seniority in that former class.
 - 5) The name of a former status employee who resigned or otherwise has been separated from employment in good standing and who, within one year after resignation or separation from employment, requests restoration to a

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register shall, upon approval of the employer, be restored on the original entry register in accordance with seniority earned as of the date of resignation or separation as determined in accordance with Sections 250.90(b)(5) and 250.120(e). The former employee may be required to pass physical tests or other tests required by this Part to determine fitness at the time of restoral. Seniority earned prior to resignation shall be restored.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 250.70 Nonstatus Appointments

a) Temporary Appointments

- 1) Temporary appointments are made to any positions the employer certifies to be emergent, temporary, or transitory. Temporary appointments shall be for not more than three months. With approval of the Executive Director, they may be renewed in accordance with need up to a maximum of six months less one day.
- 2) An employer shall fill a temporary position by calling candidates in the same manner as for status appointments, and in accordance with Section 250.60(d). Refusal to accept, or acceptance of, a temporary appointment by a candidate shall in no way affect the candidate's position on the register, regardless of number of refusals or acceptances.
- 3) A candidate may request that he/she not be called for temporary positions.

b) Provisional Appointments

- 1) In the absence of a register, an employer may make a provisional appointment, in accordance with Section 36n of the Act, providing the person so appointed possesses the qualifications for the position stated in the appropriate class specification. In order to establish eligibility for a status appointment, the provisional appointee must file application for, and pass, the examination for the appropriate class.
- 2) A provisional employee who has not qualified by examination may continue to be employed, providing no candidate is available for

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appointment from the appropriate register.

c) Apprentice Appointments

- 1) An apprentice is a nonstatus employee who is employed in an occupation defined as an "apprenticeable occupation" by the United States Department of Labor, Bureau of Apprenticeship and Training, in accordance with registered apprenticeship standards. These standards shall include, but are not necessarily limited to, criteria for screening and selection of apprentices, term of apprenticeship, requirements of related instruction, a schedule of work processes, a progressively increasing schedule of wages, periodic evaluations of the apprentice's progress, recognition for successful completion of the apprenticeship, and other requirements as established by the Joint Apprenticeship Committee governing the program in which the apprentice is enrolled and employed. The standards must meet basic requirements and be registered with the USDOL Bureau of Apprenticeship and Training.

AGENCY NOTE: An apprenticeable occupation is a trade or craft that is recognized as apprenticeable by the USDOL Bureau of Apprenticeship and Training, is customarily learned through work experience that requires 4,000 or more hours of work to learn, requires related instruction or study to supplement the work experience, is clearly identified and commonly recognized throughout the industry, involves the development of skill and knowledge sufficiently broad to be applicable in like occupations throughout an industry, and meets the standards of the area.

- 2) A program meeting the basic fundamentals for registration will be developed by a joint apprenticeship committee composed of employer, employee representatives, and a representative from the USDOL Bureau of Apprenticeship and Training. The program shall be submitted to, and approved by, the Executive Director. Following the Executive Director's approval, the program will be submitted for approval and registration to the USDOL Bureau of Apprenticeship and Training. However, no apprentice program will be developed for a job classification for which there is an existing registered area program.
- 3) Apprentices who are individually registered in the program registered with the USDOL Bureau of Apprenticeship and Training, may be employed

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without University Civil Service examination.

- 4) An apprentice who satisfactorily completes apprenticeship in accordance with the prescribed apprenticeship standards of the program in which registered will have attained the status of journeyman. The incumbent will not be subject to University Civil Service examination and no right to continuation in employment is earned by the satisfactory completion of the apprenticeship. If employment is continued at the journeyman level after satisfactory completion of an apprenticeship, seniority in the promotional line shall be counted from the date that the employee acquires journeyman status.

d) Intern~~Trainee~~ Appointments

- 1) With the approval of the Executive Director, an employer may appoint an interna~~trainee~~ to any position, provided all of the following criteria have been met:
- A) no qualified candidates are available from a reemployment register or promotional register for the class;
 - B) a predetermined and scheduled program of development, training or experience has been established and approved for the candidate;
 - C) a compensation program has been developed that provides for progressively increasing salary levels payable upon completion of defined phases of training. The intern's~~trainee's~~ starting salary shall not be more than 95% of the minimum of the approved pay range for the class. The intern's~~trainee's~~ salary, after increases have been awarded, shall not exceed 95% of the midrange of the approved pay range for the class; and
 - D) the employer can verify that one of the following factors exists:
 - i) the candidate lacks one or more of the minimum qualifications for the class;
 - ii) recruitment efforts have failed to attract qualified candidates;

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- iii) operating needs warrant ongoing training programs to supplement staffing recruitment efforts;
 - iv) there is a recognized need for specialized training programs in technical or professional fields.
- 2) If, in the opinion of the employer, the interntrainee completes the prescribed trainingtraining program in accordance with the standards established by that intern program, he/she shall be certified to a position of the class for which he/she completed his/her interntraining program.
- 3) Following successful completion of an interna training program and probationary period, seniority in the promotional line, or in the class, shall be counted from the date that the employee satisfactorily completes the interntraining program.
- 4) If a class has fewer than 10 positions, an employer may have one interntrainee appointment in the class. If a class contains 10 or more positions, not more than 10% of the total positions in the class may be filled by interntrainee appointments on any day of operation.
- e) Student Appointments
- 1) Each employer shall determine which positions shall be designated as student positions, and when so designated, they shall be filled according to this Part and such other regulations as are established by the employer pursuant to this Part, subject to the approval of the Executive Director.
 - 2) A student employee shall not displace a certified Civil Service employee.
 - 3) A student, for purposes of this Part, shall be one who is registered for course work at an institution served by the University System for at least one-half of the normal workload of a regularly enrolled full-time student, as such workload is determined by the employer. Lacking such enrollment during a summer session, or summer quarter, an applicant may be considered a student for the purposes of this Part if he/she was enrolled as a student during the quarter or semester immediately preceding the summer session, or if he/she indicates an intention to be so registered

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during the quarter or semester immediately following the summer employment. In any case, the possession of a properly authenticated student identification card shall be deemed as providing satisfactory evidence of student status. The Executive Director may approve exceptions to this subsection (e)(3) when sufficient cause is evidenced; such as, but not limited to, graduating seniors, financial hardship cases, personal or physical problems, etc.

- 4) A uniform classification plan for student employees, which shall provide groups of positions sufficiently similar in duties, responsibilities and qualifications as to be given the same class title and to be of a similar level of job worth, shall be established by each employer, subject to the approval of the Executive Director.
- 5) Each employer shall establish a wage rate or range for each position grouping, taking into account job requirements, rates paid locally for similar work, including rates paid to Civil Service employees, consistency within the student aid program of the employer, and availability of funds. No student employee shall be paid below the minimum rate, or above the maximum rate, as established for the position grouping in which he/she is employed, unless approved by the Executive Director. No maximum rate for student employment shall exceed the maximum rate established for comparable Civil Service classes on the same campus.
- 6) The employer may give applicants for student employment a screening examination, without Civil Service status, if the examination is deemed necessary for the selection of employees.
- 7) No seniority as a Civil Service employee is earned through employment in a position designated as student.
- 8) A student employee is not eligible for paid vacation, paid holidays, or disability leave, as established by the Benefits Policy approved by the Merit Board and by the governing Boards of the institutions served by the University System.
- 9) A position designated as student may be terminated at any time at the discretion of the employer.

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- 10) Each employer may make such regulations and policies governing student employment on its respective campuses as it deems desirable, subject to the Act and this Part governing the University System.
- f) Extra Help Appointments
- 1) An Extra Help appointment may be made by an employer to any position for work the employer attests to be casual or emergent in nature and that meets the following conditions:
 - A) the amount of time for which the services are needed is not usually predictable;
 - B) payment for work performed is usually made on an hourly basis; and
 - C) the work cannot readily be assigned, either on a straight-time or on an overtime basis, to a status employee.
 - 2) Qualification determination shall consist of a review of the employee's application and a verbal interview. Qualifications will be determined to be Acceptable or Not Acceptable. When skills are required for clerical/secretarial positions, an examination to demonstrate acceptable skills will be administered. The applicant will be required to pass the examination at a standard established by the employer. A listing of those applicants who have been determined to be Acceptable shall be maintained by the employer.
 - 3) An employer shall fill an Extra Help position by referring persons to the employing unit from the Extra Help list of Acceptable candidates.
 - 4) Acceptance or refusal to accept an Extra Help appointment by a candidate shall in no way affect the candidate's position on any Extra Help list, or on any other register maintained by the employer.
 - 5) Classifications will be established in broad categories, such as administrative, professional, technical, clerical, trades, and service.
 - 6) An Extra Help position may be utilized for a maximum of 900 hours of

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actual work in any consecutive 12 calendar months. The employer shall review the status of the position at least every three calendar months. If at any time it is found that the position has become an appointment that is other than Extra Help, the employer shall terminate the Extra Help appointment. If an Extra Help position has accrued 900 consecutive hours, the position shall not be reestablished until six months have elapsed from the date of the termination of the position.

