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March 21, 2014 Volume 38, Issue 12

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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2014

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

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Specialized Health Care Delivery Systems
- 2) Code Citation: 89 Ill. Adm. Code 146
- 3) Section Number: 146.550 Proposed Action: Amend
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Save Medicaid Access and Resources Together (SMART) Act, which created 305 ILCS 5/14-11
- 5) Complete Description of the Subjects and Issues Involved: These administrative rules are required pursuant to the SMART Act, PA 97-689, which created 305 ILCS 5/14-11 and required the Department to implement hospital payment reform.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
146.100	Amend	38 Ill. Reg. 4628; February 21, 2014
146.105	Amend	38 Ill. Reg. 4628; February 21, 2014
146.110	Amend	38 Ill. Reg. 4628; February 21, 2014
146.115	Amend	38 Ill. Reg. 4628; February 21, 2014
146.125	Amend	38 Ill. Reg. 4628; February 21, 2014
146.130	Amend	38 Ill. Reg. 4628; February 21, 2014
146.840	Amend	38 Ill. Reg. 4628; February 21, 2014
146.840	Amend	38 Ill. Reg. 18805; November 15, 2013
146.410	Amend	38 Ill. Reg. 18951; December 2, 2013
146.440	Amend	38 Ill. Reg. 18951; December 2, 2013

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

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

217/782-1233
HFS.Rules@illinois.gov.

The Department requests the submission of written comments within 45 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not anticipated by the Department when the most recent regulatory agendas were published.

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMSPART 146
SPECIALIZED HEALTH CARE DELIVERY SYSTEMS

SUBPART A: AMBULATORY SURGICAL TREATMENT CENTERS

Section	
146.100	General Description
146.105	Definitions
146.110	Participation Requirements
146.115	Records and Data Reporting Requirements
146.125	Covered Ambulatory Surgical Treatment Center Services
146.130	Reimbursement for Services

SUBPART B: SUPPORTIVE LIVING FACILITIES

Section	
146.200	General Description
146.205	Definitions
146.210	Structural Requirements
146.215	SLF Participation Requirements
146.220	Resident Participation Requirements
146.225	Reimbursement for Medicaid Residents
146.230	Services
146.235	Staffing
146.240	Resident Contract
146.245	Assessment and Service Plan and Quarterly Evaluation
146.250	Resident Rights
146.255	Discharge
146.260	Grievance Procedure
146.265	Records and Reporting Requirements
146.270	Quality Assurance Plan
146.275	Monitoring
146.280	Non-Compliance Action
146.285	Voluntary Surrender of Certification
146.290	Geographic Groups

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

146.295	Emergency Contingency Plan
146.300	Waivers
146.305	Reporting of Suspected Abuse, Neglect and Financial Exploitation
146.310	Facility Management of Resident Funds

SUBPART C: STATE HEMOPHILIA PROGRAM

Section	
146.400	Definitions
146.410	Patient Eligibility
146.420	Hemophilia Treatment Centers
146.430	Comprehensive Care Evaluation
146.440	Home Transfusion Arrangements
146.450	Obligations of the Department

SUBPART D: CHILDREN'S COMMUNITY-BASED HEALTH CARE CENTERS

Section	
146.500	General Description
146.510	Definitions
146.520	Participation Requirements
146.530	Records and Data Reporting Requirements
146.540	Covered Children's Community-Based Health Care Center Services
146.550	Reimbursement for Services
146.560	Individuals Eligible for Services Provided in a Children's Community-Based Health Care Center
146.570	Prior and Post Approval of Services

SUBPART E: SUPPORTIVE LIVING FACILITIES WITH DEMENTIA CARE UNITS

Section	
146.600	General Description
146.610	Structural Requirements
146.620	Participation Requirements
146.630	Resident Participation Requirements
146.640	Services
146.650	Reimbursement for Medicaid Residents
146.660	Staffing
146.670	Assessment and Service Plan and Quarterly Evaluation

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

146.680	Monitoring
140.690	Reporting Requirements
146.700	Resident Rights
146.710	Discharge

SUBPART F: BIRTH CENTERS

146.800	General Description
146.810	Participation Requirements
146.820	Record Requirements
146.830	Covered Birth Center Services
146.840	Reimbursement of Birth Center Services

AUTHORITY: Implementing and authorized by Articles III, IV, V, VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Old Part repealed at 14 Ill. Reg. 13800, effective August 15, 1990; new Part adopted at 20 Ill. Reg. 4419, effective February 29, 1996; emergency amendment at 21 Ill. Reg. 13875, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 4430, effective February 27, 1998; emergency amendment at 22 Ill. Reg. 13146, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19914, effective October 30, 1998; amended at 23 Ill. Reg. 5819, effective April 30, 1999; emergency amendment at 23 Ill. Reg. 8256, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13663, effective November 1, 1999; amended at 24 Ill. Reg. 8353, effective June 1, 2000; emergency amendment at 26 Ill. Reg. 14882, effective October 1, 2002, for a maximum of 150 days; amended at 27 Ill. Reg. 2176, effective February 1, 2003; emergency amendment at 27 Ill. Reg. 10854, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18671, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 12218, effective August 11, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 14214, effective October 18, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 852, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2014, effective January 21, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 4360, effective March 7, 2005; expedited correction at 29 Ill. Reg. 14127, effective March 7, 2005; amended at 29 Ill. Reg. 6967, effective May 1, 2005; amended at 29 Ill. Reg. 14987, effective September 30, 2005; amended at 30 Ill. Reg. 8845, effective May 1, 2006; amended at 31 Ill. Reg. 5589, effective April 1, 2007; emergency amendment at 31 Ill. Reg. 5876, effective April 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11681, effective August 1, 2007; amended at 33 Ill. Reg. 11803, effective August 1, 2009; emergency amendment at 36 Ill. Reg. 6751, effective April 13, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 13885, effective August 27, 2012; amended at 37 Ill. Reg. 17624, effective October 28, 2013; expedited

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

correction at 38 Ill. Reg. 4518, effective October 28, 2013; amended at 38 Ill. Reg. _____, effective _____.

SUBPART D: CHILDREN'S COMMUNITY-BASED HEALTH CARE CENTERS

Section 146.550 Reimbursement for Services

- a) Services provided under Section 146.540(a)(1) shall be reimbursed in accordance with 89 Ill. Adm. Code 140.474(c).
- b) Services provided under Section 146.540(a)(2) shall be reimbursed on a per diem basis at the lower of the Children's Community-Based Health Care Center's usual and customary charge to the public at the Department's rate of \$610 ~~or half of the default children's hospital base rate rounded to the nearest whole dollar as defined in 89 Ill. Adm. Code 148.270(c)(5)(B).~~
- c) Services provided under Section 146.540(b)(1) shall be reimbursed in accordance with 89 Ill. Adm. Code 140.474(c).
- d) Services provided under Section 146.540(b)(2) shall be reimbursed at the Department's rate of \$17 per hour.
- e) Effective for dates of service on or after July 1, 2012, reimbursement rates paid under this Section shall be reduced by 2.7% from the rates in effect on June 30, 2012.

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Number: 148.130 Proposed Action: Amend
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: These administrative rules are required pursuant to the Save Medicaid Access and Resources Together (SMART) Act, Public Act 97-689, which created 305 ILCS 5/14-11 and required the Department to implement hospital payment reform.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
148.20	Amend	38 Ill. Reg. 4640; February 21, 2014
148.25	Amend	38 Ill. Reg. 4640; February 21, 2014
148.30	Amend	38 Ill. Reg. 4640; February 21, 2014
148.40	Amend	38 Ill. Reg. 4640; February 21, 2014
148.50	Amend	38 Ill. Reg. 4640; February 21, 2014
148.60	Amend	38 Ill. Reg. 4640; February 21, 2014
148.70	Amend	38 Ill. Reg. 4640; February 21, 2014
148.82	Amend	38 Ill. Reg. 4640; February 21, 2014
148.85	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.90	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.95	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.100	Amend	38 Ill. Reg. 4640; February 21, 2014
148.103	Repeal	38 Ill. Reg. 4640; February 21, 2014

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

148.105	Amend	38 Ill. Reg. 4640; February 21, 2014
148.110	Amend	38 Ill. Reg. 4640; February 21, 2014
148.112	Amend	38 Ill. Reg. 4640; February 21, 2014
148.115	Amend	38 Ill. Reg. 4640; February 21, 2014
148.116	New	38 Ill. Reg. 4640; February 21, 2014
148.117	Amend	38 Ill. Reg. 4640; February 21, 2014
148.120	Amend	38 Ill. Reg. 4640; February 21, 2014
148.122	Amend	38 Ill. Reg. 4640; February 21, 2014
148.126	Amend	38 Ill. Reg. 4640; February 21, 2014
148.140	Amend	38 Ill. Reg. 4640; February 21, 2014
148.150	Amend	38 Ill. Reg. 4640; February 21, 2014
148.160	Amend	38 Ill. Reg. 4640; February 21, 2014
148.170	Amend	38 Ill. Reg. 4640; February 21, 2014
148.175	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.180	Amend	38 Ill. Reg. 4640; February 21, 2014
148.200	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.210	Amend	38 Ill. Reg. 4640; February 21, 2014
148.220	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.230	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.240	Amend	38 Ill. Reg. 4640; February 21, 2014
148.250	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.260	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.270	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.280	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.290	Amend	38 Ill. Reg. 4640; February 21, 2014
148.295	Amend	38 Ill. Reg. 4640; February 21, 2014
148.296	Amend	38 Ill. Reg. 4640; February 21, 2014
148.297	Amend	38 Ill. Reg. 4640; February 21, 2014
148.298	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.300	Amend	38 Ill. Reg. 4640; February 21, 2014
148.310	Amend	38 Ill. Reg. 4640; February 21, 2014
148.320	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.330	Amend	38 Ill. Reg. 4640; February 21, 2014
148.370	Amend	38 Ill. Reg. 4640; February 21, 2014
148.390	Amend	38 Ill. Reg. 4640; February 21, 2014
148.400	Amend	38 Ill. Reg. 4640; February 21, 2014
148.436	New	38 Ill. Reg. 18011; November 15, 2013
148.440	Amend	38 Ill. Reg. 4640; February 21, 2014
148.442	Amend	38 Ill. Reg. 4640; February 21, 2014

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

148.444	Amend	38 Ill. Reg. 4640; February 21, 2014
148.446	Amend	38 Ill. Reg. 4640; February 21, 2014
148.448	Amend	38 Ill. Reg. 4640; February 21, 2014
148.450	Amend	38 Ill. Reg. 4640; February 21, 2014
148.452	Amend	38 Ill. Reg. 4640; February 21, 2014
148.454	Amend	38 Ill. Reg. 4640; February 21, 2014
148.456	Amend	38 Ill. Reg. 4640; February 21, 2014
148.458	Amend	38 Ill. Reg. 4640; February 21, 2014
148.460	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.462	Repeal	38 Ill. Reg. 4640; February 21, 2014
148.464	Amend	38 Ill. Reg. 4640; February 21, 2014
148.466	Amend	38 Ill. Reg. 4640; February 21, 2014
148.468	Amend	38 Ill. Reg. 4640; February 21, 2014
148.470	Amend	38 Ill. Reg. 4640; February 21, 2014
148.472	Amend	38 Ill. Reg. 4640; February 21, 2014
148.474	Amend	38 Ill. Reg. 4640; February 21, 2014
148.476	Amend	38 Ill. Reg. 4640; February 21, 2014
148.478	Amend	38 Ill. Reg. 4640; February 21, 2014
148.480	Amend	38 Ill. Reg. 4640; February 21, 2014
148.482	Amend	38 Ill. Reg. 4640; February 21, 2014
148.484	Amend	38 Ill. Reg. 4640; February 21, 2014
148.486	Amend	38 Ill. Reg. 4640; February 21, 2014
148.600	Amend	38 Ill. Reg. 18959; December 2, 2013
148.610	Amend	38 Ill. Reg. 18959; December 2, 2013
148.630	Amend	38 Ill. Reg. 18959; December 2, 2013
148.860	Amend	38 Ill. Reg. 4640; February 21, 2014
148.Table C	Amend	38 Ill. Reg. 4640; February 21, 2014

- 11) Statement of Statewide Policy Objectives: This rulemaking does affect units of local government. It will have an impact on government-owned or government-operated hospitals.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Jeanette Badrov
General Counsel

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

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

217/782-1233
HFS.Rules@illinois.gov

The Department requests the submission of written comments within 45 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Medicaid funded hospital providers
 - 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 anticipated by the Department when the most recent regulatory agenda was published.