- 7) Upon working 900 hours, an Extra Help employee cannot resume employment in any Extra Help appointment at a place of employment until 30 calendar days have elapsed.
- 8) The employer shall quarterly review its use of Extra Help appointments to ensure compliance with this Section.
- 9) Compensation of Extra Help employees shall be within the limits established for comparable service in status employment.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 250.90 Probationary Period

- a) Purpose of Probationary Period. The probationary period is an integral part of the examination process, and shall be utilized by the employer for close observation and evaluation of the employee's work, for obtaining the most effective adjustment of a new employee to his/her position, and to determine whether an employee demonstrates the ability and qualifications necessary to furnish satisfactory service. Periodically, throughout the probationary period, the employer should discuss with the employee his/her progress on the job. An employee who is dismissed during a probationary period shall be given the reasons for his/her dismissal, with the understanding that the reason is not reviewable.
- b) Duration of Probationary Period
 - 1) Candidates employed from the reemployment register shall not be required to serve a new probationary period.
 - 2) An employee who has accepted a status appointment shall be on probation

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for no less than six months and no longer than 12 months. The probationary period shall be extended by a comparable amount of time for the following personnel actions: a paid or unpaid leave of absence that exceeds more than five consecutive work days; a layoff of any duration; a suspension of any duration; or a designated off-site formalized training session, provided the Executive Director has approved the off-site training for that extension. If the probationary period is interrupted by a paid or unpaid leave of absence that exceeds more than five consecutive work days, a layoff, or a suspension, a comparable amount of time shall be added to the probationary period. The probationary period shall begin on the date of assignment to duty and shall expire at the close of business on the last working day that completes the probationary period for the class, regardless of percentage of time of employment during the probationary period. If the employee is not dismissed during the probationary period, the employee shall become a status employee at its conclusion.

- 3) An employee reinstated to a register in accordance with Section 250.60(j)(4) who is subsequently appointed to a position of his/her former class shall complete his/her probationary period in the former class, if he/she has not already done so.
- 4) An employee who goes on layoff status during the probationary period may, upon written request of the employer, be reinstated by the Executive Director on either the original entry register or promotional register, as appropriate, in accordance with total service earned as of the date of the layoff and may be appointed thereafter to the same or similar position. The reinstated employee shall complete the probationary period for the class in which eligibility has been established, although his/her service may be interrupted by one or more layoffs.
- 5) Service in a higher class shall count toward completion of the probationary period in a lower class in the same promotional line. Service in a lower class shall not be counted toward completion of probationary period in a higher class of the same promotional line.
- 6) A provisional employee shall begin a probationary period on the date of entrance into a status appointment for which the employee is eligible.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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Section 250.110 Separations and Demotions

- a) Resignation. An employee having a nonstatus or status appointment, as described in Sections 250.70 and 250.80, may resign by presenting a signed resignation to his/her employer or by demonstrating to the employer by other means his/her intent to separate from employment. Upon receipt of a signed resignation or other evidence of intent to separate from employment, the employee will be separated from employment. The Executive Director shall be notified promptly by the employer of all resignations.
- b) Leave of Absence
 - 1) Leave of Absence for Classification Changes. A status employee who accepts a position that represents a promotion in a class outside his/her promotional line shall be granted a leave of absence from a position of his/her former class for the duration of any ~~intern appointment~~~~trainee~~, provisional appointment, and/or probationary period in the new class.
 - 2) Leave of Absence for Disciplinary Actions. An employee placed on a Disciplinary Suspension or on a Suspension Pending Discharge shall be placed on a leave of absence from his/her position.
 - 3) Leave of Absence for Disability Leave
 - A) If an employee is no longer able to perform the duties and responsibilities of his/her position in the class due to a disability as determined by the employer's medical and/or psychological evaluation procedures, and/or in accordance with State and federal law, the employee will be required to take disability leave in accordance with subsection (b)(3)(B).
 - B) A status employee who becomes eligible for disability benefits to be paid by the employer or, as later determined, by the Illinois State retirement system to which the employee contributed, or becomes eligible for payment benefits as defined by the Workers' Compensation Act [820 ILCS 305], the Illinois Occupational Diseases Act [820 ILCS 310], or a State self-insurance program, shall be granted a disability leave. The disability leave shall be the

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period for which the employee applies for such benefits, until the time of the expiration of the benefits or a final administrative decision denying or terminating the benefits, including any gap in benefit payments between the expiration of institutional benefits and those available under the approving authority.

- C) The employer may require an employee to take a medical and/or psychological examination prior to returning to work after a disability leave. The examination shall be conducted by a licensed practitioner selected by the employer to determine the physical and/or mental capability to perform the essential duties of the employee's position. The employer may supply the examining practitioner with facts relating to the employee's difficulty or inability to perform the essential functions of the job and may supply additional information, including but not limited to physical and mental requirements of the employee's position, duty statement, job classification specification, and position description. The employee may also present an alternative opinion provided by a licensed practitioner to be selected and paid for by the employee. If there is a difference of opinion, a third outside practitioner shall be selected by the two physicians. The employer shall pay for all examinations, except those initiated by the employee.
- D) An employee's refusal to submit to an examination as described in subsection (b)(3)(C), the unexcused failure to appear for such an examination, or the refusal to release the results of the examination may be deemed by the employer as an acknowledgement that the employee is not fit for duty and may subject the employee to termination actions as defined in subsection (c).
- E) A disability leave may be revoked by the employer upon evidence that the cause for granting the leave was misrepresented.
- F) At the expiration of all disability benefits, an employee shall be entitled to return to a position in his/her class without any loss of status due to the disability leave, providing that he/she returns upon the expiration of all disability benefits to which entitled.
- G) Reemployment

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- i) If an employee does not return to work at the expiration of all disability benefits and is terminated in accordance with subsection (c)(2), the employee may, within one year following the expiration of all disability benefits, request reinstatement and, upon approval of the Executive Director, the employee's name may be placed on the reemployment register in the class in which he/she was employed at the time the disability leave was granted and in accordance with total seniority earned.
 - ii) If, within one year following the expiration of all disability benefits, the employee requests reinstatement, but, because of his/her disability, is deemed unable to perform the duties in the class, the employee may be required to pass physical or other tests to determine employability under the University System.
 - 4) Military Leave of Absence. An employee shall be granted a Military Leave of Absence in accordance with State and federal law and regulations.
 - 5) The Executive Director shall be notified promptly by the employer of all leaves of absence, including military, disability, or any other leave otherwise granted. The notification shall include the beginning and ending dates of leaves that exceed 30 calendar days of non-pay status.
- c) Termination
 - 1) An employee having a non-status appointment, as described in Section 250.70 of this Part, may be terminated by his/her employer at any time during the training period and/or upon completion of the work assignment, except for those status employees eligible for a leave of absence as defined in subsection (b)(1).
 - 2) An employee on disability leave, as defined in subsection (b)(3), who has exhausted all of his/her disability benefits and is unable to resume the duties and responsibilities of a position in his/her class may be terminated from employment, unless the employer and employee agree on

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employment in a more suitable classification. The alternative employment options shall be subject to standard civil service employment protocols.

- 3) An employee who fails to report for duty after a disability leave of absence has expired or has been denied, disapproved, revoked, or canceled by the approving authority, or any other failure to report for duty as scheduled after a disability leave of absence, may be terminated from employment.
- 4) This notification and review process shall only apply to subsection (c)(2) and (c)(3).
 - A) The employer shall notify the employee that he/she will be terminated from the employer's service to become effective 15 calendar days from the date of mailing of the notification to the employee. The notification must be sent, by certified mail or by overnight delivery service that requires signature upon receipt, to the most recent address of the employee as shown on the employer's records.
 - B) At any time prior to the effective date of termination, the employee shall have the opportunity to provide to the employer evidence of the reason for the unauthorized absence. The employer shall revoke the termination if the employee provides satisfactory evidence of the reason for the unauthorized absence. If the employer determines that the evidence is not satisfactory, the employer shall notify the employee that the termination will remain in effect.
 - C) Within 15 calendar days from the original date of notification of termination, the employee may request a review of the termination decision pursuant to Section 250.130 of this Part. The review is limited to a determination of whether this Section has been properly applied and whether the employer's decision is deemed arbitrary or capricious. In the event a review is not requested within the allotted timeframe, the employee's termination from service shall be effective 15 days after the original notification.
- 5) The employer shall notify the Executive Director promptly of all terminations of employment, setting forth the reason for the termination.

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- d) Layoff
- 1) The Executive Director shall be notified promptly of all employees on layoff status, together with the dates of the beginning of layoff and of return to employment from layoff status, when the layoff exceeds 30 consecutive work days. A status employee shall receive a written notice, at least 30 calendar days in advance of the effective date of layoff, when the layoff exceeds 30 consecutive work days; however, the effective date of layoff may be extended up to 15 days without the requirement of further notice.
 - 2) Whenever it becomes necessary to lay off one or more employees, except as provided in subsection (d)(3), the employee who has the least amount of service in the class shall be laid off first, and additional layoffs shall be made in the ascending order of the place of the employee on the service and seniority lists for that class.
 - 3) An employee who is the incumbent of a position for which the Executive Director has authorized specialized certification under Section 250.60(d)(9), or who is the incumbent of a position that has previously been identified as requiring specialized training or experience as required by the position in accordance with minimum acceptable qualifications for the class, may not be bumped by another employee with greater seniority unless the employee with greater seniority possesses the special and identified qualifications authorized for the incumbent's position.
 - 4) Whenever it becomes necessary to reemploy one or more employees in a class, the employee last laid off by seniority shall be reemployed first, and further reemployment shall be made in the order of seniority until the reemployment register for that class is exhausted. Work of short duration requiring reemployment of one or more employees will not require a new written 15 day advance notice of layoff if the work period is to be 5 consecutive working days or less and the work is emergent in nature.
 - 5) A status employee who is subject to layoff from a part-time position may bump an employee in a full-time status position, providing the part-time employee's equivalent full-time accrued seniority based on hours in pay status is greater than that of the least senior employee in a full-time

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position. A full-time status employee who is subject to layoff may bump the least senior full-time employee, who then may bump the part-time employee having the highest percent-time appointment, providing the full-time employee has more accrued seniority.

- 6) Names of employees laid off during their probationary periods shall be returned to the register from which they were certified to their position in accordance with service in a status appointment earned as of the date of layoff.
- e) Disciplinary Suspension. An employer may suspend an employee as a disciplinary measure for not more than 30 calendar days.
- 1) The employer will discuss the specific problem pertaining to contemplated suspension with the employee and the Campus Human Resource Director or his/her designee before a suspension notice is served. The employee will be told at that time that suspension is being considered.
 - 2) In imposing a disciplinary suspension, the employer shall serve a written suspension notice on the employee showing reason for the suspension, and shall immediately report the suspension to the Executive Director and shall send a copy of the notice served on the employee, along with proof of service, to the Executive Director.
 - 3) Causes justifying suspension, not for discharge as provided for in subsection (f)(2), shall include, but are not limited to: unauthorized and unexcused absence; leaving work without authority; failure to ring in or out on time card; habitual lateness; punching other time cards; key duplication and/or unauthorized possession of keys; misrepresentation of absence; falsification of records; refusal to do work assigned; failure to follow work schedules; failure to follow time schedules; insolence; failure to adhere to departmental regulations of appearance; smoking in prohibited areas; disregard of safety regulations; careless workmanship resulting in spoilage, waste, or delay; unauthorized use of institutional property; gambling on institutional property; creating or contributing to unsanitary conditions; horseplay or scuffling; fighting; sleeping during working hours; unauthorized visiting; and "loafing on the job".

AGENCY NOTE: It is to be noted that an employee's allegation that a

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Disciplinary Suspension was unfairly imposed is subject to the grievance procedure established by the employing institution, but is not reviewable by the Civil Service System.

- f) Discharge Proceedings and Effective Date of Discharge
 - 1) Pre-discharge Proceedings
 - A) Prior to initiating any proceedings before the Merit Board for the discharge of an employee, the employer shall notify the employee in writing, served upon the employee in person if the employee is present on the job or, otherwise, by certified mail or by overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, of the employer's intention to initiate the proceedings. The notification shall advise the employee of the substance of the charges proposed to be filed in sufficient detail to inform the employee of the nature of the conduct on which the proposed charges are based. The notification shall also advise the employee that either or both of the following options are available to the employee:
 - i) within 3 work days after service of the employer's notification, the employee may notify the employer of his/her decision to require the employer to hold a conference with the employee or his/her representative for the purposes of responding to the matters contained in the notification and of attempting to achieve a reconciliation or understanding; and
 - ii) within 3 work days after service of notification, the employee may deliver to the employer a written response to the matters contained in the employer's notification; provided that, if the employee elects to require the conference identified in subsection (f)(1)(A)(i), at that conference the employee may request and receive an opportunity to respond further in writing within 3 work days after the conclusion of the conference.

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- B) Employer's Decision
- i) Within 7 work days after compliance with the provisions of subsection (f)(1)(A), the employer shall either:
- notify the employee that no further action will be taken to initiate discharge proceedings with the Merit Board against the employee based solely on the matters contained in the employer's notification; or
 - initiate proceedings before the Merit Board under this subsection (f) seeking discharge of the employee based solely on the matters contained in the employer's notification.
- ii) The employer's election not to initiate discharge proceedings with the Merit Board shall not preclude the employer from imposing a suspension in accordance with subsection (e) or some lesser penalty.
- C) An employee who has been served with an employer's notification as provided in subsection (f)(1)(A) may be placed on excused absence with pay during all or any part of the period covered by this subsection (f)(1) to provide the employer an opportunity to investigate serious charges.
- 2) Actual Discharge Proceedings
- A) Proceedings before the Merit Board seeking the discharge of an employee shall be initiated by the employer filing Written Charges for Discharge with the Merit Board setting forth the causes for discharge in sufficient detail to inform the employee of the nature of the conduct on which the charges are based. The Written Charges for Discharge shall be set forth in separately numbered charges. The Written Charges for Discharge shall contain the dates, names of persons, places, and facts necessary to properly allege cause for discharge. If a breach of duty, statute, or rule of the employer is alleged, the statute, law, or rule shall be cited in

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connection with the charge.

- B) The Written Charges for Discharge shall be accompanied with a certification by the employer that all procedures set forth in subsection (f)(1) have been followed and that there has been full compliance with any options elected by the employee. At the time the Written Charges for Discharge and the certification are filed with the Merit Board, the employer shall serve copies upon the employee in person if the employee is present on the job; otherwise, service shall be by certified mail or by overnight delivery that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and the employer shall file a proof of the service with the Merit Board.
- C) At any time prior to commencement of the hearing, the Executive Director may direct or authorize the Written Charges for Discharge to be amended to correct technical defects or to set forth additional facts or allegations related to the subject matter of the original charges. The amendments shall relate back to the original date of service of the Written Charges for Discharge. The employer shall serve copies of the Amended Written Charges for Discharge upon the employee in person if the employee is present on the job; otherwise, service shall be by certified mail or by overnight delivery that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and the employer shall file a proof of the service with the Merit Board.
- D) An employee who has been served with Written Charges for Discharge in accordance with subsections (f)(2)(A) and (B) may be suspended without pay by the employer during all or any part of the period that the discharge proceeding is pending, and until final disposition, if the employer is of the opinion that the employee's presence on the job might constitute a substantial risk of injury to life or property, or might cause a disruptive effect on employer's operations. Any suspension without pay shall become effective on the date the employer serves the Suspension Notice Pending Discharge upon the employee, which may be served with the Written Charges for Discharge or on any date thereafter. Service shall be upon the employee in person if the employee is present on

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the job; otherwise, service shall be by certified mail or by overnight delivery that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and the employer shall file with the Merit Board a copy of the Suspension Notice Pending Discharge and proof of service.

3) Hearing Request

- A) An employee who has been served with Written Charges for Discharge may request a hearing by filing a written request for hearing with the Secretary for the Merit Board within 15 calendar days after the date of personal delivery or mailing of the Written Charges for Discharge to the employee. The Secretary for the Merit Board shall immediately notify the employer of the filing of the written request by the employee. Thereafter, further proceedings shall be as provided in this subsection (f) and any discharge shall be effective on the date of the discharge order of the Merit Board, unless otherwise expressly stated in the order.
- B) If the employee does not file a written request for hearing with the Secretary for the Merit Board within 15 calendar days, the employee's discharge shall become effective at the end of the 15-day period without further action by the Merit Board. The Secretary for the Merit Board shall promptly notify the employer of the employee's failure to file a timely written request for hearing.

4) Hearing Proceedings

- A) Upon receipt of the employee's written request for hearing on the Written Charges for Discharge, the Merit Board shall promptly appoint a Hearing Board or Hearing Officer to hear the charges and the employee's response. All hearings relating to discharge proceedings shall be convened by and conducted under the control of the Executive Director or his/her authorized representative. The Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to commence the hearing within 10 calendar days after receipt of the employee's written request for hearing, but in no event shall the

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hearing commence later than 45 days after service of the Written Charges for Discharge, unless a continuance is granted pursuant to subsection (f)(19)(B). Dilatory tactics or actions will not be permitted and the Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to conduct the hearings in no more than three hearing days, unless justice, due process, and fundamental fairness require otherwise. All hearings shall be open to the public unless, upon motion of either party, the Hearing Board or Hearing Officer finds it necessary to close the hearing or parts of the hearing in instances where personal safety is of concern or when confidential testimony/exhibits are to be referenced or revealed. There shall be a presumption that hearings will be closed only under extraordinary circumstances. A transcript of the hearing, including exhibits, shall be made and shall be filed with the Secretary for the Merit Board as soon as possible following conclusion of the hearings.

- B) Within 15 calendar days after receipt of the transcript from the Secretary for the Merit Board, the Hearing Board or Hearing Officer shall file its findings of fact and any other recommendations with the Secretary for the Merit Board, unless that time is extended by the Executive Director for good cause shown. For the purpose of this Section, good cause shall include, but not be limited to: sickness, attendance at court proceedings, death, weather conditions that prevent the members from meeting. If by that time the findings of fact have not been received by the Secretary for the Merit Board, the Executive Director will either appoint another approved Hearing Board or Hearing Officer that will then review the record and submit findings of fact within 10 calendar days after the appointment, or the Executive Director will give written notice to all Hearing Board members or the Hearing Officer and to all parties to the proceeding that he or she will, within 10 calendar days, discontinue the hearing and commence a new hearing and the present Hearing Board or Hearing Officer will be dismissed without pay. Within this 10-day period following the Executive Director's notice, the Hearing Board or Hearing Officer can appeal to the Executive Director by showing cause why time should be extended.

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- C) The Executive Director shall certify as the Hearing Record the Written Charges for Discharge, the Suspension Notice Pending Discharge, the employee's request for hearing, the transcript and exhibits, the Hearing Board's or Hearing Officer's findings of fact and other recommendations, and other documents that have been filed.
- D) Upon certification by the Executive Director, the Secretary for the Merit Board shall, by certified mail or by overnight delivery that requires signature upon receipt, immediately forward a copy of the Hearing Record, along with notice that the Hearing Record has been certified, to all parties of record. Any objections to the form or contents of the Hearing Record, or briefs, abstracts, or excerpts from the Hearing Record, or arguments, motions, or recommendations, relating to the hearing proceedings or the Hearing Record, or requests for further hearing or for permission to supplement further the Hearing Record by other evidence, must be filed with the Secretary for the Merit Board within 14 calendar days after the date of the postmark of the certified mail notice or the mailing date of the overnight delivery that the Hearing Record has been certified, with proof of service on all parties. No answer or reply briefs and arguments in response to these filings will be permitted unless expressly authorized by the Executive Director or the Merit Board or its Chair.
- E) A party requesting oral argument before the Merit Board in cases of discharge must file an appropriate motion with the Secretary for the Merit Board with notice to all parties within 14 calendar days after the date of the postmark of the certified mail notice or the mailing date of the overnight delivery of the certified hearing record, with proof of service on all parties. The motion must specifically state the issues and any relevant law that will be the subject of argument. The Merit Board will grant or deny the motion at the Merit Board meeting at which oral argument is requested. Oral argument in cases of discharge will generally not be allowed unless novel or precedent setting questions of law or policy are at issue.