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER d: MEDICAL PROGRAMS

PART 148

HOSPITAL SERVICES

SUBPART A: GENERAL PROVISIONS

Section

148.10	Hospital Services
148.20	Participation
148.25	Definitions and Applicability
148.30	General Requirements
148.40	Special Requirements
148.50	Covered Hospital Services
148.60	Services Not Covered as Hospital Services
148.70	Limitation On Hospital Services

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section

148.80	Organ Transplants Services Covered Under Medicaid (Repealed)
148.82	Organ Transplant Services
148.85	Supplemental Tertiary Care Adjustment Payments
148.90	Medicaid Inpatient Utilization Rate (MIUR) Adjustment Payments
148.95	Medicaid Outpatient Utilization Rate (MOUR) Adjustment Payments
148.100	Outpatient Rural Hospital Adjustment Payments
148.103	Outpatient Service Adjustment Payments
148.105	Psychiatric Adjustment Payments
148.110	Psychiatric Base Rate Adjustment Payments
148.112	High Volume Adjustment Payments
148.115	Rural Adjustment Payments
148.117	Outpatient Assistance Adjustment Payments
148.120	Disproportionate Share Hospital (DSH) Adjustments
148.122	Medicaid Percentage Adjustments
148.126	Safety Net Adjustment Payments
148.130	Outlier Adjustments for Exceptionally Costly Stays
148.140	Hospital Outpatient and Clinic Services
148.150	Public Law 103-66 Requirements

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 148.160 Payment Methodology for County-Owned Hospitals in an Illinois County with a Population of Over Three Million
- 148.170 Payment Methodology for Hospitals Organized Under the University of Illinois Hospital Act
- 148.175 Supplemental Disproportionate Share Payment Methodology for Hospitals Organized Under the Town Hospital Act
- 148.180 Payment for Pre-operative Days, Patient Specific Orders, and Services Which Can Be Performed in an Outpatient Setting
- 148.190 Copayments
- 148.200 Alternate Reimbursement Systems
- 148.210 Filing Cost Reports
- 148.220 Pre September 1, 1991, Admissions
- 148.230 Admissions Occurring on or after September 1, 1991
- 148.240 Utilization Review and Furnishing of Inpatient Hospital Services Directly or Under Arrangements
- 148.250 Determination of Alternate Payment Rates to Certain Exempt Hospitals
- 148.260 Calculation and Definitions of Inpatient Per Diem Rates
- 148.270 Determination of Alternate Cost Per Diem Rates For All Hospitals; Payment Rates for Certain Exempt Hospital Units; and Payment Rates for Certain Other Hospitals
- 148.280 Reimbursement Methodologies for Children's Hospitals and Hospitals Reimbursed Under Special Arrangements
- 148.285 Excellence in Academic Medicine Payments (Repealed)
- 148.290 Adjustments and Reductions to Total Payments
- 148.295 Critical Hospital Adjustment Payments (CHAP)
- 148.296 Tertiary Care Adjustment Payments
- 148.297 Pediatric Outpatient Adjustment Payments
- 148.298 Pediatric Inpatient Adjustment Payments
- 148.300 Payment
- 148.310 Review Procedure
- 148.320 Alternatives
- 148.330 Exemptions
- 148.340 Subacute Alcoholism and Substance Abuse Treatment Services
- 148.350 Definitions (Repealed)
- 148.360 Types of Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
- 148.368 Volume Adjustment (Repealed)
- 148.370 Payment for Subacute Alcoholism and Substance Abuse Treatment Services
- 148.380 Rate Appeals for Subacute Alcoholism and Substance Abuse Treatment Services

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

	(Repealed)
148.390	Hearings
148.400	Special Hospital Reporting Requirements
148.402	Medicaid Eligibility Payments (Repealed)
148.404	Medicaid High Volume Adjustment Payments (Repealed)
148.406	Intensive Care Adjustment Payments (Repealed)
148.408	Trauma Center Adjustment Payments (Repealed)
148.410	Psychiatric Rate Adjustment Payments (Repealed)
148.412	Rehabilitation Adjustment Payments (Repealed)
148.414	Supplemental Tertiary Care Adjustment Payments (Repealed)
148.416	Crossover Percentage Adjustment Payments (Repealed)
148.418	Long Term Acute Care Hospital Adjustment Payments (Repealed)
148.420	Obstetrical Care Adjustment Payments (Repealed)
148.422	Outpatient Access Payments (Repealed)
148.424	Outpatient Utilization Payments (Repealed)
148.426	Outpatient Complexity of Care Adjustment Payments (Repealed)
148.428	Rehabilitation Hospital Adjustment Payments (Repealed)
148.430	Perinatal Outpatient Adjustment Payments (Repealed)
148.432	Supplemental Psychiatric Adjustment Payments (Repealed)
148.434	Outpatient Community Access Adjustment Payments (Repealed)
148.440	High Volume Adjustment Payments
148.442	Inpatient Services Adjustment Payments
148.444	Capital Needs Payments
148.446	Obstetrical Care Payments
148.448	Trauma Care Payments
148.450	Supplemental Tertiary Care Payments
148.452	Crossover Care Payments
148.454	Magnet Hospital Payments
148.456	Ambulatory Procedure Listing Increase Payments
148.458	General Provisions
148.460	Catastrophic Relief Payments
148.462	Hospital Medicaid Stimulus Payments
148.464	General Provisions
148.466	Magnet and Perinatal Hospital Adjustment Payments
148.468	Trauma Level II Hospital Adjustment Payments
148.470	Dual Eligible Hospital Adjustment Payments
148.472	Medicaid Volume Hospital Adjustment Payments
148.474	Outpatient Service Adjustment Payments
148.476	Ambulatory Service Adjustment Payments

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148.478	Specialty Hospital Adjustment Payments
148.480	ER Safety Net Payments
148.482	Physician Supplemental Adjustment Payments
148.484	Freestanding Children's Hospital Adjustment Payments
148.486	Freestanding Children's Hospital Outpatient Adjustment Payments

SUBPART C: SEXUAL ASSAULT EMERGENCY TREATMENT PROGRAM

Section	
148.500	Definitions
148.510	Reimbursement

SUBPART D: STATE CHRONIC RENAL DISEASE PROGRAM

Section	
148.600	Definitions
148.610	Scope of the Program
148.620	Assistance Level and Reimbursement
148.630	Criteria and Information Required to Establish Eligibility
148.640	Covered Services

SUBPART E: INSTITUTION FOR MENTAL DISEASES PROVISIONS FOR HOSPITALS

Section	
148.700	General Provisions

SUBPART F: EMERGENCY PSYCHIATRIC DEMONSTRATION PROGRAM

Section	
148.800	General Provisions
148.810	Definitions
148.820	Individual Eligibility for the Program
148.830	Providers Participating in the Program
148.840	Stabilization and Discharge Practices
148.850	Medication Management
148.860	Community Connect IMD Hospital Payment
148.870	Community Connect TCM Agency Payment
148.880	Program Reporting
148.TABLE A	Renal Participation Fee Worksheet
148.TABLE B	Bureau of Labor Statistics Equivalence

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148.TABLE C List of Metropolitan Counties by SMSA Definition

AUTHORITY: Implementing and authorized by Articles III, IV, V and VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18499, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11335, effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3450, effective February 28, 1994; emergency amendment at 18 Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17648, effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16630, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg. 9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552,

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effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. 11514, effective June 22, 1998; emergency amendment at 22 Ill. Reg. 13070, effective July 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 15027, effective August 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16273, effective August 28, 1998; amended at 22 Ill. Reg. 21490, effective November 25, 1998; amended at 23 Ill. Reg. 5784, effective April 30, 1999; amended at 23 Ill. Reg. 7115, effective June 1, 1999; amended at 23 Ill. Reg. 7908, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8213, effective July 1, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 12772, effective October 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13621, effective November 1, 1999; amended at 24 Ill. Reg. 2400, effective February 1, 2000; amended at 24 Ill. Reg. 3845, effective February 25, 2000; emergency amendment at 24 Ill. Reg. 10386, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11846, effective August 1, 2000; amended at 24 Ill. Reg. 16067, effective October 16, 2000; amended at 24 Ill. Reg. 17146, effective November 1, 2000; amended at 24 Ill. Reg. 18293, effective December 1, 2000; amended at 25 Ill. Reg. 5359, effective April 1, 2001; emergency amendment at 25 Ill. Reg. 5432, effective April 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 6959, effective June 1, 2001; emergency amendment at 25 Ill. Reg. 9974, effective July 23, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 10513, effective August 2, 2001; emergency amendment at 25 Ill. Reg. 12870, effective October 1, 2001, for a maximum of 150 days; emergency expired February 27, 2002; amended at 25 Ill. Reg. 16087, effective December 1, 2001; emergency amendment at 26 Ill. Reg. 536, effective December 31, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 680, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 4825, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 4953, effective March 18, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 7786, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 7340, effective April 30, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 8395, effective May 28, 2002; emergency amendment at 26 Ill. Reg. 11040, effective July 1, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16612, effective October 22, 2002; amended at 26 Ill. Reg. 12322, effective July 26, 2002; amended at 26 Ill. Reg. 13661, effective September 3, 2002; amended at 26 Ill. Reg. 14808, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 14887, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 17775, effective November 27, 2002; emergency amendment at 27 Ill. Reg. 580, effective January 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 866,

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effective January 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 4386, effective February 24, 2003; emergency amendment at 27 Ill. Reg. 8320, effective April 28, 2003, for a maximum of 150 days; emergency amendment repealed at 27 Ill. Reg. 12121, effective July 10, 2003; amended at 27 Ill. Reg. 9178, effective May 28, 2003; emergency amendment at 27 Ill. Reg. 11041, effective July 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16185, effective October 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16268, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18843, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 1418, effective January 8, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 1766, effective January 10, 2004, for a maximum of 150 days; emergency expired June 7, 2004; amended at 28 Ill. Reg. 2770, effective February 1, 2004; emergency amendment at 28 Ill. Reg. 5902, effective April 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7101, effective May 3, 2004; amended at 28 Ill. Reg. 8072, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 8167, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9661, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10157, effective July 1, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 12036, effective August 3, 2004, for a maximum of 150 days; emergency expired December 30, 2004; emergency amendment at 28 Ill. Reg. 12227, effective August 6, 2004, for a maximum of 150 days; emergency expired January 2, 2005; amended at 28 Ill. Reg. 14557, effective October 27, 2004; amended at 28 Ill. Reg. 15536, effective November 24, 2004; amended at 29 Ill. Reg. 861, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2026, effective January 21, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 5514, effective April 1, 2005; emergency amendment at 29 Ill. Reg. 5756, effective April 8, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 11622, effective July 5, 2005, for the remainder of the 150 days; amended at 29 Ill. Reg. 8363, effective June 1, 2005; emergency amendment at 29 Ill. Reg. 10275, effective July 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12568, effective August 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 15629, effective October 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 19973, effective November 23, 2005; amended at 30 Ill. Reg. 383, effective December 28, 2005; emergency amendment at 30 Ill. Reg. 596, effective January 1, 2006, for a maximum of 150 days; emergency amendment at 30 Ill. Reg. 955, effective January 9, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 2827, effective February 24, 2006; emergency amendment at 30 Ill. Reg. 7786, effective April 10, 2006, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 30 Ill. Reg. 12400, effective July 1, 2006, for the remainder of the 150 days; emergency expired September 6, 2006; amended at 30 Ill. Reg. 8877, effective May 1, 2006; amended at 30 Ill. Reg. 10393, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 11815, effective July 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18672, effective November 27, 2006; emergency amendment at 31 Ill. Reg. 1602, effective January 1, 2007, for a maximum of 150 days;