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- 5) Conduct of Hearing
- A) Pre-hearing Conference. In all hearings, it is recommended that the Hearing Board or Hearing Officer hold a pre-hearing conference immediately preceding the hearing on the day of the hearing. The Hearing Board or Hearing Officer will give the parties an opportunity to discuss issues and share information at the pre-hearing conference that will allow them to present their cases in a fair, efficient, and timely manner. Generally, the Hearing Board or Hearing Officer will conduct the pre-hearing conference for the purpose of achieving one or more of the following points, as determined by the Hearing Board or Hearing Officer on a case by case basis:
- i) defining and simplification of the issues;
 - ii) negotiating admissions or stipulations of fact to avoid unnecessary proof;
 - iii) reviewing each party's witness and exhibit list;
 - iv) limiting redundant witness testimony or duplication of evidentiary material, if necessary;
 - v) determining the length of time each party will need to present its case;
 - vi) exchanging exhibits; and
 - vii) discussing any matter that may aid in the efficient and timely disposition of the case.
- B) Following the Pre-hearing Conference. The Hearing Board or Hearing Officer shall enter into the record any action taken and any agreements made by the parties as to the matters considered. The length and scope of the pre-hearing conference is at the discretion of the Hearing Board or Hearing Officer, but should generally be concluded within a one hour timeframe.

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- 6) Order of Hearing
 - A) The Executive Director, or authorized representative, shall open and convene the hearing.
 - B) The Executive Director, or authorized representative, shall request all persons who have been asked to serve as witnesses, other than a party or employer representative, to be excluded from the hearing room while the hearing is in process, except during their own testimony and cross-examination. Except as he/she might intervene, or be requested to intervene, the Executive Director, or authorized representative, shall empower the Hearing Board or Hearing Officer to proceed with the hearing in such a manner as to provide the employer and the employee a full opportunity to present their positions to the Hearing Board or Hearing Officer.
 - C) The parties may make a brief opening statement at the beginning of the hearing. The employer will proceed first, followed by the employee. Opening statements may be waived or may be reserved and presented at the commencement of the party's case-in-chief.
 - D) The employer shall first present its case-in-chief, with an opportunity for the employee to cross-examine the employer's witnesses. The employee may be called as an adverse witness during the course of the hearing.
 - E) The employee shall then present his/her case-in-chief, with an opportunity for the employer to cross-examine the employee's witnesses.
 - F) Each party may call rebuttal witnesses if found to be necessary by the Hearing Board or Hearing Officer.
 - G) At the conclusion of the hearing, each party may make an oral closing argument. The employer may be permitted a brief rebuttal at the end of the employee's closing argument.

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- H) The hearing shall be closed when the employer and the employee have had a fair and reasonable opportunity to present their positions to the Hearing Board or Hearing Officer.
 - I) In addition, each party may submit written arguments, summary statements, and/or briefs within 10 calendar days after conclusion of the hearing. A copy of the written closing arguments must be provided to all parties of record and filed with the Executive Director, with proof of service included. Only written materials submitted within the 10 calendar day timeframe will be forwarded with the transcript of evidence and considered by the Hearing Board or Hearing Officer, unless otherwise extended by the Executive Director.
- 7) Evidence and Motions
- A) As a general matter, the rules of evidence and privilege as applied in civil cases in the circuit courts of the State of Illinois shall be followed. However, evidence not admissible under those rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the investigation and conduct of serious matters of this nature. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
 - B) All testimony shall be presented under oath or affirmation. Objections to testimony or evidentiary offers shall be noted in the record. Consistent with these requirements and in order to expedite the hearing, any part of the evidence may be received in written form, provided the interests of the parties are not jeopardized.
 - C) The standard of proof applied by the Hearing Board or Hearing Officer when evaluating the charges will be the preponderance of the evidence.
 - D) The Hearing Board or Hearing Officer may, on its own motion or upon motion of one of the parties, take notice of matters of which the circuit courts of the State of Illinois take judicial notice.

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- E) The Hearing Board or Hearing Officer has the authority to rule on all motions that do not dispose of the proceedings. Examples of motions that can be ruled on by the Hearing Board or Hearing Officer are motions in limine or motions to suppress evidence. Motions directed at the Hearing Board or Hearing Officer shall be presented at the pre-hearing conference, if possible, and actions taken by the Hearing Board or Hearing Officer shall be entered into the record.
- F) Motions that dispose of the proceedings must be directed to the Merit Board. Examples of motions that are to be directed to the Merit Board are motions to dismiss, motions to decide a proceeding on the merits, or motions claiming lack of jurisdiction. Motions must be filed with the Secretary for the Merit Board within 14 calendar days after the date of the postmark of the certified Hearing Record. Motions will be ruled on by the Merit Board at the Merit Board meeting in which the case is being considered. The filing of a motion of this nature shall not be allowed to cause any delay in the proceedings.
- G) Performance records of the employee or past disciplinary records are admissible and relevant for the purpose of mitigation or aggravation, except if otherwise excluded by a local employer policy or collective bargaining agreement.
- 8) Stipulations. Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing. It is the policy of the Merit Board to encourage stipulation of facts whenever practicable.
- 9) Evidence Depositions. Upon request to the Executive Director and upon good cause shown (which shall include, but is not restricted to, potential unavailability of a witness at the time the hearing is scheduled, scheduling or travel arrangement considerations, or agreement of the parties) any party may request a deposition of any witness to be taken for evidence in a hearing. If desired, subpoenas may be requested upon application to the Executive Director in a manner consistent with this Part. The deposition

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shall proceed in the manner provided by law for depositions in civil actions in the circuit courts of the State of Illinois.

- 10) Subpoenas. Requests for subpoenas shall be directed to the Executive Director at least five work days before the hearing, unless an exception is granted by the Executive Director. Subpoena requests may be granted if reasonably designed to produce or lead to the production of evidence related to the alleged charges and the terms of compliance are reasonable given the time frames and other circumstances. The party requesting the subpoenas shall be responsible for service and costs related to the subpoena of a witness. The fees of the witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit courts of the State of Illinois. Subpoenas are effective throughout the course of the proceedings. Requests for subpoenas must be submitted in writing and include the following:
 - A) The name and address of the witnesses sought;
 - B) Any specific documents the witnesses will be required to bring; and
 - C) A brief statement of the relevant facts or testimony that the witnesses will be providing.
- 11) Request for Documents. Prior to the hearing, each party shall serve upon the other party and file a copy with the Secretary for the Merit Board, to be submitted to the Hearing Board or Hearing Officer, the following information, to the extent available at that time:
 - A) A list of the names and addresses of the witnesses the party proposes to call; and
 - B) All documents the party proposes to offer in its case-in-chief.
- 12) Failure to Appear. Failure of a party to appear on the date set for hearing may result in findings of fact unfavorable to that party and may result in a loss of rights by default.

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- 13) Disqualification of Assigned Hearing Board or Hearing Officer. A Hearing Board or Hearing Officer may be disqualified on grounds of bias or conflict of interest. An adverse ruling, or the fact that a Hearing Board or Hearing Officer has had contact with the University System, by itself, shall not constitute bias or conflict of interest. Whenever any party believes a Hearing Board or Hearing Officer should be disqualified from conducting an assigned proceeding, that party may file a request with the Executive Director to disqualify the Hearing Board or Hearing Officer, setting forth by affidavit the alleged grounds for disqualification, with proof of service on all parties. The Executive Director shall rule and make the final determination on all requests for disqualification.
- 14) Ex Parte Communications
 - A) Except in the disposition of matters they are authorized by law to entertain or dispose of on an ex parte basis, the Merit Board, the Executive Director, employees of the University System Office, and the assigned Hearing Board or Hearing Officer shall not, after Notice of Convening of Hearing has been issued, communicate, directly or indirectly, with any party or the party's representative regarding any issue of fact or with any person or party in connection with any other issue regarding the case, except upon notice and opportunity for all parties to participate. However, the Merit Board, the Executive Director, employees of the University System, and the Hearing Board or Hearing Officer may communicate with each other. Also, members of the Merit Board and the Hearing Board or Hearing Officer may have the aid and advice of one or more personal assistants.
 - B) Communications regarding procedure, including interpretation and application of Section 360 of the Act, subsection (f), and related procedures, are not considered ex parte communications.
- 15) Role and Responsibilities of the Hearing Board or Hearing Officer. The Hearing Board or Hearing Officer shall be responsible for the following activities:
 - A) Conduct the pre-hearing conference;

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- B) Facilitate the timely completion of the hearing process, taking necessary steps to avoid delay;
- C) Establish reasonable limits on the duration of witness testimony;
- D) Limit repetitive or cumulative testimony;
- E) Rule on motions, objections or evidentiary questions;
- F) Hear evidence as presented at the hearing by the employer and the employee on behalf of their respective positions (the evidence may include matters in aggravation, mitigation and justification, which may pertain to the question of "just cause" for discharge);
- G) Direct questions to witnesses at any time, but restrict questioning to the clarification of the testimony already presented;
- H) Prepare a signed findings of fact within 15 calendar days after receipt of the transcript of the hearing proceedings to be transmitted to the Merit Board. The findings of fact shall set forth each of the written charges alleged in the Written Charges for Discharge, including an evaluation of the facts presented by the employer and employee with respect to each charge, and based on this evaluation, a determination as to whether the charges are sufficiently supported by the evidence presented. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. The findings of fact presented by the Hearing Board or Hearing Officer are advisory only to the Merit Board. It is not the role of the Hearing Board or Hearing Officer to determine whether just cause for discharge exists. The determination of just cause is the sole province of the Merit Board; and
- I) Enter any order that further carries out the purpose of this Section.