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emergency amendment at 31 Ill. Reg. 1997, effective January 15, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 5596, effective April 1, 2007; amended at 31 Ill. Reg. 8123, effective May 30, 2007; amended at 31 Ill. Reg. 8508, effective June 1, 2007; emergency amendment at 31 Ill. Reg. 10137, effective July 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11688, effective August 1, 2007; amended at 31 Ill. Reg. 14792, effective October 22, 2007; amended at 32 Ill. Reg. 312, effective January 1, 2008; emergency amendment at 32 Ill. Reg. 518, effective January 1, 2008, for a maximum of 150 days; emergency amendment at 32 Ill. Reg. 2993, effective February 16, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 8718, effective May 29, 2008; amended at 32 Ill. Reg. 9945, effective June 26, 2008; emergency amendment at 32 Ill. Reg. 10517, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 33 Ill. Reg. 501, effective December 30, 2008; peremptory amendment at 33 Ill. Reg. 1538, effective December 30, 2008; emergency amendment at 33 Ill. Reg. 5821, effective April 1, 2009, for a maximum of 150 days; emergency expired August 28, 2009; amended at 33 Ill. Reg. 13246, effective September 8, 2009; emergency amendment at 34 Ill. Reg. 15856, effective October 1, 2010, for a maximum of 150 days; emergency expired February 27, 2011; amended at 34 Ill. Reg. 17737, effective November 8, 2010; amended at 35 Ill. Reg. 420, effective December 27, 2010; amended at 35 Ill. Reg. 10033, effective June 15, 2011; amended at 35 Ill. Reg. 16572, effective October 1, 2011; emergency amendment at 36 Ill. Reg. 10326, effective July 1, 2012 through June 30, 2013; emergency amendment to Section 148.70(g) suspended at 36 Ill. Reg. 13737, effective August 15, 2012; suspension withdrawn from Section 148.70(g) at 36 Ill. Reg. 18989, December 11, 2012; emergency amendment in response to Joint Committee on Administrative Rules action on Section 148.70(g) at 36 Ill. Reg. 18976, effective December 12, 2012 through June 30, 2013; emergency amendment to Section 148.140(b)(1)(F) suspended at 36 Ill. Reg. 13739, effective August 15, 2012; suspension withdrawn from Section 148.140(b)(1)(F) at 36 Ill. Reg. 14530, September 11, 2012; emergency amendment to Sections 148.140(b) and 148.190(a)(2) in response to Joint Committee on Administrative Rules action at 36 Ill. Reg. 14851, effective September 21, 2012 through June 30, 2013; amended at 37 Ill. Reg. 402, effective December 27, 2012; emergency rulemaking at 37 Ill. Reg. 5082, effective April 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 10432, effective June 27, 2013; amended at 37 Ill. Reg. 17631, effective October 23, 2013; amended at 38 Ill. Reg. 4363, effective January 29, 2014; amended at 38 Ill. Reg. _____, effective _____.

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section 148.130 Outlier Adjustments for Exceptionally Costly Stays

- a) **Outlier Adjustments.** Outlier adjustments are provided for exceptionally costly stays provided by hospitals or distinct part units reimbursed on a per diem basis or

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hospitals reimbursed in accordance with Section 148.82(g) for discharges before July 1, 2014. For discharges on or after July 1, 2014, this Section shall not be utilized for the basis of any hospital payments.

- b) The determination of those services qualified for an outlier adjustment shall be made as follows for services provided on and after October 1, 1992, and for each subsequent rate period, as defined in Section 148.25(g)(2)(B), for hospitals or distinct part units reimbursed on a per diem basis or hospitals reimbursed in accordance with Section 148.82(g):
- 1) The services must have been provided on or after October 1, 1992; and
 - 2) The services must have been provided to:
 - A) Children who have not attained the age of six years by hospitals defined by the Department as DSH hospitals under Section 148.120(a); or
 - B) Infants who have not attained the age of one year by hospitals that do not meet the definition of a DSH hospital under Section 148.120(a); or
 - C) Children who have not attained the age of 19 on the date of admission for services provided on or after January 1, 2008 by a hospital devoted exclusively to the care of children as defined in 89 Ill. Adm. Code 149.50(c)(3)(A); or
 - D) Children who have not attained the age of 19 on the date of admission for services provided on or after July 1, 2009 by a Children's Hospital as defined in 89 Ill. Adm. Code 149.50(c)(3)(B).
 - 3) Claims with total covered charges equal to or above the mean total covered charges plus one standard deviation shall be considered for outlier adjustments once the following calculations have been performed:
 - A) Total covered charges (less charges attributable to medical education) equal to or exceeding one standard deviation above the mean shall be multiplied by the hospital's cost to charge ratio.

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- B) The hospital's rate for services provided on the claim shall be multiplied by the number of covered days on the claim.
 - C) The product of subsection (b)(3)(B) shall be subtracted from the product of subsection (b)(3)(A).
 - D) The difference of subsection (b)(3)(C) shall be multiplied by .25, the product of which shall be the outlier adjustment for the claim.
 - E) Third party payments (credits) shall be applied to the final payment made on the claim.
- c) The determination of those services qualified for an outlier adjustment shall be made in accordance with 89 Ill. Adm. Code 149.105 for hospitals reimbursed on a per case basis.
- d) Definition of terms relating to outlier adjustments are as follows:
- 1) "Base fiscal year" means the hospital's fiscal year cost report most recently audited by the Department.
 - 2) "Cost to Charge Ratio" means the hospital's Medicaid total allowable cost for all care divided by the Medicaid total covered charges for all care. The Cost to Charge Ratio is derived by utilizing cost report data from the hospital's base fiscal year.
 - 3) "Mean total covered charges" means the mean total covered charges (as described in subsection (d)(5)), for services provided in the most recent state fiscal year for which complete information is available and which have been adjudicated by the Department, as follows:
 - A) For hospitals that do not meet the definition of a DSH hospital under Section 148.120(a) in the DSH determination year, the mean total covered charges for all claims for inpatient services provided to individuals under the age of one year; and
 - B) For hospitals defined by the Department as DSH hospitals under Section 148.120(a) in the DSH determination year, the mean total

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covered charges for all claims for inpatient services provided to individuals under the age of six years.

- 4) "Rate for services provided" means the inpatient rate in effect for the type of services provided.
- 5) "Total covered charges" means the amount entered on the UB-82 or UB-92 Uniform Billing Form for revenue code 001 in column 53 (Total Charges).

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

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- 1) Heading of the Part: Rules of Procedure in Administrative Hearings
- 2) Code Citation: 56 Ill. Adm. Code 120
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
120.100	Amend
120.110	Amend
120.115	Repeal
120.130	Amend
120.140	Amend
120.150	Repeal
120.160	Repeal
120.200	Amend
120.210	Repeal
120.300	Amend
120.301	Amend
120.320	Amend
120.400	Amend
120.410	Amend
120.420	Amend
120.500	Amend
120.530	Amend
120.560	Amend
120.610	Amend
120.620	Amend
120.640	Amend
120.650	Amend
120.660	Amend
- 4) Statutory Authority: Implementing and authorized by Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking makes the formal hearing process more user friendly and less burdensome on the parties by eliminating unnecessary and costly discovery while still allowing parties access to documents and subpoena procedures so that hearings can be expedited at less cost while still providing due process.

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- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace any emergency rulemaking currently in effect?
No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:
- Jim Preckwinkle
Illinois Department of Labor
900 S. Spring St.
Springfield, Illinois 62704
- 217/558-1270
fax: 217/782-0596
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2013

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The full text of the Proposed Amendments can be found on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER a: GENERAL ADMINISTRATIVE RULESPART 120
RULES OF PROCEDURE IN ADMINISTRATIVE HEARINGS

SUBPART A: GENERAL PROVISIONS

Section	
120.100	Applicability
120.110	Definitions
120.115	Non-Applicability of the Rules (Repealed)
120.120	Burden and Standard of Proof
120.130	Filing and Service
120.140	Form of Papers Filed
120.150	Computation of Time (Repealed)
120.160	Referral to Illinois Supreme Court Rules and Code of Civil Procedure (Repealed)

SUBPART B: NOTICE OF HEARING, SERVICE AND APPEARANCE

Section	
120.200	Notice of Hearing
120.210	Manner of Service (Repealed)
120.220	Appearance

SUBPART C: [ANSWER](#), MOTION, JOINDER AND INTERVENTION

Section	
120.300	Answer and Motion
120.301	Motions
120.310	Consolidation and Severance of Matters
120.320	Intervention
120.330	Postponement or Continuance of Hearing

SUBPART D: PREHEARING CONFERENCES, DISCOVERY AND SUBPOENAS

Section	
120.400	Prehearing Conferences

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- 120.410 Discovery
- 120.420 Subpoenas

SUBPART E: CONDUCT OF HEARINGS AND RULES OF EVIDENCE

- Section
- 120.500 Authority of Administrative Law Judge
- 120.510 Ex Parte Communications
- 120.520 Disqualification of Administrative Law Judge
- 120.530 Contumacious Conduct
- 120.540 Consent Decree
- 120.545 Settlement Agreements
- 120.550 Conduct of Hearings
- 120.560 Rules of Evidence
- 120.570 Official Notice
- 120.580 Hostile or Adverse Witnesses

SUBPART F: POST-HEARING PROCEDURES

- Section
- 120.600 Default
- 120.610 Record in Contested Cases
- 120.620 Briefs
- 120.630 Administrative Law Judge's Findings and Opinions (Repealed)
- 120.640 Administrative Law Judge's Decision and Order
- 120.650 Administrative Law Judge's Recommendations
- 120.660 Order of the Director
- 120.670 Judicial Review

AUTHORITY: Implementing and authorized by Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10].

SOURCE: Adopted at 25 Ill. Reg. 899, effective January 5, 2001; amended at 30 Ill. Reg. 10424, effective May 24, 2006; amended at 35 Ill. Reg. 10134, effective June 7, 2011; amended at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 120.100 Applicability

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This Part shall apply to all administrative hearings concerning contested cases conducted under the jurisdiction of the Director of Labor and/or the Department of Labor, except for formal hearings conducted under the Wage Payment and Collection Act [820 ILCS 115]. This Part shall apply to all formal hearings before the Department, unless the application of this Part would cause delay or otherwise affect the rights of the parties. The review procedures in Sections 120.640 and 120.650 are effective for any case pending on June 1, 2014 in which testimony was heard and evidence was received into the record, but for which a decision had not been issued from the ALJ, on that date.

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

Section 120.110 Definitions

"Administrative Law Judge" or "ALJ" means an attorney, licensed to practice law in the State of Illinois, presiding over an administrative hearing convened under this Part.

"Contested case" means *an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.* [5 ILCS 100/1-30]

"Day" means a calendar~~business~~ day.

"Department" means the Department of Labor.

"Director" means the Director of the Department of Labor or the Director's designee.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper or combination of papers required or permitted to be filed.

"Evidence" means those matters considered evidence under the Illinois Rules of Evidence [735 ILCS 5/Art. VIII].

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

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"Party" means *each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.* [5 ILCS 100/1-55]

"Person" means any individual, partnership, corporation, limited liability company, association, governmental subdivision, or public or private organization of any character other than an agency of State government.

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

Section 120.115 Non-Applicability of the Rules (Repealed)

~~If a party fails to obtain or renew the registration, license or certification the party is required to obtain under the statutory framework the Director is required to enforce, the Director may issue a cease and desist order and seek judicial enforcement of the order through referral of the matter to the Attorney General.~~

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

Section 120.130 Filing and Service

- a) Documents and requests permitted or required to be filed with the Director or the Department in connection with a hearing shall be addressed and mailed or delivered to the Department's Chicago office, 160 N. LaSalle, C-1300, Chicago IL 60601. ~~Filing, inspection, and copying of documents may be done at the Department from 8:30 a.m. to 4:30 p.m. Monday through Friday, except for national and State legal holidays.~~ The Department's Chicago office is open from 8:30 a.m. to 5:00 p.m. Monday through Friday, except for national and State legal holidays. When the Act or this Part requires the filing of a motion, brief, exception or other paper in any proceeding, the document must be received by the Department or the officer or agent designated to receive that matter before the official closing time of the receiving office on the last day of the time limit, if any, for the filing or extension of time that may have been granted. Filings received after 5:00 p.m. will be considered filed on the following business day. ~~Documents may also be inspected or copied at the Department's Springfield office by requesting of the Department that those documents be transmitted by E-mail or fax to the Springfield office for that purpose, with the costs of transmission to be borne by the party transmitting the documents. Copying costs at the rate of 30 cents per page will be borne by the party requesting the copies of documents from the case file.~~

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- b) In computing any period of time prescribed or allowed by this Part, the day of the act, event or default after which the designated period of time begins to run is not to be included. The period of time shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday or legal holiday. A request for an extension of time to file a document shall be filed no later than 5:00 p.m. at the Chicago Office on the date on which the document is due. Requests for extensions of time filed within three days after the due date must be grounded upon circumstances not reasonably foreseeable in advance. Filings received after 4:30 p.m. will be date stamped the following business day.
- c) Documents may be filed with the Department by certified, ~~registered~~, or First Class mail, by messenger service, private delivery service, or personally at the Department's Chicago office. Filing by electronic transmission, such as telefax machine or electronic mail (e-mail), ~~computer modem~~, will not be accepted, except when specifically requested or ordered by the ALJ Administrative Law Judge.
- d) The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person. When service is made by facsimile transmission or e-mail, the date of service shall be the date on which transmission is sent. The date of filing shall be the day when the matter is received by the Department as provided by subsection (b). Service of documents by a party on other parties may be made personally, by certified mail, regular mail, e-mail (if the document was filed electronically) or private delivery service. Unless otherwise specified in this Part, service on all parties shall be made in the same manner as that utilized in filing the document with the Department, or in a more expeditious manner; however, when filing with the Department is done by hand, the other parties shall be promptly notified of that action by telephone or electronic mail, followed by service of a copy in a manner designed to insure receipt by the close of the next business day following the filing with the Department.
- e) When service is made by certified mail, the return post office receipt shall be proof of service. When service is made by a private delivery service, the receipt from that service showing delivery shall be proof of service. However, these methods of proof of service are not exclusive. Any sufficient proof may be relied upon to establish service.