- 16) **Final** Decision of the Merit Board. In the course of reaching its decision, the Merit Board may request the Executive Director to make recommendations that he/she deems appropriate with respect to the discharge proceedings. Nothing in subsections (f)(16)(A) and (B) is

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intended to eliminate or limit the Merit Board's discretion to determine the appropriate disposition on a case-by-case basis. The Merit Board shall enter findings of fact and shall order the following decision and order or any other decision and order it deems appropriate:

- A) Discharge, if just cause is found to exist. No employee shall be discharged except for just cause. Just cause is defined as some substantial shortcoming that renders the employee's continuance in his/her position in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for the employee no longer holding the position; or
 - B) Reinstatement, if just cause for discharge is found not to exist. An employee shall be reinstated as follows:
 - i) Reinstatement with no loss of compensation when none of the significant charges are proven.
 - ii) Reinstatement with a 60-day suspension when the proven charges do not rise to the level of just cause for discharge, but some disciplinary action is justified based on the severity of the proven charges. If the Merit Board orders reinstatement with a 60-day suspension, any time served while on suspension pending discharge will be applied towards the fulfillment of the 60-day suspension.
- 17) Final Decision and Order of the Merit Board. The Secretary for the Merit Board shall immediately forward copies of all Merit Board orders to the employer and the employee by certified mail or by overnight delivery that requires signature upon receipt. ~~Request for a rehearing, or for a reconsideration of a Merit Board order or decision, shall not extend any appeal period for administrative review, except by express order of the Merit Board or its Chair.~~
- 18) Administrative Review. All final decisions of the Merit Board shall be subject to appeal by the parties to the proceedings under the Administrative Review Law [735 ILCS 5/Art. III]. A complaint for administrative review must be filed and summons issued within 35 days after the date that a copy of the Merit Board decision has been served upon

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the party affected. A final decision of the final Merit Board shall be deemed served either when personally delivered or when deposited in the United States mail in a sealed envelope or package, with postage paid, addressed to the party affected by the decision at his/her last known residence or place of business.

- 19) Time Period Proceedings
- A) On the motion of either party with notice to the other party, or by independent action of the Chair of the Merit Board or the Executive Director communicated to both parties, any time period set forth in this subsection (f) may be extended by the Chair of the Merit Board or by the Executive Director for good cause shown.
 - B) No extension may be beyond a period established by statute, except for cases in which a written motion for continuance of a scheduled hearing is filed with the Secretary for the Merit Board at least 48 hours prior to the time scheduled for hearing, unless an exception is granted by the Executive Director. The moving party must set forth emergency grounds for a continuance, which are limited to unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God; the sudden illness or death of the movant, a member of his or her immediate family, or his/her legal counsel; or if the movant is able to demonstrate some other real and compelling need for additional time. If there is an arrest or criminal indictment of any employee that resulted from an employee's conduct in the course of employment duties, the Executive Director, at the request of the employee, may grant a continuance of hearing pending some resolution of the criminal charges. Requests for continuances must be preceded by contacting the opposing party and asking for agreement to the continuance.
 - C) The time periods set forth in this subsection (f), except for the 15-day period set forth in subsection (f)(3)(B) and except for any time period provided for seeking administrative review of a final decision of the Merit Board, shall be deemed directory and not mandatory; and no failure to comply with any of the time periods set forth in this subsection (f), except for the 15-day period set

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forth in subsection (f)(3)(B) of this Section and except for any time period provided for seeking administrative review of a final decision of the Merit Board, shall cause the Merit Board to lose jurisdiction of any matter.

- D) If the last date for filing falls on a weekend or legal holiday, the last date for filing is the first business day following that weekend or legal holiday.
- 20) Reason for Discharge. Causes justifying discharge and any suspension during the discharge proceedings shall include, but are not limited to: all those listed as cause for suspension if they become recurring offenses; and, in addition, theft; drinking intoxicating liquors on institutional time or property; inability to perform satisfactorily assigned duties as a result of drinking alcoholic beverages; malicious damage to property, tools, or equipment; immoral or indecent conduct that violates common decency or morality; conviction of an offense involving moral turpitude; illegal or excessive use of drugs, narcotics, and/or intoxicants.
- 21) Hearing Expenses. All customary and reasonable court reporter and copying expenses incident to the preparation of the Hearing Record and providing copies to parties to the proceedings shall be paid by the employer. The Merit Board shall pay all expenses of the Hearing Board or Hearing Officer and any legal expenses incurred by a Hearing Board or Hearing Officer, to the extent that those expenses have been approved by the Merit Board or its Executive Director.
- g) Demotion
- 1) Any of the actions described in this subsection (g)(1) is considered to be a demotion when that action has been initiated by the employer. A demotion may occur when a status employee:
- A) is subject to a reduction in salary in his/her current position, or in a position of the same class to which he/she has been reassigned, except when the reduction in pay results from an overall reduction in pay to persons employed in the same class and/or when the Merit Board, on the basis of supporting evidence, determines that the pay potential should be lowered for a class;

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- B) is subject to a reduction in percentage of time worked;
 - C) is appointed to a position in a lower class in a promotional line;
 - D) is appointed to a position in a class outside a promotional line with a lower pay potential;
 - E) is given a nonstatus appointment.
- 2) None of the actions described in subsection (g)(1) are considered to be a demotion when the action has been initiated, or willingly accepted, by the employee.
- A) Evidence of initiation by, or willing acceptance by, an employee shall be: a statement signed by the employee (to be filed by the employer with the notice of employment) indicating that the new appointment is at his/her request and/or is acceptable to him/her, or the employee applied for, and took, the Civil Service examination, upon the results of which the new appointment is based, after the date of certification to his/her most recent position.
 - B) Without the evidence indicated in subsection (g)(2)(A), the action will be considered to have been initiated by the employer and, therefore, will be considered to be a demotion.
- 3) Any classification plan changes authorized and implemented by the University System and/or the Merit Board that may result in a lower pay potential will not be considered a demotion.
- 4) An employer may effectuate a demotion by filing a Notice of Demotion with the Merit Board and serving a copy of the Notice of Demotion on the employee by certified mail, by overnight delivery that requires signature upon receipt, or by personally serving the employee. The Notice of Demotion shall designate the position and class to which the employee has been demoted and shall factually state the causes justifying demotion. The effective date of the demotion shall be the date of service of the Notice of Demotion upon the employee. A demotion shall be subject to the same

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hearing and review procedures as are provided an employee in the case of a discharge. (See subsection (f).) During any hearing and review proceedings, the employee shall be paid the approved rate for the class of the position to which he/she has been demoted, as set forth in the Notice of Demotion.

- 5) A status employee who is demoted to a position in a class in which he/she has never been employed on a status appointment may qualify for the position to which he/she is demoted, if his/her name is not already on an eligible register for that class, by taking the examination given to all other applicants for this class as promptly as possible following demotion to the class. The employee must pass the examination as a condition to retaining his/her appointment.

h) Dismissal

- 1) An employer may dismiss an employee whose name has been certified and who has been subsequently employed in a status position at any time during the probationary period of employment in a class, if the employer determines, pursuant to conditions of Section 250.90(a), that the employee has failed to demonstrate the ability and the qualifications necessary to furnish satisfactory service.
- 2) The employer shall notify the Executive Director promptly of dismissals, setting forth the reasons for the dismissal.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

BOARD OF HIGHER EDUCATION

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- 1) Heading of the Part: Nursing School Grant Program
- 2) Code Citation: 23 Ill. Adm. Code 1100
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
1100.200	Amendment
1100.300	Amendment
1100.500	Amendment
1100.600	Amendment
- 4) Statutory Authority: 110 ILCS 205/9.31
- 5) Effective Date of Amendments: October 14, 2011
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? The rulemaking does not include incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act.
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Board of Higher Education's office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: April 29, 2011; 35 Ill. Reg. 7038
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: The amendments were promulgated to maximize the use of grant funds allocated to the program and address the cyclical fluctuations in the national licensure exam rates.

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

Karen Helland
Academic Affairs
Illinois Board of Higher Education
431 East Adams Street, Second Floor
Springfield, Illinois 62701-1404

217/557-7358
Fax: 217/782-8548
helland@ibhe.org

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

BOARD OF HIGHER EDUCATION

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TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1100

NURSING SCHOOL GRANT PROGRAM

Section

1100.100	Purpose
1100.200	Definitions
1100.300	Eligible Nursing Program
1100.400	Application Process
1100.500	Expansion Grants
1100.600	Improvement Grants
1100.700	Award Process
1100.800	Audit Requirements

AUTHORITY: Implementing and authorized by Section 9.31 of the Board of Higher Education Act [110 ILCS 205/9.31].

SOURCE: Emergency rules adopted at 30 Ill. Reg. 17113, effective October 16, 2006, for a maximum of 150 days; adopted at 31 Ill. Reg. 3145, effective February 7, 2007; amended at 35 Ill. Reg. 17458, effective October 14, 2011.

Section 1100.200 Definitions

"Board" means the Board of Higher Education.

"CCNE" means the Commission on Collegiate Nursing Education.

"Eligible Nursing Program" means a nursing program at an Illinois institution of higher learning that prepares registered nurses in accordance with Section 1100.300 and offers at least one of the following nursing degree programs:

"ADN" means an Associate Degree in Nursing. Upon completion of the program, a graduate ~~must~~may be eligible to take the examination (NCLEX-RN) for licensure as a registered nurse ~~(NCLEX-RN)~~.

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"BSN" means a Bachelor of Science in Nursing. This program admits pre-licensure students and awards a Bachelor of Science degree in nursing. Upon completion of the program, a graduate must be eligible to take the examination (NCLEX-RN) for licensure as a registered nurse.

"RN-BSN" means a baccalaureate completion program that admits registered nurses and awards a Bachelor of Science degree in nursing.

"DFPR" means the Illinois Department of Financial and Professional Regulation or its successor.

"Expansion Grant" means a competitive grant, renewable for up to three years, under this Part that supports high-performing eligible nursing schools for the purpose of expanding nursing program capacity and either increasing the number of students preparing for initial licensure as registered nurses (ADN or BSN) or increasing the number of registered nurses completing baccalaureate completion programs (RN-BSN).