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- f) Failure to comply with the requirements of this Section relating to timeliness of service on other parties shall be a basis for either:
- 1) rejection of the document; or
 - 2) withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.
- g) The person or party serving the papers or process on other parties shall submit to the Department a written statement of service stating the names of the persons served and the date and manner of service. Proof of service shall be required by the Department only if, subsequent to the receipt of the statement of service, a question is raised with respect to proper service.
- h) Whenever this Part requires or permits the service of pleadings or other papers upon a party, service shall be deemed satisfied by service on the attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of those persons, in addition to the party, shall satisfy this requirement. Service by the Department or its agents of any documents upon any attorney or other representative may be accomplished by any means of service permitted by this Section, including regular mail.

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

Section 120.140 Form of Papers Filed

- a) A document shall clearly show the title of the subject proceedings, nature of the document (i.e., motion, petition), the relevant statute that relates to the proceeding, the case number and the ~~ALJ~~Administrative Law Judge who is hearing the matter;
- b) Documents shall be typewritten or reproduced from typewritten copy on 8½ by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 point type, and shall be double spaced (except that quotations and footnotes may be single spaced). Carbon copies shall not be filed and will not be accepted. Nonconforming papers may, at the Director's or ALJ's discretion, be rejected; ~~on letter-size white paper;~~

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- c) Exhibits, ~~when~~where possible, shall be reduced or enlarged to conform to the size requirements of subsection (b). A party is not prohibited from enlarging an exhibit at hearing for demonstrative purposes as long as the exhibit is reduced to the size requirement in this subsection (c) for the record; and
- d) One copy of each document filed shall be signed by the party or by its authorized representative or attorney. All documents shall bear the business address, e-mail address, fax number, if any, and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf.
- ~~e) Manner of service of all papers filed shall be in conformity with Section 120.210.~~

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

Section 120.150 Computation of Time (Repealed)

~~Computation of any period of time prescribed by this Part shall begin with the first business day following the date of filing of the document with the Department and shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday, or legal holiday. Notice and filing requirements shall be construed to mean notice and filing received by 4:30 p.m. Monday through Friday. Proof of a notice of filing together with a copy of the document filed shall be served on all parties entitled to notice and the notice shall contain a certification by a person who sends the notice with a copy of the document filed describing how service was made.~~

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

Section 120.160 Referral to Illinois Supreme Court Rules and Code of Civil Procedure (Repealed)

~~An Administrative Law Judge shall be guided to the extent practicable by any pertinent provisions of the Illinois Supreme Court Rules and the Code of Civil Procedure [735 ILCS 5], regarding any procedural question not regulated by this Part, the appropriate Act and the IAPA.~~

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

SUBPART B: NOTICE OF HEARING, SERVICE AND APPEARANCE

Section 120.200 Notice of Hearing

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- a) All hearings shall be initiated by the Director's issuance, ~~upon written request or upon the Director's own motion,~~ of a written Notice of Hearing, which shall be served upon all known parties to the hearing. Hearings under the Child Labor Law [820 ILCS 205] shall take priority over all other hearings.
- b) Service shall be complete when the Notice of Hearing is served:
- 1) in accordance with how a summons is served on a person under Part 2 of the Civil Practice Law [735 ILCS 5/Art. II, Part 2]; ~~or~~
 - 2) by certified ~~U.S. United States~~ Mail, postage prepaid, addressed to the last known address of the person involved not less than 15 days before the day designated for the hearing; or
 - 3) by U.S. mail, postage prepaid, to the address on file with the Department.
- c) A Notice of Hearing served under this Part shall include:
- 1) The time, place and nature of the hearing;
 - 2) The legal authority and jurisdiction under which the hearing is to be held;
 - 3) A reference to the particular Section of the statutes and rules involved;
 - 4) A short and plain statement of the matters asserted, except ~~when~~where a more detailed statement is otherwise provided for by law; and
 - 5) A designation of an ~~ALJ Administrative Law Judge~~ to preside over the hearing and the address of the ~~ALJ Administrative Law Judge~~.
- d) A copy of a Notice of Hearing served pursuant to this Part shall be referred to the ~~ALJ Administrative Law Judge~~ designated in the Notice, together with the original complaint, application or report and any written request for a hearing filed pursuant to this Part.

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

Section 120.210 Manner of Service (~~Repealed~~)

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~~Service of any document upon any person may be made by personal delivery registered or certified mail with return receipt signed by the person or its registered agent, or by U.S. regular mail, postage prepaid. Proof of service shall be made by affidavit of the person making personal service, or by a properly executed registered or certified mail receipt.~~

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

SUBPART C: ANSWER, MOTION, JOINDER AND INTERVENTION**Section 120.300 Answer ~~and Motion~~**

- a) Any party receiving a complaint and Notice of Hearing shall file a written answer to the complaint not later than 15 days after receiving the complaint and Notice of Hearing. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint. However, if the respondent is without knowledge, the respondent shall so state and that statement operates as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the answer states that the respondent is without knowledge, shall be deemed to be admitted to be true and shall be so found by the ALJ, unless good cause to the contrary is shown.
- b) When a hearing is scheduled in a matter in which a complaint is not issued, an answer shall not be required and the matter shall proceed under this Part.
- c) An original and one copy of the answer shall be filed with the ALJ. Immediately upon the filing of the answer, the respondent shall serve a copy on the Director and other parties. An answer of a party represented by counsel or non-attorney representative shall be signed by at least one attorney or non-attorney representative of record in his or her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney representative shall sign his or her answer and state his or her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the attorney or non-attorney party representative constitutes a certificate by him or her that he or she has read the answer; that, to the best of his or her knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this Section, it may be stricken as a sham and false and the action may proceed as though the answer had not been served. For a willful violation of this Section an attorney or non-attorney party representative may be subjected to

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appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

- d) The ALJ before whom the hearing is scheduled may by written order extend the time within which the answer shall be filed.
- ~~a) Any party receiving a Notice of Hearing may file a written answer not later than 7 days after receiving the notice of hearing. All answers or motions preliminary to a hearing shall be presented to the Administrative Law Judge in accordance with Section 120.130 of this Part at least 7 days prior to the date of the hearing. Failure to file an answer shall be deemed a general denial of matters asserted and waiver of all affirmative defenses.~~
- ~~b) Unless made orally on the record during a hearing, or unless the Administrative Law Judge directs otherwise, a motion shall be in writing and shall be accompanied by any affidavits or other evidence relied upon and, when appropriate, by a proposed order. At least 2 copies of all motions shall be filed with the Administrative Law Judge, and at least one copy served on each additional party, if any, to the hearing.~~
- ~~c) Within 7 days after service of a written motion or other document, or other period as the Administrative Law Judge may require, a party may file a response in support of or in opposition to the motion and if necessary, accompanied by affidavits or other evidence. A party has the right to request the Administrative Law Judge for leave to file a response to a motion.~~
- ~~d) No oral argument will be heard on a motion unless the Administrative Law Judge directs otherwise. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied upon. The brief will be no longer than 15 pages in length unless prior to the filing date leave is granted to file a brief greater than 15 pages.~~
- ~~e) A written motion will be disposed of by written order and on notice of all parties.~~
- ~~f) The Administrative Law Judge shall rule upon all motions, except that he or she shall have no authority to dismiss or decide a hearing on the merits without granting all parties to the proceeding a right to be heard and to establish a record.~~
- ~~g) Unless otherwise ordered, the filing of an answer or motion shall not stay the proceeding or extend the time for the performance of any act.~~

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- h) ~~A party may participate in the proceeding without forfeiting any jurisdictional objection, if such objection is made within 10 days after the receipt of the notice of hearing. Any party may file a response to the objection within 10 days after service.~~
- i) ~~A party has a right to file an emergency motion setting forth why an emergency exists and the Administrative Law Judge can deny the emergency motion solely on the basis that the motion did not demonstrate that an emergency exists.~~

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

Section 120.301 Motions

- a) All motions made before or during a hearing shall be made to the ALJ and, unless made orally on the record during a hearing or unless the ALJ directs otherwise, a motion shall be in writing and shall be accompanied by any affidavits or other evidence relied upon and, when appropriate, by a proposed order. Two copies of all motions shall be filed with the ALJ, and at least one copy shall be served on each additional party, if any, to the hearing.
- b) Within 7 days after service of a written motion or other document, or other period as the ALJ may allow, a party may file a response in support of or in opposition to the motion and, if necessary, accompanied by affidavits or other evidence. A party filing a motion has the right to request from the ALJ leave to file a reply to a response.
- c) No oral argument will be heard on a motion unless the ALJ directs otherwise. A written brief may be filed with a motion or an answer to a motion stating the arguments and authorities relied upon. The brief will be no longer than 15 pages in length unless, prior to the filing date, leave is granted to file a brief greater than 15 pages.
- d) A written motion filed prior to a hearing will be disposed of by written order and on notice of all parties, except for motions made at or after the opening of a hearing, in which case the ALJ shall announce his or her ruling orally on the record at the hearing. All motions, rulings and orders shall become a part of the record, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved. Except as provided in subsection (i), rulings by the ALJ on motions and/or objections, and orders in connection with

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those motions and/or objections, shall not be appealed directly to the Director but shall be considered by the Director in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Director pursuant to Sections 120.640 and 120.650.

- e) The ALJ shall rule upon all motions, except that the ALJ shall have no authority to dismiss or decide a hearing on the merits without granting all parties to the proceeding a right to be heard in accordance with the procedures for motions in this Section, which shall constitute the record.
- f) Unless otherwise ordered, the filing of an answer or motion shall not stay the proceeding or extend the time for the performance of any act.
- g) A party may participate in the proceeding without forfeiting any jurisdictional objection, if the objection is made within 10 days after the receipt of notice of hearing. Any party may file a response to the objection within 10 days after service. The right to make motions or to object to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the ALJ.
- h) A party has a right to file an emergency motion setting forth why an emergency exists and the ALJ can deny the emergency motion solely on the basis that the motion did not demonstrate that an emergency exists.
- i) If any motion in the nature of a motion to dismiss or for summary judgment is granted by the ALJ before filing his or her final decision in a matter scheduled for hearing, any party may obtain a review of the granting of the motion by filing a request with the Director stating the grounds for review and, immediately upon filing, shall serve a copy of the request on the other parties. Unless the request for review is filed within 15 days from the date of the order of dismissal or granting of summary judgment, the decision of the ALJ shall become final.
- j) A party has the right to appeal any order issued by an ALJ during the pendency of a proceeding.