"Improvement Grant" means an annual competitive grant under this Part that supports eligible nursing schools with the purpose of increasing student retention and improving institutional NCLEX-RN pass rates.

"Institution of Higher Learning" means a public or nonpublic institution of higher education located within Illinois that offers associate, baccalaureate or post-baccalaureate degrees and that is authorized to operate in the State of Illinois.

"NLNAC" means the National League for Nursing Accrediting Commission.

"NCLEX-RN" means the National Council Licensure Examination-Registered Nurse. Passing the NCLEX-RN is required of candidates for licensure as a Registered Nurse (RN) in Illinois.

(Source: Amended at 35 Ill. Reg. 17458, effective October 14, 2011)

Section 1100.300 Eligible Nursing Program

Illinois institutions of higher learning offering registered nursing degree programs must meet the following criteria to be eligible to receive a grant under this Part:

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- a) ADN programs must:
- 1) Be approved by ~~DFPR~~ the Illinois Department of Financial and Professional Regulation (DFPR);
 - 2) Be accredited by ~~NLNAC~~ the National League for Nursing Accrediting Commission (NLNAC); and
 - 3) Have an articulation agreement with at least one institution of higher learning that offers baccalaureate degrees for registered nurses.
- b) BSN programs must:
- 1) Be approved by DFPR; and
 - 2) Be accredited by ~~CCNE~~ the Commission on Collegiate Nursing Education (CCNE) or ~~the~~ NLNAC.
- c) RN-BSN programs must be accredited by the CCNE or the NLNAC.

(Source: Amended at 35 Ill. Reg. 17458, effective October 14, 2011)

Section 1100.500 Expansion Grants

- a) In a given fiscal year, ~~the amount at least 90 percent~~ of the Program appropriation ~~or allocation to~~ shall support Expansion Grants shall be based on the following order of priority:-
- 1) Funding for renewal grants;
 - 2) Funding for grants in year one of a three-year grant cycle; or
 - 3) A combination of renewal and first-year grants the Board deems appropriate to maximize the grant awards.
- b) Eligibility Criteria
- 1) ADN and BSN programs must meet both of the following criteria:

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- A) NCLEX-RN pass rate for first-time test takers must be equal to or greater than the national average for the previous calendar year as reported by DFPR~~90 percent~~.
- B) Program attrition rate must be equal to or less than 15 percent.
- 2) RN-BSN programs must have a program attrition rate equal to or less than 15 percent.
- c) Grant applications for Expansion Grants under this Part shall include, but need not be limited to, the following:
 - 1) Comprehensive description of the proposed use of funds in accordance with subsection (e), including evidence of current research and best practices to support proposed strategies.
 - 2) Budget by line item, including personal services, contractual services, commodities, equipment, telecommunications, travel, and audit.
 - 3) Performance measures, including, but not limited to, the following:
 - A) Eligibility criteria in accordance with subsection (b);
 - B) First-year retention rate;
 - C) Job placement within 6 months of degree completion; and
 - D) Number of degrees conferred (three-year trend).
 - 4) Statement of institutional support and sustainability of grant-funded activities.
 - 5) Evaluation plan.
 - 6) Program audit and an interim evaluation report from the previous year, if the applicant received an Expansion Grant under this Part.
- d) Awards

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- 1) The grant awards for eligible nursing programs shall be determined using a competitive process to review applications that shall include, but need not be limited to, the following criteria:
 - A) Evidence of effective program goals and performance measures;
 - B) Proposed use of funds and budget justification demonstrating an effective use of program resources;
 - C) An effective evaluation plan including reliable measures of performance and program outcomes;
 - D) Evidence of institutional support and sustainability of grant-funded activities; and
 - E) Number of completed applications received in accordance with subsection (c).
- 2) The number and amount of grant awards is subject to the Program appropriation or allocation.
- e) Use of Grant Funds. Expansion Grant funds shall~~may~~ be used to expand capacity and increase the number of students preparing for careers as registered nurses. Acceptable expenditures may include, but are not limited to, the following:
 - 1) Hiring additional qualified nursing faculty;
 - 2) Developing or expanding instructional programs (e.g., online, weekend, evening);
 - 3) Developing or expanding academic support programs;
 - 4) Securing additional clinical instruction sites;
 - 5) Increasing classroom space;
 - 6) Purchasing equipment and other program-related instructional materials; and

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- 7) Evaluation, dissemination of program results, and program audit.
- f) Grantees may annually reapply for funding ~~under this Part~~.
- g) Grantees must submit a final evaluation report.

(Source: Amended at 35 Ill. Reg. 17458, effective October 14, 2011)

Section 1100.600 Improvement Grants

- a) In a given fiscal year, ~~the amount no more than 10 percent~~ of the Program appropriation ~~or allocations shall be~~ directed to Improvement Grants is the remainder after the Expansion Grant determination.
- b) Eligibility Criteria
 - 1) ADN and BSN programs must meet at least one of the following criteria:
 - A) NCLEX-RN pass rate for first-time test takers must be less than the national average for the previous calendar year as reported by DFPR 90 percent.
 - B) Program attrition rate must be greater than 15 percent.
 - 2) RN-BSN programs must have a program attrition rate greater than 15 percent.
- c) Grant applications for Improvement Grants under this Part shall include, but need not be limited to, the following:
 - 1) Comprehensive description of the proposed use of funds in accordance with subsection (e), including evidence of current research and best practices to support proposed strategies.
 - 2) Budget by line item, including personal services, contractual services, commodities, equipment, telecommunications, travel, and audit.
 - 3) Performance measures, including, but not limited to, the following:

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- A) Eligibility criteria in accordance with subsection (b);
 - B) First-year retention rate;
 - C) Job placement within 6 months ~~after~~ degree completion; and
 - D) Number of degrees conferred (three-year trend).
- 4) Statement of institutional support and sustainability of grant-funded activities.
- 5) Evaluation plan.
- 6) Program audit from the previous year, if the applicant received an Improvement Grant ~~under this Part~~.
- d) Awards
- 1) The grant awards for eligible nursing programs shall be determined using a competitive process to review applications that shall include, but need not be limited to, the following criteria:
 - A) Evidence of effective program goals and performance measures;
 - B) Proposed use of funds and budget justification demonstrating an effective use of program resources;
 - C) An effective evaluation plan including reliable measures of performance and program outcomes;
 - D) Evidence of institutional support and sustainability of grant-funded activities; and
 - E) Number of completed applications received in accordance with subsection (c).
 - 2) The number and amount of grant awards is subject to the Program appropriation.

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- e) Use of Grant Funds. Improvement Grant funds may be used to support strategies aimed at increasing student retention and improving graduation rates and institutional NCLEX-RN pass rates.
- 1) Acceptable expenditures may include, but are not limited to, the following:
- A) Developing or expanding academic support services to improve student retention and increase graduation rates and NCLEX-RN pass rates;
- B) Improving existing classroom space;
- C) Purchasing equipment and other instructional materials necessary to improve instructional quality; and
- D) Program audit.
- 2) Improvement Grants shall not be used to hire faculty.
- f) Grantees may apply annually for funding ~~under this Part~~.
- g) Grantees must submit an evaluation report.

(Source: Amended at 35 Ill. Reg. 17458, effective October 14, 2011)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF EXPEDITED CORRECTION

- 1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 300
- 3) Section Number: 300.286
- 4) Date Proposal published in Illinois Register: November 29, 2010; 34 Ill. Reg. 18104
- 5) Date Adoption published in Illinois Register: July 15, 2011; 35 Ill. Reg. 11419
- 6) Date Request for Expedited Correction published in Illinois Register: September 16, 2011; 35 Ill. Reg. 15308
- 7) Adoption Effective Date: June 29, 2011
- 8) Correction Effective Date: June 29, 2011
- 9) Reason for Approval of Expedited Correction: To correct a typographical error by changing "6(b)(2)" to "(b)(2)" in subsection (d).

The full text of the Corrected Rulemaking begins on the following page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF EXPEDITED CORRECTION

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 300
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
300.110	General Requirements
300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.163	Alzheimer's Special Care Disclosure
300.165	Criteria for Adverse Licensure Actions
300.170	Denial of Initial License
300.175	Denial of Renewal of License
300.180	Revocation of License
300.190	Experimental Program Conflicting With Requirements
300.200	Inspections, Surveys, Evaluations and Consultation
300.210	Filing an Annual Attested Financial Statement
300.220	Information to Be Made Available to the Public By the Department
300.230	Information to Be Made Available to the Public By the Licensee
300.240	Municipal Licensing
300.250	Ownership Disclosure
300.260	Issuance of Conditional Licenses
300.270	Monitor and Receivership
300.271	Presentation of Findings
300.272	Determination to Issue a Notice of Violation or Administrative Warning
300.274	Determination of the Level of a Violation
300.276	Notice of Violation
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300.278	Plans of Correction
300.280	Reports of Correction
300.282	Conditions for Assessment of Penalties
300.284	Calculation of Penalties (Repealed)
300.286	Notice of Penalty Assessment; Response by Facility

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300.287	Consideration of Factors for Assessing Penalties
300.288	Reduction or Waiver of Penalties
300.290	Quarterly List of Violators (Repealed)
300.300	Alcoholism Treatment Programs In Long-Term Care Facilities
300.310	Department May Survey Facilities Formerly Licensed
300.315	Supported Congregate Living Arrangement Demonstration
300.320	Waivers
300.330	Definitions
300.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
300.510	Administrator

SUBPART C: POLICIES

Section	
300.610	Resident Care Policies
300.615	Determination of Need Screening and Request for Resident Criminal History Record Information
300.620	Admission, Retention and Discharge Policies
300.624	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
300.625	Identified Offenders
300.626	Discharge Planning for Identified Offenders
300.627	Transfer of an Identified Offender
300.630	Contract Between Resident and Facility
300.640	Residents' Advisory Council
300.650	Personnel Policies
300.651	Whistleblower Protection
300.655	Initial Health Evaluation for Employees
300.660	Nursing Assistants
300.661	Health Care Worker Background Check
300.662	Resident Attendants
300.663	Registry of Certified Nursing Assistants
300.665	Student Interns
300.670	Disaster Preparedness
300.680	Restraints

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300.682	Nonemergency Use of Physical Restraints
300.684	Emergency Use of Physical Restraints
300.686	Unnecessary, Psychotropic, and Antipsychotic Drugs
300.690	Incidents and Accidents
300.695	Contacting Local Law Enforcement
300.696	Infection Control

SUBPART D: PERSONNEL

Section	
300.810	General
300.820	Categories of Personnel
300.830	Consultation Services
300.840	Personnel Policies

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section	
300.1010	Medical Care Policies
300.1020	Communicable Disease Policies
300.1025	Tuberculin Skin Test Procedures
300.1030	Medical Emergencies
300.1035	Life-Sustaining Treatments
300.1040	Care and Treatment of Sexual Assault Survivors
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SUBPART F: NURSING AND PERSONAL CARE

Section	
300.1210	General Requirements for Nursing and Personal Care
300.1220	Supervision of Nursing Services
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SUBPART G: RESIDENT CARE SERVICES

Section	
300.1410	Activity Program

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- 300.1420 Specialized Rehabilitation Services
- 300.1430 Work Programs
- 300.1440 Volunteer Program
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SUBPART H: MEDICATIONS

Section

- 300.1610 Medication Policies and Procedures
- 300.1620 Compliance with Licensed Prescriber's Orders
- 300.1630 Administration of Medication
- 300.1640 Labeling and Storage of Medications
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SUBPART I: RESIDENT AND FACILITY RECORDS

Section

- 300.1810 Resident Record Requirements
- 300.1820 Content of Medical Records
- 300.1830 Records Pertaining to Residents' Property
- 300.1840 Retention and Transfer of Resident Records
- 300.1850 Other Resident Record Requirements
- 300.1860 Staff Responsibility for Medical Records
- 300.1870 Retention of Facility Records
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SUBPART J: FOOD SERVICE

Section

- 300.2010 Director of Food Services
- 300.2020 Dietary Staff in Addition to Director of Food Services
- 300.2030 Hygiene of Dietary Staff
- 300.2040 Diet Orders
- 300.2050 Meal Planning
- 300.2060 Therapeutic Diets (Repealed)
- 300.2070 Scheduling Meals
- 300.2080 Menus and Food Records
- 300.2090 Food Preparation and Service
- 300.2100 Food Handling Sanitation

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300.2110 Kitchen Equipment, Utensils, and Supplies

SUBPART K: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

Section

300.2210 Maintenance
300.2220 Housekeeping
300.2230 Laundry Services

SUBPART L: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

300.2410 Furnishings
300.2420 Equipment and Supplies
300.2430 Sterilization of Equipment and Supplies

SUBPART M: WATER SUPPLY AND SEWAGE DISPOSAL

Section

300.2610 Codes
300.2620 Water Supply
300.2630 Sewage Disposal
300.2640 Plumbing

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS
FOR NEW INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section

300.2810 Applicability of these Standards
300.2820 Codes and Standards
300.2830 Preparation of Drawings and Specifications
300.2840 Site
300.2850 Administration and Public Areas
300.2860 Nursing Unit
300.2870 Dining, Living, Activities Rooms
300.2880 Therapy and Personal Care
300.2890 Service Departments
300.2900 General Building Requirements
300.2910 Structural

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NOTICE OF EXPEDITED CORRECTION

- 300.2920 Mechanical Systems
- 300.2930 Plumbing Systems
- 300.2940 Electrical Systems

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS
FOR EXISTING INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section

- 300.3010 Applicability
- 300.3020 Codes and Standards
- 300.3030 Preparation of Drawings and Specifications
- 300.3040 Site
- 300.3050 Administration and Public Areas
- 300.3060 Nursing Unit
- 300.3070 Living, Dining, Activities Rooms
- 300.3080 Treatment and Personal Care
- 300.3090 Service Departments
- 300.3100 General Building Requirements
- 300.3110 Structural
- 300.3120 Mechanical Systems
- 300.3130 Plumbing Systems
- 300.3140 Electrical Requirements

SUBPART P: RESIDENT'S RIGHTS

Section

- 300.3210 General
- 300.3220 Medical Care
- 300.3230 Restraints (Repealed)
- 300.3240 Abuse and Neglect
- 300.3250 Communication and Visitation
- 300.3260 Resident's Funds
- 300.3270 Residents' Advisory Council
- 300.3280 Contract With Facility
- 300.3290 Private Right of Action
- 300.3300 Transfer or Discharge
- 300.3310 Complaint Procedures
- 300.3320 Confidentiality
- 300.3330 Facility Implementation

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SUBPART Q: SPECIALIZED LIVING FACILITIES FOR THE MENTALLY ILL

Section

300.3410	Application of Other Sections of These Minimum Standards (Repealed)
300.3420	Administrator (Repealed)
300.3430	Policies (Repealed)
300.3440	Personnel (Repealed)
300.3450	Resident Living Services Medical and Dental Care (Repealed)
300.3460	Resident Services Program (Repealed)
300.3470	Psychological Services (Repealed)
300.3480	Social Services (Repealed)
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
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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'
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
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- 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
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- 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
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SUBPART U: ALZHEIMER'S SPECIAL CARE UNIT OR CENTER PROVIDING

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CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR OTHER DEMENTIA

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300.7010	Admission Criteria
300.7020	Assessment and Care Planning
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300.7040	Activities
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300.7070	Quality Assessment and Improvement
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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
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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].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982;

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amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at

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27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007; amended at 31 Ill. Reg. 8813, effective June 6, 2007; amended at 33 Ill. Reg. 9356, effective June 17, 2009; amended at 34 Ill. Reg. 19182, effective November 23, 2010; amended at 35 Ill. Reg. 3378, effective February 14, 2011; amended at 35 Ill. Reg. 11419, effective June 29, 2011; expedited correction at 35 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 300.286 Notice of Penalty Assessment; Response by Facility

- a) If the Director or his or her designee 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* 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 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)

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- b) *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) In lieu of submitting payment for the fine subject to offset under Section 300.282(k) and Section 3-305 of the Act, a facility may submit to the Department a copy of a letter to the Centers for Medicare and Medicaid Services (CMMS) of its binding intent to waive its right to a federal hearing to contest a civil monetary penalty for the equivalent federal violation, as described in Section 300.282(k) of this Part.*
- c) The facility shall pay penalties to the Department within the time periods provided in Section 3-310 of the Act.
- d) The submission of either 65% of the amount assessed for each violation specified in the penalty assessment, pursuant to subsection (b)(1), or the submission of up to 75% of the amount assessed (or a letter to CMMS), as described in subsection 6(b)(2), shall constitute a waiver by the facility of a right to hearing pursuant to Section 3-703 of the Act.

(Source: Expedited Correction at 35 Ill. Reg. _____, effective _____)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTIONS
TO PROPOSED RULEMAKING

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Heading of the Part: Cemetery Oversight Act

Code Citation: 68 Ill. Adm. Code 1249

<u>Section Numbers:</u>	1249.10	1249.110	1249.200	1249.400
	1249.20	1249.120	1249.210	1249.410
	1249.30	1249.130	1249.220	1249.420
	1249.40	1249.140	1249.230	1249.430
	1249.50	1249.150	1249.300	1249.440
	1249.60	1249.160	1249.310	1249.450
	1249.70	1249.170	1249.320	1249.460
	1249.100	1249.180	1249.330	1249.470

Date Originally Published in the Illinois Register: 7/15/11
35 Ill. Reg. 11050

At its meeting on 10/11/11, the Joint Committee on Administrative Rules objected to the above cited rulemaking of the Department of Financial and Professional Regulation's rulemaking titled Cemetery Oversight Act (68 Ill. Adm. Code 1249; 35 Ill. Reg. 11050) because licensure fees, indemnification costs and continuing education requirements, as well as cemetery maintenance standards that are not differentiated based on the size and financial strength of the cemetery as is required by the statute, will create a serious financial hardship for some cemeteries. Further, the Department is acting prematurely in urging the adoption of these rules while legislation is still pending before the General Assembly that would offer the Department additional direction on the implementation of the Cemetery Oversight Act.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall constitute withdrawal of this proposed rulemaking. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTIONS
TO EMERGENCY RULE
AND EMERGENCY RULEMAKING

ILLINOIS RACING BOARD

Heading of the Part: Medication

Code Citation: 11 Ill. Adm. Code 603

Section Numbers: 603.60 603.75 603.160

Date Originally Published in the Illinois Register: 9/16/11
35 Ill. Reg 15296

At its meeting on October 11, 2011, the Joint Committee on Administrative Rules objected to the Illinois Racing Board's emergency rule to adopt rules titled Medication (11 Ill. Adm. Code 603; 35 Ill. Reg. 15296) because the incorporation by reference of the Association of Racing Commissioners International (RCI) Uniform Classification of Foreign Substances incorrectly cites the wrong version. Additionally, JCAR objects to the use of emergency rulemaking to remove Levamisole from the list of approved substances. RCI revised its guidelines to recommend against the use of Levamisole at least as early as 2009. If IRB had acted in a more timely manner, this use of emergency rulemaking could have been avoided.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION
TO EMERGENCY RULEMAKING

DEPARTMENT OF TRANSPORTATION

Heading of the Part: Prequalification of Contractors, Authorization to Bid, and Subcontractor Registration