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

Section 120.320 Intervention

- a) Permission to Intervene

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- 1) Upon timely written application, the ~~ALJ Administrative Law Judge~~ may, in his or her discretion, permit any party to intervene in a hearing proceeding, subject to the necessity for conducting an orderly and expeditious hearing, when:
- ~~A1)~~ The party is so situated that he or she may be adversely affected by a final order arising from the hearing;
 - ~~B2)~~ The party requesting intervention is a necessary party to the hearing proceeding; ~~or-~~
 - ~~C)~~ A party's claim or defense and the main action have a question of law or fact in common.
- 2) In exercising discretion under this subsection (a), the ALJ shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
- b) Two copies of a petition for intervention shall be filed with the ~~ALJ Administrative Law Judge~~, and one copy shall be served on each party. ~~The Administrative Law Judge will determine whether a party is necessary and shall consider whether the necessary party will unduly delay or prejudice the adjudication of the rights of the original parties.~~
- c) An intervenor shall have all the rights of an original party subject to the order of the ~~ALJ Administrative Law Judge~~, except that the ~~ALJ Administrative Law Judge~~ may, in his or her order allowing intervention, provide that the party shall not raise issues that might more properly have been raised at an earlier stage of the proceeding, that the party shall not raise new issues or add new parties, or that in other respects the party shall not interfere with the conduct of the hearing, as justice and the avoidance of undue delay may require.

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

SUBPART D: PREHEARING CONFERENCES, DISCOVERY AND SUBPOENAS

Section 120.400 Prehearing Conferences

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- a) Upon the ~~ALJ's Administrative Law Judge's~~ own motion or the motion of a party, the ~~ALJ Administrative Law Judge~~ may direct the parties or their counsel to meet with the ~~ALJ Administrative Law Judge~~ for a conference to consider:
- 1) Simplification of the issues;
 - 2) Necessity or desirability of amending documents for purposes of clarification, simplification or limitation;
 - 3) Stipulations and admissions of fact and of contents and authenticity of documents;
 - 4) Limitation of the number of witnesses;
 - 5) Propriety of prior mutual exchange between and among the parties who have prepared testimony or exhibits; ~~and~~
 - 6) Rulings on pre-hearing motions; and
 - 7) Taking such other action and addressing such ~~Such~~ other matters as may tend to expedite the disposition of the proceedings and to assure a just conclusion.
- b) ~~After the prehearing conference, the results of the prehearing conference will be set out in the transcript of proceeding. All parties are permitted to voice any objections to a prehearing order in the transcript of proceeding or in writing by a time certain set by the Administrative Law Judge. A party's failure to object will constitute a waiver of objection to the prehearing order or any part of that order.~~
- be) The ~~ALJ Administrative Law Judge~~ shall make an order that recites the action taken at the conference, the amendments allowed to any pleadings that have been filed, and the agreements made between the parties as to any of the matters considered and that limits the issues for hearings to those not disposed of by admissions or agreements. The order, when entered, controls the subsequent course of the hearing unless modified at the hearing to prevent manifest injustice. A party may file any objections to a prehearing order to preserve its position for the record.

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

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Section 120.410 Discovery

- a) General discovery (e.g., deposition, interrogatories or request to produce or admit) shall not be permitted.
- b) Disclosure of the following shall be required in accordance with the time periods set forth in this subsection (b) unless otherwise modified by the ALJ in the order issued pursuant to the pre-hearing conference:
 - 1) Unless otherwise ordered by the ALJ at least 21 days prior to the commencement of the hearing, each party shall provide all parties with a copy of any document that it may offer into evidence. This subsection (b)(1) shall not require any party to provide copies of documents already provided. Each party shall provide newly discovered documents as they become known to the party intending to introduce the document.
 - 2) Unless otherwise ordered by the ALJ at least 21 days prior to the commencement of the hearing, each party shall provide all parties with a list containing the name and address of any witness who may be called to testify. Each party shall provide newly discovered witnesses as they become known to the party intending to call the witness.
- a) ~~For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Deposition may be taken in accordance with the Illinois Supreme Court Rules [S. Ct. Rules 201 through 230], except there will be no distinction between discovery deposition and evidence deposition.~~
- b) ~~Unless the prehearing conference order permits the taking of depositions, any party desiring to take the deposition of a witness may file a motion in writing to the presiding Administrative Law Judge, setting forth:~~
 - 1) ~~The reasons why the deposition should be taken;~~
 - 2) ~~The time when the deposition is to be taken;~~
 - 3) ~~The name and address of each witness; and~~
 - 4) ~~The subject matter concerning which each witness is expected to testify.~~

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- e) ~~All parties shall receive notice of the taking of the deposition as determined by the Administrative Law Judge.~~
- d) ~~Each witness testifying upon deposition shall be sworn, and the parties not calling the witness shall have the right to cross examine the witness. The questions and answers, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him or her, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with 2 copies, in an envelope and mail the envelope by registered mail to the presiding Administrative Law Judge. Subject to objections to the questions and answers noted at the time of taking, the deposition may be read and offered in evidence by the party taking it as against any party who was present, was represented at the taking of the deposition, or had due notice of the taking of the deposition. Each deposition of a witness shall be transcribed. The witness shall be questioned in accordance with the Civil Practice Law and Rules of Illinois Supreme Court except all objections as to form and substance of question must be made during the deposition.~~
- e) ~~In the discretion of the Administrative Law Judge, he or she may permit, under terms that seem just and equitable, discovery that is permitted by Illinois Supreme Court Rules.~~
- f) ~~Upon application of any party, the Administrative Law Judge may enter a protective order as permitted by Supreme Court Rule 201.~~

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

Section 120.420 Subpoenas

- a) The ALJ shall, on the written application of any party, issue subpoenas to a party allowing that party to require the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents. The Director shall have the authority to sign and issue subpoenas on behalf of the Department. Applications for subpoenas made before or during the hearing shall be filed with the ALJ. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.
- b) Subpoenas may be served by personal delivery, by certified mail with return receipt

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signed by private delivery service, or by U.S. regular mail, postage prepaid. Any person served with a subpoena, whether ad testificandum (for witness testimony) or duces tecum (for document production), who does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. All petitions to revoke subpoenas shall be served on the party at whose request the subpoena was issued. The petition to revoke, if made prior to or during the hearing shall be filed with the ALJ.

- c) The ALJ, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable, is oppressive or requests material that is irrelevant. The ALJ will rule upon motions to quash or modify material requested in the subpoena. The ALJ may deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, harassment or oppression. The ALJ can take these actions if the subpoena does not describe with sufficient particularity the evidence whose production is required, or if, for any other reason sufficient in law, the subpoena is otherwise invalid. The ALJ can also take these actions to protect materials from disclosure consistent with a protective order issued by the ALJ. If the Request for Subpoena is denied or modified, the ALJ shall proceed to conduct the hearing, and the specific reasons for denying or modifying the request shall be made part of the record.
- d) If a party or organization within control of a party fails to obey a subpoena, and the ALJ finds the subpoena to have been validly served and the material requested to be relevant and material, the ALJ may impose such sanctions as are appropriate, including but not limited to: prohibiting testimony by the party who has refused to comply with the subpoena; drawing an adverse inference against the party required to comply; or recognizing the evidence required by the subpoena but not produced as establishing the truth of the position of the party who subpoenaed the document. If a nonparty fails to obey a subpoena, the party seeking enforcement shall be responsible for preparing an application for enforcement and shall file it in a court of appropriate jurisdiction.
- e) Witnesses summoned before the ALJ, other than those summoned by the Department, shall be paid the same fees and mileage that are paid witnesses in the court of the county where the hearing is being held. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

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- a) ~~The Administrative Law Judge may issue a subpoena to compel the attendance of a witness or the production of documents when the witness or the production of documents has or contains relevant evidence but is not being presented by the party, witness or holder of a document. A party may also request the Administrative Law Judge to issue a subpoena to compel the attendance of a witness or the production of documents.~~
- b) ~~A Request for Subpoena shall be either in writing or on the record and shall:~~
- 1) ~~Identify the witness or document sought;~~
 - 2) ~~State the facts that will be proven by each witness and or document sought; and~~
 - 3) ~~Provide a proposed subpoena.~~
- c) ~~The Administrative Law Judge shall grant or deny the request, either in writing or on the record. The movant is responsible for serving the subpoena upon the party or witness if the request is granted. Service of a subpoena must be completed 7 days before the date of the required appearance or production.~~
- d) ~~The Administrative Law Judge, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable, oppressive, or irrelevant. The Administrative Law Judge will rule upon motions to quash or modify material requested in the subpoena, denying, limiting or conditioning the production of information when necessary to prevent undue delay, undue expense, harassment, or oppression or to protect materials from disclosure consistent with the provisions of Section 120.410(f) of this Part. If the Request for Subpoena is denied or modified, the Administrative Law Judge shall proceed to conduct the hearing, and the specific reasons for denying or modifying the request shall be made part of the record.~~
- e) ~~Any witness subpoenaed for a deposition may be required to attend only in the county in which the witness resides or maintains an office address, or in any other place ordered by the Administrative Law Judge.~~

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

SUBPART E: CONDUCT OF HEARINGS AND RULES OF EVIDENCE

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Section 120.500 Authority of Administrative Law Judge

An ~~ALJ Administrative Law Judge~~ presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair and impartial hearing, including the following:

- a) To administer oaths and affirmations;
- b) To rule upon offers of proof and receive relevant evidence;
- c) To ~~exercise the power of the Director and~~ issue subpoenas as provided in Section 120.420 under any statute;
- d) To rule on issues relating to document exchange provide for discovery and to determine its scope;
- e) To regulate the course of the hearing and the conduct of the parties and their counsel;
- f) To consider and rule upon procedural requests;
- g) To hold conferences for the settlement or simplification of the issues;
- h) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetition or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
- i) To make or to cause to be made an inspection of the employment or place of employment involved; and
- j) To make decisions in accordance with the appropriate Act and rules, this Part, and the IAPA.

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

Section 120.530 Contumacious Conduct

- a) Contumacious conduct at any hearing before the ~~ALJ Administrative Law Judge~~ shall be grounds for exclusion from the hearing.

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- b) If a witness or a party refuses to answer a question after being directed to do so or refuses to obey an order to provide ~~documents or permit discovery~~, the ~~ALJ Administrative Law Judge~~ may make ~~those such~~ orders with regard to the refusal as are just and appropriate, including, but not limited to, excluding the testimony of witnesses, entering an order of default, entering an order that certain facts are deemed admitted for purpose of the proceeding, or entering an order denying the application or complaint of a party.

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

Section 120.560 Rules of Evidence

The Illinois Rules of Evidence shall apply to the extent practicable unless, by such application, the ~~ALJ Administrative Law Judge~~ determines that application of ~~the any such~~ rule would be an injustice or preclude the introduction of evidence of the type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs. The ~~ALJ Administrative Law Judge~~ must state on the record his or her reasons for that determination. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally, accompanied by a short statement of the grounds for the objection, and included in the record. No objection shall be deemed waived by further participation in the hearing.

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

SUBPART F: POST-HEARING PROCEDURES

Section 120.610 Record in Contested Cases

- a) A full and complete record shall be kept of all proceedings. The record shall consist of the following:
- 1) All pleadings, including all notices and responses to those pleadings;
 - 2) A transcript of the hearing, if any, and all evidence received;
 - 3) A statement of matters officially noticed;
 - 4) Any offers of proof, objections to that proof, and rulings on that proof;

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- 5) Any proposed findings and acceptance;
 - 6) Any decision, opinion or report by the ~~ALJ Administrative Law Judge~~;
 - 7) All staff memoranda or data submitted to the ~~ALJ Administrative Law Judge~~ or ~~employeesmembers~~ of the Department in connection with their consideration of the case; and
 - 8) Any ex parte communication prohibited by Section 10-60 of the IAPA ~~[5 ILCS 100/10-60]~~, but those communications shall not form the basis for any finding of fact.
- b) The record shall also contain the following:
- 1) Subpoenas;
 - 2) Requests for Subpoenas;
 - 3) Cover letters;
 - 4) Notices of Filing; and
 - 5) Certificates of mailing for regular mail and return receipts for certified mail; and
 - 6) ~~Discovery Requests.~~
- c) The Department shall be the official custodian of the records of administrative hearings held by the Department.

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

Section 120.620 Briefs

The ~~ALJ Administrative Law Judge~~ may require or allow parties to submit written briefs to the ~~ALJ Administrative Law Judge~~ within 10 days after the close of the hearing or other reasonable time as the ~~ALJ Administrative Law Judge~~ shall determine, consistent with the Director's responsibility for an expeditious decision. Briefs shall be limited to 25 pages, unless permission

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[is granted by the ALJ.](#)

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

Section 120.640 Administrative Law Judge's Decision and Order

- a) The ~~ALJ's Administrative Law Judge's~~ decision shall be in writing and, when necessary, include findings of fact and conclusions of law and opinions. The findings of fact shall be based exclusively on the evidence presented at hearing or known to all parties, including matters officially noticed. The ~~ALJ Administrative Law Judge~~ shall, in addition to the decision, issue an appropriate order. The decision in the case shall become effective immediately upon the execution of the order by the ~~ALJ Administrative Law Judge~~ or as otherwise specified within the order or an applicable statute. A copy of the order shall be delivered or mailed to each party of record and to each attorney of record. This Section applies to [all formal hearings held pursuant to the Child Labor Law \[820 ILCS 205\], Day and Temporary Labor Services Act \[820 ILCS 175\], Nurse Agency Licensing Act \[225 ILCS 510\], Prevailing Wage Act \[820 ILCS 130/9 and 11a\], Health and Safety Act \[820 ILCS 225\], Safety Inspection and Education Act \[820 ILCS 220\], ~~and~~ Illinois Worker Adjustment and Retraining Notification Act \[820 ILCS 65\], \[Employee Classification Act \\[820 ILCS 185/25\\], Private Employment Agency Act \\[225 ILCS 515/12\\], One Day Rest in Seven Act \\[820 ILCS 140/6\\] and Carnival and Amusement Rides Safety Act \\[430 ILCS 85/2-8.1, 2-12 and 2-15\\].\]\(#\)](#)
- b) [The ALJ shall forward a copy of his or her decision, including findings of fact, opinions, recommendations and order, to each party of record. Each party of record shall be allowed 10 days in which to submit exceptions to the findings, opinions, recommendations and order of the ALJ and to present a brief in support of those exceptions. In the event no timely or proper exceptions are filed, the findings, conclusions, recommendations and order shall automatically become the decision and order of the Director. All objections and exceptions to the Director's decision and order shall be deemed waived for all purposes. Service of the ALJ's decision and of the order transferring the case to the Director shall be complete upon mailing.](#)
- c) [Exceptions](#)
- 1) [Each exception shall:](#)

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- A) set forth specifically the questions of procedure, fact, law or policy to which exception is taken;
 - B) identify that part of the ALJ's decision to which objection is made;
 - C) designate by precise citation of page the portions of the record relied on; and
 - D) concisely state the grounds for the exception.
- 2) If a supporting brief is filed, the exceptions document shall not contain any argument or citation of authority in support of the exceptions. Those matters shall be set forth only in the brief. If no supporting brief is filed, the exceptions document shall also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document shall be subject to a 25 page limit. If a supporting brief is filed, it shall be subject to a 20 page limit.
- d) Any exception to a ruling, finding, conclusion or recommendation that is not specifically stated shall be deemed to have been waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief in support of exceptions shall not refer to any matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:
- 1) A clear and concise statement of the case, containing all that is material to the consideration of the questions presented.
 - 2) A specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate.
 - 3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on.
- e) Within 10 days, or such further period as the Director may allow, from the last date on which exceptions and any supporting brief may be filed, a party opposing the exceptions may file an answering brief to the exceptions, in accordance with this subsection. The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support of the exceptions. It

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shall present clearly the points of fact and law relied on in support of the position taken on each question. When exception has been taken to a factual finding of the ALJ and the exception is proposed to support that finding, the answering brief should specify those pages of the record that, in the view of the party filing the brief, support the ALJ's finding. The answering brief shall be limited to 20 pages.

- f) Requests for extension of time to file an answering brief to the exceptions shall be in writing and copies shall be served promptly on the other parties.
- g) Any matter not included in the exceptions may not thereafter be raised to the Director or in any further proceeding and is deemed waived for all purposes.

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

Section 120.650 Administrative Law Judge's Recommendations

- a) When~~Where~~ the Director is required by law to be the sole, personal acting officer, the ~~ALJ Administrative Law Judge~~ shall, in lieu of decision and order under Section 120.640, make recommendations by way of proposal for decision. The recommendations shall be made upon consideration of the record as a whole or portion of the record as may be supported by competent, material and substantial evidence.
- b) The ~~ALJ Administrative Law Judge~~ shall forward a copy of his or her proposed findings of fact, opinions and recommendations to each party of record and each party of record shall be allowed 10 days in which to submit exceptions to the findings, opinions, and recommendations of the ~~ALJ Administrative Law Judge~~ and to present a brief ~~to the Administrative Law Judge~~ in support of those exceptions. In the event no timely or proper exceptions are filed, the findings, conclusions, recommendations and order contained in the ALJ's decision shall automatically become the decision and order of the Director. All objections and exceptions to the Director's decision and order shall be deemed waived for all purposes. Service of the ALJ's decision and of the order transferring the case to the Director shall be complete upon mailing.
- c) Exceptions and briefs in support of exceptions or in answer to exceptions shall comply with Section 120.640(c) through (f).
- d) Any matter not included in the exceptions may not thereafter be raised to the

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Director or in any further proceeding and is deemed waived for all purposes.

e) ~~The Administrative Law Judge shall then prepare and submit to the Director or his or her authorized representative a final set of findings, opinions and recommendations that, if a party submitted proposed findings of fact that might control the decision or order, shall include a ruling upon each proposed finding of fact together with the exceptions and briefs filed pursuant to this Section.~~

ed) This Section applies to formal hearings held pursuant to the Environmental Protection Act [415 ILCS 5/52(c)], Private Employment Agency Act [225 ILCS 515], Prevailing Wage Act [820 ILCS 130/11b] and Victims' Economic Security and Safety Act [820 ILCS 180].

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

Section 120.660 Order of the Director

Upon receipt of an ~~ALJ's Administrative Law Judge's~~ recommendation by way of Recommended Decision or an ALJ Decision and Order, to which exceptions have been filed, the Director shall review the record and the ~~ALJ's Administrative Law Judge's~~ findings, opinions and recommendations, together with exceptions and briefs, and shall issue an order as set forth by applicable statutes within a reasonable time. The decision in the case will become effective immediately upon the execution of the order or as otherwise specified within the order or an applicable statute. A copy of the order shall be delivered or mailed to each party and to each attorney of record.

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

Section 120.670 Judicial Review

- a) If a party seeks judicial review of an Administrative Law Judge's Decision and Order~~decision~~ or a Decision and an Order of the Director, that party will pay the actual cost to the Department of preparing the administrative record and filing it in court. Payment shall be by certified check made payable to the Illinois Department of Labor.
- b) Actions for judicial review under this Section shall be filed where the hearing proceedings took place, which is in ~~either~~ the circuit court of either Cook County or ~~of~~ Sangamon County.

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

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- 1) Heading of the Part: Home Rule County Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 220
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
220.115	Amend
- 4) Statutory Authority: 55 ILCS 5/5-1006
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3502; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 220
HOME RULE COUNTY RETAILERS' OCCUPATION TAX

Section

220.101	Nature of the Home Rule County Retailer's Occupation Tax
220.105	Registration and Returns
220.110	Claims to Recover Erroneously Paid Tax
220.115	Jurisdictional Questions
220.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
220.125	Penalties, Interest and Procedures
220.130	Effective Date

AUTHORITY: Implementing the Home Rule County Retailers' Occupation Tax Law of the Counties Code [55 ILCS 5/5-1006] and authorized by Section 2505-95 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-95].

SOURCE: Adopted August 5, 1959; amended at 3 Ill. Reg. 44, p. 185, effective October 19, 1979; codified at 6 Ill. Reg. 9681; amended at 15 Ill. Reg. 5783, effective April 9, 1991; amended at 24 Ill. Reg. 8105, effective May 26, 2000; amended at 24 Ill. Reg. 18345, effective December 1, 2000; emergency amendment at 38 Ill. Reg. 4047, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 220.115 Jurisdictional Questions

- a) County Defined
When used in this Part, "county" includes all territory located within the county, including all territory within cities, villages or incorporated towns, including an incorporated town that has superseded a civil township.
- b) Retailer's Selling Activities Determine Taxing Jurisdiction
 - 1) The Home Rule County Retailers' Occupation Tax Law [55 ILCS 5/5-1006] authorizes home rule counties to impose a tax on those engaged in the business of selling tangible personal property at retail within the county. Because the statute imposes a tax on the retail business of selling and not on specific sales, the jurisdiction in which the sale takes place is

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not necessarily the jurisdiction where the retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the 'occupation' of the retailer and not upon the 'sales' as such.") (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the county to impose tax on retailers who conduct business in the county, the Home Rule County Retailers' Occupation Tax Law links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (b)(1) and (b)(2), a seller incurs Home Rule County Retailers' Occupation Tax in the county if its predominant and most important selling activities take place in the county. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- c) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations

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- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (c)(2) through (c)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.
- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately, or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made; i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.

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- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.
- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-state destination.
- C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.
- 7) Order Acceptance Not Doing Business in the County
- A) Except as otherwise provided in subsections (c)(2) through (c)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:
- i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;

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selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
 - C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
 - D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (d)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
 - C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);

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D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and

E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (d)(2) and (d)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).

B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections (d)(2) and (d)(3).

a) ~~County-Defined~~
When used in this Part, "county" includes all territory located within the county,

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~~including all territory within cities, villages or incorporated towns, including an incorporated town that has superseded a civil township.~~

b) ~~Mere Solicitation of Orders Not Doing Business~~

- ~~1) For a seller to incur Home Rule County Retailers' Occupation Tax liability in a given county, the sale must be made in the course of the seller's engaging in the retail business within that county. In other words, enough of the selling activity must occur within the home rule county to justify concluding that the seller is engaged in business within the home rule county with respect to that sale.~~
- ~~2) For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where the orders were subject to acceptance outside the taxing jurisdiction and title passed outside the jurisdiction, with the goods being shipped from outside the jurisdiction to the purchaser in the jurisdiction, did not constitute engaging in the business of selling within the jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a home rule county as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~

e) ~~Seller's Acceptance of Order~~

- ~~1) Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the county or by someone who is working out of that place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order that is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule county or by someone working out of that place of business, the seller incurs Home Rule County Retailers' Occupation Tax liability in that home rule county if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. The Department will assume that the seller has accepted the purchase order at~~

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~~the place of business at which the seller receives the purchase order from the purchaser in the absence of clear proof to the contrary.~~

- ~~2) If a purchase order is accepted outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a county at the time of its sale (or is subsequently produced in the county), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in the county) will determine where the seller is engaged in business for Home Rule County Retailers' Occupation Tax purposes with respect to that sale.~~

~~d) Some Considerations That Are Not Controlling~~

- ~~1) Delivery of the property within the county to the purchaser is not necessary for the seller to incur Home Rule County Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercounty commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the county for the seller to be regarded as being engaged in the business of selling within the county with respect to that sale.~~
- ~~2) The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether the seller incurs Home Rule County Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the county" in the Home Rule County Retailers' Occupation Tax Act refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company v. Department of Finance, et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~

- ~~e) Place of Business Where Long Term or Blanket Contracts are Involved
Under a long term blanket or master contract that (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which subsequent specific~~

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~~orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule County Retailers' Occupation Tax purposes with respect to those orders.~~

~~f) Sales Through Vending Machines~~

~~The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.~~

~~g) Sales From Vehicles Carrying Uncommitted Stock of Goods~~

~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made—the vehicle carrying the stock of goods for sale being regarded as a portable place of business.~~

~~h) Sales of Coal or Other Minerals~~

~~For the purpose of determining the local governmental unit whose tax is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~

~~1) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~

~~2) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the county and transports it over its own line to an out of State destination.~~

~~3) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The~~

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~~taxable sale (the retail sale) is the final sale to the user, and the Municipal or Home Rule County Retailers' Occupation Tax on that sale will go to the municipality or county where the retailer is located.~~

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

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- 1) Heading of the Part: Home Rule Municipal Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 270
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
270.115	Amend
- 4) Statutory Authority: 65 ILCS 5/8-11-1
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3504; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 270

HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX

Section

270.101	Nature of the Home Rule Municipal Retailers' Occupation Tax
270.105	Registration and Returns
270.110	Claims to Recover Erroneously Paid Tax
270.115	Jurisdictional Questions
270.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
270.125	Penalties, Interest and Procedures
270.130	Effective Date

AUTHORITY: Implementing the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1] and authorized by Section 2505-15 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-15].