Code Citation: 44 Ill. Adm. Code 650

Section Numbers: 650.170

Date Originally Published in the Illinois Register: 9/23/11
35 Ill. Reg. 15485

At its meeting on October 11, 2011, the Joint Committee on Administrative Rules objected to the Department of Transportation's use of emergency rulemaking to adopt rules titled Prequalification of Contractors, Authorization to Bid, and Subcontractor Registration (44 Ill. Adm. Code 650; 35 Ill. Reg. 15485) because the Department has not demonstrated the existence of a situation requiring the use of emergency rulemaking. PA 96-795 became effective 7/1/10, over 13 months before these emergency rules were adopted. Any emergency that exists appears to be due to the Department's delay in implementing PA 96-795.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

WITHDRAWAL OF FILING PROHIBITION
OF PROPOSED RULEMAKING

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

Heading of the Part: Medical Assistance Programs

Code Citation: 89 Ill. Adm. Code 120

<u>Section Numbers:</u>	120.10	120.62	120.379	120.385
	120.20	120.63	120.380	120.387
	120.40	120.65	120.381	120.388
	120.60	120.308	120.382	120.TABLE B
	120.61	120.347	120.384	

Date Originally Published in the Illinois Register: 8/13/10
34 Ill. Reg. 11664

Date Filing Prohibition Published in Illinois Register: 5/27/11
35 Ill. Reg. 8251

Date Filing Prohibition Became Effective: 5/10/11

Date Filing Prohibition Withdrawn: Effective upon the Department filing the rule, with the Second Notice Agreements and with the JCAR approved Modifications, for adoption

The Joint Committee on Administrative Rules certifies that, pursuant to Section 5-115 of the Illinois Administrative Procedure Act, the Joint Committee, at its meeting October 11, 2011, has withdrawn the prohibition against the filing of the Department of Healthcare and Family Services' rulemaking. The Committee originally issued this Filing Prohibition at its 5/10/11 meeting.

Please take notice that the agency is no longer prohibited from filing the rulemaking with the Secretary of State, as modified in accordance with Agreements between the agency and the Joint Committee on Administrative Rules and the Modifications submitted in response to the Objection and Filing Prohibition, and from enforcing or invoking the rule.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF AGENCY RESPONSE TO JOINT COMMITTEE RECOMMENDATION
TO PROPOSED RULEMAKING

- 1) Heading of the Part: Temporary Assistance for Needy Families
- 2) Code Citation: 89 Ill. Adm. Code 112
- 3)

<u>Section Numbers</u> :	<u>Action</u> :
112.150	Agree
112.151	Agree
- 4) Date Notice of Proposed Amendments Published in the Register: 35 Ill. Reg. 6736; April 22, 2011
- 5) Date JCAR Statement of Objection Published in the Register: September 30, 2011; 35 Ill. Reg. 15691
- 6) Summary of Action Taken by the Agency: At its meeting on September 13, 2011, the Joint Committee on Administrative Rules considered the above-cited rulemaking and recommended that the Department of Human Services, in the future, take measures to ensure gaps do not occur between the expiration of an emergency rule and adoption of the permanent rulemaking, to avoid creating a regulatory gap.

The Department of Human Services has reviewed the recommendation from the Joint Committee on Administrative Rules regarding the above-cited rulemaking and accepts the recommendation. The Department will make every attempt to take measures to ensure gaps do not occur between the expiration of an emergency rule and adoption of the permanent rulemaking, to avoid creating a regulatory gap.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF AGENCY RESPONSE TO JOINT COMMITTEE RECOMMENDATION
TO PROPOSED RULEMAKING

- 1) Heading of the Part: Aid to the Aged, Blind or Disabled
- 2) Code Citation: 89 Ill. Adm. Code 113
- 3) Section Number: 113.107 Action:
Agree
- 4) Date Notice of Proposed Amendment Published in the Illinois Register: 35 Ill. Reg. 6738; April 22, 2011
- 5) Date JCAR Statement of Objection Published in the Register: September 30, 2011; 35 Ill. Reg. 15692
- 6) Summary of Action Taken by the Agency: At its meeting on September 13, 2011, the Joint Committee on Administrative Rules considered the above-cited rulemaking and recommended that the Department of Human Services, in the future, take measures to ensure gaps do not occur between the expiration of an emergency rule and adoption of the permanent rulemaking, to avoid creating a regulatory gap.

The Department of Human Services has reviewed the recommendation from the Joint Committee on Administrative Rules regarding the above-cited rulemaking and accepts the recommendation. The Department will make every attempt to take measures to ensure gaps do not occur between the expiration of an emergency rule and adoption of the permanent rulemaking, to avoid creating a regulatory gap.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF AGENCY RESPONSE TO JOINT COMMITTEE RECOMMENDATION
TO PROPOSED RULEMAKING

- 1) Heading of the Part: General Assistance
- 2) Code Citation: 89 Ill. Adm. Code 114
- 3)

<u>Section Numbers:</u>	<u>Action:</u>
114.250	Agree
114.251	Agree
- 4) Date Notice of Proposed Amendments Published in the Illinois Register: 35 Ill. Reg. 6740; April 22, 2011
- 5) Date JCAR Statement of Objection Published in the Register: September 30, 2011; 35 Ill. Reg. 15693
- 6) Summary of Action Taken by the Agency: At its meeting on September 13, 2011, the Joint Committee on Administrative Rules considered the above-cited rulemaking and recommended that the Department of Human Services, in the future, take measures to ensure gaps do not occur between the expiration of an emergency rule and adoption of the permanent rulemaking, to avoid creating a regulatory gap.

The Department of Human Services has reviewed the recommendation from the Joint Committee on Administrative Rules regarding the above-cited rulemaking and accepts the recommendation. The Department will make every attempt to take measures to ensure gaps do not occur between the expiration of an emergency rule and adoption of the permanent rulemaking, to avoid creating a regulatory gap.

POLLUTION CONTROL BOARD

NOTICE OF PUBLIC INFORMATION ON PROPOSED AMENDMENT

Section 13(c) of the Environmental Protection Act (Act) [415 ILCS 5/13(c)] requires the Board to adopt regulations that are "identical in substance" to U.S. Environmental Protection Agency (USEPA) underground injection control (UIC) rules adopted pursuant to Section 1421 of the Safe Drinking Water Act (SDWA), 42 USC § 300h (2006). These rules are contained in 35 Ill. Adm. Code 730 and 738. (Parts 702, 704, 705, and 730 are to be amended in docket R11-14.)

Section 7.2(a) of the Act 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) allows the Board to extend the deadline for adoption by publication of a notice of reason for delay in the *Illinois Register*.

On October 6, 2011, the Pollution Control Board adopted an order that adopted a proposal for public comment, set forth reasons for delay, and extended the deadline for completion of rulemaking action in the UIC update docket R11-14. In that order, the Board stated as follows:

REASONS FOR DELAY

Under Section 7.2 of the Act (415 ILCS 5/7.2(b) (2004)), the Board must complete this rulemaking within one year of December 10, 2010, the date of the earliest set of federal amendments considered in this docket. USEPA adopted the earliest federal amendments that required Board attention on December 10, 2010, so that the deadline for Board adoption of these amendments is December 10, 2011. Meeting that deadline would have required Board adoption of this proposal for public comment by September 1, 2011, so that this proceeding could have progressed to final adoption according to the following schedule:

Due date:	December 10, 2011
Proposal adopted date:	September 1, 2011
Publication submission deadline:	September 12, 2011
<i>Illinois Register</i> publication date:	September 23, 2011
End of 45-day public comment period:	November 7, 2011
Adoption date:	November 17, 2011
Possible filing and effective date:	November 28, 2011
Possible <i>Illinois Register</i> publication date:	December 9, 2011

Unfortunately, delays in final adoption of RCRA Subtitle C Update, USEPA Amendments (January 1, 2010 through June 30, 2010), R11-2 and RCRA Subtitle C Update, USEPA Amendments, R11-16 (Aug. 18, 2011) (cons.) and the extent of minor revisions found necessary in the text of the USEPA amendments

POLLUTION CONTROL BOARD

NOTICE OF PUBLIC INFORMATION ON PROPOSED AMENDMENT

that underlie this proceeding have delayed this proposal for public comment until today.

The Board presently projects the following the following timetable for progress towards completion of the present amendments:

Due date:	January 26, 2012
Proposal adopted date:	October 6, 2011
Publication submission deadline:	October 18, 2011
<i>Illinois Register</i> publication date:	October 29, 2011
End of 45-day public comment period:	December 12, 2011
Adoption date:	January 5, 2012
Possible filing and effective date:	January 17, 2012
Possible <i>Illinois Register</i> publication date:	January 28, 2012

The above are reasonable projections of the dates for progress towards adoption of the amendments included in this proposal. Should the Board gain publication of the Notices of Proposed Amendments in this matter in the October 22, 2011 issue of the *Illinois Register*, the Board might be able to adopt rules on December 15, 2011, and file them before December 19, 2011. Conversely, should delay occur through some presently unforeseen circumstance, a Board vote to adopt amendments based on this proposal, and filing of the adopted amendments with the Office of the Secretary of State, could occur later.

Direct inquiries as follows, referencing consolidated docket R11-14:

Michael J. McCambridge, Staff Attorney
Illinois Pollution Control Board
312-814-6924 or mccambm@ipcb.state.il.us

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of October 11, 2011 through October 17, 2011 and have been scheduled for review by the Committee at its November 8, 2011 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
11/24/11	<u>Department on Aging</u> , Community Care Program (89 Ill. Adm. Code 240)	8/12/11 35 Ill. Reg. 12993	11/8/11
11/25/11	<u>Department of Public Health</u> , Emergency Medical Services and Trauma Center Code (77 Ill. Adm. Code 515)	7/29/11 35 Ill. Reg. 12645	11/8/11
11/27/11	<u>Department of Natural Resources</u> , Special White-Tailed Deer Season for Disease Control (17 Ill. Adm. Code 657)	8/12/11 35 Ill. Reg. 13049	11/8/11

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

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