SOURCE: Adopted August 1, 1955; amended at 3 Ill. Reg. 44, p. 189, effective October 19, 1979; amended at 6 Ill. Reg. 2836, 2839 and 2841, effective March 3, 1982; codified at 6 Ill. Reg. 9681; amended at 15 Ill. Reg. 3507, effective February 21, 1991; amended at 24 Ill. Reg. 8111, effective May 26, 2000; amended at 24 Ill. Reg. 18351, effective December 1, 2000; emergency amendment at 38 Ill. Reg. 4060, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 270.115 Jurisdictional Questions

- a) [Retailer's Selling Activities Determine Taxing Jurisdiction](#)
 - 1) [The Home Rule Municipal Retailers' Occupation Tax Act \[65 ILCS 5/8-11-1\] authorizes home rule municipalities to impose a tax on those engaged in the business of selling tangible personal property at retail within the municipality. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the location where the local retailers' occupation tax is owed. Rather, it is the location where the seller is engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 \(1951\) \("In short, the tax is](#)

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imposed on the "occupation" of the retailer and not upon the "sales" as such.) (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes

liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the municipality to impose tax on retailers who conduct business in the municipality, the Home Rule Municipal Retailers' Occupation Tax Act links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (a)(1) and (a)(2), a seller incurs Home Rule Municipal Retailers' Occupation Tax if its predominant and most important selling activities take place in the municipality. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- b) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations
- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is

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obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (b)(2) through (b)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.

- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately, or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made; i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.
- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For

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purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.

A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.

B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-state destination.

C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.

7) Order Acceptance Not Doing Business in the Municipality

A) Except as otherwise provided in subsections (b)(2) through (b)(7), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:

i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;

ii) all orders for the purchase of tangible personal property are submitted to the seller in the jurisdiction by means of iii) the seller's employees or agents who accept purchase orders

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record information relayed by the customer (such as purchaser's name and address; price, type and quantity of items; and method of payment and delivery), but do not negotiate or exercise discretion on behalf of the seller.

B) The place of engaging in the business of selling for retailers who accept purchase orders in a jurisdiction and who meet the criteria set forth in subsection (b)(7)(A) shall be determined based on the composite of selling activities engaged in outside the jurisdiction in which purchase orders are accepted, in accordance with subsections (c)(2) through (c)(4).

c) Application of Composite of Selling Activities Test to Multi-Jurisdictional Intrastate Retailers

- 1) In General. Some sellers are engaged in retail operations with selling activities in multiple jurisdictions in Illinois that do not fall within any of the categories identified in subsection (b). The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Consequently, "it is . . . not possible to prescribe by definition which of the many activities must take place in (a municipality) to constitute it an occupation conducted in (that municipality). . . . (I)t is necessary to determine each case according to the facts which reveal the method by which the business was conducted." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943); see also Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 36. The location of the selling activities most important to each retailer's business of selling dictates the jurisdiction where it is engaged in the business of selling.
- 2) Primary Factors. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions should consider the following selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

 - A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart

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Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;

B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);

C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and

D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).

3) Secondary Factors. If, after consideration of the factors listed in subsection (c)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:

A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;

B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;

C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);

D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and

E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't

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of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

A) When a retailer's selling activities are spread through multiple jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (c)(2) and (c)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).

B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if the party does not, in substance, conduct the selling activities identified in subsections (c)(2) and (c)(3).

a) ~~Mere Solicitation of Orders Not Doing Business~~

1) ~~For a seller to incur Home Rule Municipal Retailers' Occupation Tax liability in a given home rule municipality, the sale must be made in the course of such seller's engaging in the retail business within such home rule municipality. In other words, enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with~~

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~~respect to that sale.~~

- 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a home rule municipality as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~

b) **Seller's Acceptance of Order**

- 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability in that home rule municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.~~
- 2) ~~The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.~~
- 3) ~~If a purchase order is accepted outside this State but the tangible personal property which is sold is in an inventory of the retailer located within a home rule municipality at the time of its sale (or is subsequently produced in the home rule municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or~~

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~~subsequent production in the home rule municipality) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale.~~

- e) ~~Some Considerations Which Are Not Controlling~~
 - 1) ~~Delivery of the property within the municipality to the purchaser is not necessary for the seller to incur Home Rule Municipal Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercity commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the home rule municipality for the seller to be regarded as being engaged in the business of selling within such home rule municipality with respect to that sale.~~
 - 2) ~~The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether or not the seller incurs Home Rule Municipal Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase in the municipality in the Home Rule Municipal Retailers' Occupation Tax Act refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company v. Department of Finance, et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~
- d) ~~Place of Business Where Long Term or Blanket Contracts are Involved~~

~~Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such orders.~~
- e) ~~Sales Through Vending Machines~~

~~The seller's place of engaging in business when making sales through a vending~~

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~~machine is the place where the vending machine is located when such sales are made.~~

- f) ~~Sales From Vehicles Carrying Uncommitted Stock of Goods~~
~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made—the vehicle carrying such stock of goods for sale being regarded as a portable place of business.~~
- g) ~~Sales of Coal or Other Minerals~~
- 1) ~~For the purpose of determining the local governmental unit whose tax is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~
 - 2) ~~A retail sale is a sale to a user, such as a railroad, public utility or other industrial company for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~
 - 3) ~~A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than a common carrier by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the home rule municipality and transports it over its own line to an out-of-State destination.~~
 - 4) ~~A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the Home Rule Municipal, Non-Home Rule Municipal or Home Rule County Retailers' Occupation Tax on that sale will go to the home rule municipality, non-home rule municipality or home rule county where the retailer is located.~~

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

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- 1) Heading of the Part: Regional Transportation Authority Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 320
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
320.115	Amend
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3506; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 320

REGIONAL TRANSPORTATION AUTHORITY

RETAILERS' OCCUPATION TAX

Section

320.101	Nature of the Regional Transportation Authority Retailers' Occupation Tax
320.105	Registration and Returns
320.110	Claims to Recover Erroneously Paid Tax
320.115	Jurisdictional Questions
320.120	Incorporation of the Retailers' Occupation Tax Regulations by Reference
320.125	Penalties, Interest and Procedures
320.130	Effective Date

AUTHORITY: Authorized by and implementing Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03].

SOURCE: Adopted at 4 Ill. Reg. 28, p. 542, effective July 1, 1980; codified at 6 Ill. Reg. 9681; amended at 15 Ill. Reg. 6316, effective April 11, 1991; amended at 24 Ill. Reg. 18370, effective December 1, 2000; amended at 34 Ill. Reg. 11444, effective July 26, 2010; emergency amendment at 38 Ill. Reg. 4073, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 320.115 Jurisdictional Questions

- a) [Retailer's Selling Activities Determine Taxing Jurisdiction](#)
- 1) [The Regional Transportation Authority Act \[70 ILCS 3615\] authorizes the Authority to impose a tax on those engaged in the business of selling tangible personal property at retail in the metropolitan region. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the Regional Transportation Authority Retailers' Occupation Tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 \(1951\) \("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as](#)

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such.") (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the Authority to impose tax on retailers who conduct business in the metropolitan region, the Regional Transportation Authority Act links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (a)(1) and (a)(2) of this Section, a seller incurs Regional Transportation Authority Retailers' Occupation Tax in the metropolitan region if its predominant and most important selling activities take place in the metropolitan region. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- b) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations
- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers

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engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (b)(2) through (b)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.

- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property within a jurisdiction and the purchaser takes possession of the property immediately; or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made; i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.
- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail within the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the

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location at which the coal or other mineral is extracted from the mouth of the mine.

A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.

B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property within the jurisdiction and transports it over its own line to an out-of-state destination.

C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.

7) Order Acceptance Not Doing Business in the Jurisdiction of the Authority

A) Except as otherwise provided in subsections (b)(2) through (b)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:

i) the seller has no other selling activity within the jurisdiction except receipt and acceptance of purchase orders;

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selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, [paragraph 62](#);
 - B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
 - C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
 - D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (c)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, [paragraph 62](#);
 - B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
 - C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);

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- D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and
 - E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.
- 4) Principles Underlying Determination of Seller's Location
- A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (c)(2) and (c)(3) in keeping with the principle that the retailer incurs local retailers' occupation taxes in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).
 - B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections (c)(2) and (c)(3).
- a) ~~Mere Solicitation of Orders not Doing Business~~

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- 1) ~~For a seller to incur Regional Transportation Authority Retailers' Occupation Tax liability in the metropolitan region, the sale must be made in the course of such seller's engaging in the retail business within the metropolitan region. In other words, enough of the selling activity must occur within the metropolitan region to justify concluding that the seller is engaged in business within the metropolitan region with respect to that sale. The same principles are applicable as to determining in which county of the metropolitan region a sale is made.~~
 - 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a county as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~
- b) Seller's Acceptance of Order
- 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business, the seller incurs Regional Transportation Authority Retailers' Occupation Tax liability in the metropolitan region if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.~~
 - 2) ~~The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase~~

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~~order from the purchaser in the absence of clear proof to the contrary.~~

- 3) ~~If a purchase order is accepted outside this State, but the tangible personal property which is sold is in an inventory of the retailer located within the metropolitan region at the time of its sale (or is subsequently produced in the region), then delivered in Illinois to the purchaser, the seller will be considered to be engaged in business in the metropolitan region for Regional Transportation Authority Retailers' Occupation Tax purposes with respect to such sale. The county in the region where the property is located at the time of sale (or subsequent production in a county in the metropolitan region) is determinative of the applicable Regional Transportation Authority Retailers' Occupation Tax rate.~~

e) ~~Some Considerations Which Are Not Controlling~~

- 1) ~~Delivery of the property within the metropolitan region to the purchaser is not necessary for the seller to incur Regional Transportation Authority Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercity commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the metropolitan region for the seller to be regarded as being engaged in the business of selling within the metropolitan region with respect to that sale.~~
- 2) ~~The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether or not the seller incurs Regional Transportation Authority Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the metropolitan region" in Section 4.03(e) of the Regional Transportation Authority Act [70 ILCS 3615/4.03(e)] refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company v. Department of Finance, et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~

d) ~~Place of Business where Long Term or Blanket Contracts are Involved~~

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~~Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Regional Transportation Authority Retailers' Occupation Tax purposes with respect to such orders.~~

- e) ~~Sales Through Vending Machines~~
~~The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when such sales are made.~~
- f) ~~Sales from Vehicles Carrying Uncommitted Stock of Goods~~
~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made—the vehicle carrying such stock of goods for sale being regarded as a portable place of business.~~
- g) ~~Sales of Coal or other Minerals~~
- 1) ~~For the purpose of determining whether the Regional Transportation Authority Retailers' Occupation Tax is applicable for a retail sale by a producer of coal or other mineral mined in Illinois, the sale is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth.~~
- 2) ~~A retail sale is a sale to a user, such as a railroad, public utility or other industrial company for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~
- 3) ~~A mineral mined in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than~~

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~~common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the metropolitan region and transports it over its own line to an out-of-State destination.~~

- 4) ~~A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user and the Regional Transportation Authority Retailers' Occupation Tax on that sale will be applicable if the retailer is located in the metropolitan region.~~

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

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- 1) Heading of the Part: Metro East Mass Transit District Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 370
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
370.115	Amend
- 4) Statutory Authority: 70 ILCS 3610/5.01
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3508; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 370
METRO EAST MASS TRANSIT DISTRICT
RETAILERS' OCCUPATION TAX

Section

370.101	Nature of a Metro East Mass Transit District Retailers' Occupation Tax
370.105	Registration and Returns
370.110	Claims to Recover Erroneously Paid Tax
370.115	Jurisdictional Questions
370.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
370.125	Penalties, Interest and Procedures
370.130	Effective Date

AUTHORITY: Authorized by and implementing Section 5.01 of the Local Mass Transit District Act [70 ILCS 3610].

SOURCE: Adopted at 5 Ill. Reg. 5899, effective May 28, 1981; codified at 6 Ill. Reg. 9696; amended at 15 Ill. Reg. 5805, effective April 5, 1991; amended at 24 Ill. Reg. 17820, effective November 28, 2000; emergency amendment at 38 Ill. Reg. 4086, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 370.115 Jurisdictional Questions

- a) [Retailer's Selling Activities Determine Taxing Jurisdiction](#)
 - 1) [The Local Mass Transit District Act \[70 ILCS 3610/5.01\] authorizes the Board of Trustees of any Metro East Mass Transit District to impose a tax on those engaged in the business of selling tangible personal property at retail within the District. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 \(1951\) \("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such."\) \(citing Mahon v. Nudelman, 377 Ill. 331 \(1941\) and Standard Oil](#)

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Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the District to impose tax on retailers who conduct business in the District, the Local Mass Transit District Act links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (a)(1) and (a)(2), a seller incurs Metro East Mass Transit District Retailers' Occupation Tax if its predominant and most important selling activities take place in the District. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- b) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations
- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in

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the State. Subsections (b)(2) through (b)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.

- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately, or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the district where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within the jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made; i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.
- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.

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- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-State destination.
- C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.
- 7) Order Acceptance Not Doing Business in the District
- A) Except as otherwise provided in subsections (b)(2) through (b)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:
- i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;
 - ii) all orders for the purchase of tangible personal property are submitted to the seller in the jurisdiction by means of telephone or Internet; and
 - iii) the seller's employees or agents who accept purchase orders record information relayed by the customer (such as

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purchaser's name and address; price, type and quantity of items; and method of payment and delivery), but do not negotiate or exercise discretion on behalf of the seller.

B) The place of engaging in the business of selling for retailers who accept purchase orders in a jurisdiction and who meet the criteria set forth in subsection (b)(7)(A) shall be determined based on the composite of selling activities engaged in outside the jurisdiction in which purchase orders are accepted, in accordance with subsections (c)(2) through (c)(4).

c) Application of Composite of Selling Activities Test to Multi-Jurisdictional Intrastate Retailers

1) In General. Some sellers are engaged in retail operations with selling activities in multiple jurisdictions in Illinois that do not fall within any of the categories identified in subsection (b). The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Consequently, "it is . . . not possible to prescribe by definition which of the many activities must take place in (a jurisdiction) to constitute it an occupation conducted in (that jurisdiction). . . . (I)t is necessary to determine each case according to the facts which reveal the method by which the business was conducted." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943); see also Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 36. The location of the selling activities most important to each retailer's business of selling dictates the jurisdiction where it is engaged in the business of selling.

2) Primary Factors. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions should consider the following selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-

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Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;

- B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
 - C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
 - D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (c)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
 - C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);
 - D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and
 - E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v.

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[Daley, 409 Ill. 438, 452 \(1951\); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.](#)

- 4) [Principles Underlying Determination of Seller's Location](#)
- A) [When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections \(c\)\(2\) and \(c\)\(3\) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection \(and\) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 \(quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 \(1942\)\).](#)
- B) [The Department "may look through the form of a putatively \(multijurisdictional\) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 \(1960\); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 \(1968\); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 \(1st Dist. 1976\); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections \(c\)\(2\) and \(c\)\(3\).](#)
- 2) ~~Over the counter Sales. When a person makes an over the counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately; or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the district where the over the counter sale occurred.~~
- 3) ~~In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is~~

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~~in an inventory of the retailer located within the jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. — Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).~~

- ~~4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.~~
 - ~~5) Sales From Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made—the vehicle carrying the stock of goods for sale being regarded as a portable place of business.~~
 - ~~6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, “extracted from the earth” means the location at which the coal or other mineral is extracted from the mouth of the mine.
 - ~~A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. “Mineral” includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~~~
- a) ~~Mere Solicitation of Orders not Doing Business~~
- ~~1) For a seller to incur Metro East Mass Transit District Retailers' Occupation Tax liability in the district, the sale must be made in the course of such seller's engaging in the retail business within the district. In other words, enough of the selling activity must occur within the district to justify concluding that the seller is engaged in business within the district with respect to that sale.~~

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- 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a county as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~
- b) Seller's Acceptance of Order
 - 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the district or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the district or by someone working out of such place of business, the seller incurs Metro East Mass Transit District Retailers' Occupation Tax liability in the district if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.~~
 - 2) ~~The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.~~
 - 3) ~~If a purchase order is accepted outside this State, but the tangible personal property which is sold is in an inventory of the retailer located within the district at the time of its sale (or is subsequently produced in the region) then delivered in Illinois to the purchaser, the seller will be considered to be engaged in business in the district for Metro East Mass Transit District Retailers' Occupation Tax purposes with respect to such sale.~~
- e) ~~Some Considerations Which are not Controlling~~

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- 1) ~~Delivery of the property within the district to the purchaser is not necessary for the seller to incur Metro East Mass Transit District Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercity commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the district for the seller to be regarded as being engaged in the business of selling within the district with respect to that sale.~~
- 2) ~~The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether or not the seller incurs Metro East Mass Transit District Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the district" in Section 5.01(b) of the Local Mass Transit District Act refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company v. Department of Finance, et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~
- d) ~~Place of Business where Long Term or Blanket Contracts are Involved~~
~~Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Metro East Mass Transit District Retailers' Occupation Tax purposes with respect to such orders.~~
- e) ~~Sales Through Vending Machines~~
~~The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when such sales are made.~~
- f) ~~Sales From Vehicles Carrying Uncommitted Stock of Goods~~

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~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made—the vehicle carrying such stock of goods for sale being regarded as a portable place of business.~~

g) ~~Sales of Coal or Other Minerals~~

- ~~1) For the purpose of determining whether the Metro East Mass Transit District Retailers' Occupation Tax is applicable for a retail sale by a producer of coal or other mineral mined in Illinois, the sale is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~
- ~~2) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~
- ~~3) A mineral mined in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in Illinois and transports it over its own line to an out-of-State destination.~~
- ~~4) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the Metro East Mass Transit District Retailers' Occupation Tax on the sale will be applicable if the retailer is located in the district.~~

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

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- 1) Heading of the Part: Metro-East Park and Recreation District Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 395
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
395.115	Amend
- 4) Statutory Authority: 70 ILCS 1605/15
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3510; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 395

METRO-EAST PARK AND RECREATION DISTRICT RETAILERS' OCCUPATION TAX

Section

395.101	Nature of the Metro-East Park and Recreation District Retailers' Occupation Tax
395.105	Registration and Returns
395.110	Claims to Recover Erroneously Paid Tax
395.115	Jurisdictional Questions
395.120	Retailers' Occupation Tax Regulations
395.125	Penalties, Interest and Procedures
395.130	Effective Date

AUTHORITY: Implementing the Metro-East Park and Recreation District Act [70 ILCS 1605] and authorized by Section 2505-795 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-795].

SOURCE: Adopted at 24 Ill. Reg. 18357, effective December 1, 2000; emergency amendment at 38 Ill. Reg. 4099, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 395.115 Jurisdictional Questions

- a) [Municipal and Municipality Defined](#)
[When used in this Part, "municipal" and "municipality" mean a city, village or incorporated town, including an incorporated town that has superseded a civil township.](#)

- b) [Retailer's Selling Activities Determine Taxing Jurisdiction](#)
 - 1) [The Non-Home Rule Municipal Retailers' Occupation Tax Act \[65 ILCS 5\] authorizes non-home rule municipalities to impose a tax on those engaged in the business of selling tangible personal property at retail within the municipality. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is](#)

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engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil

Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the municipality to impose tax on retailers who conduct business in the municipality, the Non-Home Rule Municipal Retailers' Occupation Tax Act, links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (b)(1) and (b)(2), a seller incurs Non-Home Rule Municipal Retailers' Occupation Tax in the municipality if its predominant and most important selling activities take place in the municipality. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- c) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations

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- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (c)(2) through (c)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.
- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately, or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made, i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.

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- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.
- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-state destination.
- C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.
- 7) Order Acceptance Not Doing Business in the Municipality
- A) Except as otherwise provided in subsections (c)(2) through (c)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:
- i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;

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selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
 - C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
 - D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (d)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
 - C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);

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- D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and
- E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

- A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (d)(2) and (d)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).
- B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections (d)(2) and (d)(3).

- a) ~~District Defined~~
~~When used in this Part, "district" means the Metro East Park and Recreation~~

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~~District created under the Metro East Park and Recreation District Act.~~

- b) ~~Mere Solicitation of Orders Not Doing Business~~
- 1) ~~For a seller to incur Metro East Park and Recreation District Retailers' Occupation Tax liability in the district, the sale must be made in the course of the seller's engaging in the retail business within the district. In other words, enough of the selling activity must occur within the district to justify concluding that the seller is engaged in business within the district with respect to that sale.~~
 - 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where the orders were subject to acceptance outside the taxing jurisdiction and title passed outside the jurisdiction, with the goods being shipped from outside the jurisdiction to the purchaser in the jurisdiction, did not constitute engaging in the business of selling within the jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the district as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~
- e) ~~Seller's Acceptance of Order~~
- 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the district or by someone who is working out of that place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order that is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the district or by someone working out of that place of business, the seller incurs Metro East Park and Recreation District Retailers' Occupation Tax liability in that district if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives the purchase order from~~

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~~the purchaser in the absence of clear proof to the contrary.~~

- 2) ~~If a purchase order is accepted outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within the district at the time of its sale (or is subsequently produced in the district), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in the district) will determine where the seller is engaged in business for Metro East Park and Recreation District Retailers' Occupation Tax purposes with respect to the sale.~~
- d) ~~Some Considerations That Are Not Controlling~~
- 1) ~~Delivery of the property within the district to the purchaser is not necessary for the seller to incur Metro East Park and Recreation District Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercity commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the district for the seller to be regarded as being engaged in the business of selling within the district with respect to that sale.~~
 - 2) ~~The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether the seller incurs Metro East Park and Recreation District Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the District" in Section 30(a) of the Metro East Park and Recreation District Act refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company vs. Department of Finance et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~
- e) ~~Place of Business Where Long Term or Blanket Contracts Are Involved~~
~~Under a long term blanket or master contract that (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which subsequent specific~~

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~~orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Metro East Park and Recreation District Retailers' Occupation Tax purposes with respect to the orders.~~

- f) ~~Sales Through Vending Machines~~
~~The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.~~
- g) ~~Sales from Vehicles Carrying Uncommitted Stock of Goods~~
~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made—the vehicle carrying the stock of goods for sale being regarded as a portable place of business.~~
- h) ~~Sales of Coal or Other Minerals~~
~~For the purpose of determining the tax that is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~
- 1) ~~A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~
 - 2) ~~A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in Illinois and transports it to an out of State destination.~~
 - 3) ~~A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The~~

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~~taxable sale (the retail sale) is the final sale to the user, and the Metro East Park and Recreation District Retailers' Occupation Tax on that sale will go to the jurisdiction where the retailer is located.~~

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

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- 1) Heading of the Part: County Water Commission Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 630
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
630.120	Amend
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rulemaking currently in effect? Yes. 38 Ill. Reg. 3512; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 630

COUNTY WATER COMMISSION RETAILERS' OCCUPATION TAX

Section

630.101	Nature and Rate of the County Water Commission Retailers' Occupation Tax
630.105	Exemptions from the County Water Commission Retailers' Occupation Tax
630.110	Registration and Returns
630.115	Claims to Recover Erroneously Paid Tax
630.120	Jurisdictional Questions
630.125	Incorporation of Retailers' Occupation Tax Regulations by Reference
630.130	Penalties, Interest and Procedures
630.135	Effective Date

AUTHORITY: Implementing Section 4(b) of the Water Commission Act of 1985 [70 ILCS 3720] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].

SOURCE: Adopted at 13 Ill. Reg. 9362, effective June 6, 1989; amended at 15 Ill. Reg. 5762, effective April 5, 1991; amended at 24 Ill. Reg. 17808, effective November 28, 2000; emergency amendment at 38 Ill. Reg. 4112, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 630.120 Jurisdictional Questions

- a) [Retailer's Selling Activities Determine Taxing Jurisdiction](#)
 - 1) [The Water Commission Act of 1985 \[70 ILCS 3720\] authorizes the board of commissioners of any county water commission to impose a tax on those engaged in the business of selling tangible personal property at retail within the territory of the commission. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 \(1951\) \("In short, the](#)

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tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the county water commission to impose tax on retailers who conduct business in the territory of the commission, the Water Commission Act of 1985 links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (a)(1) and (a)(2), a seller incurs County Water Commission Retailers' Occupation Tax if its predominant and most important selling activities take place in the territory of the County Water Commission. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- b) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations

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- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (b)(2) through (b)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.
- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately; or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made; i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.

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- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.
- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-state destination.
- C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling, as set forth in this Section.
- 7) Order Acceptance Not Doing Business in the Territory of a County Water Commission
- A) Except as otherwise provided in subsections (b)(2) through (b)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:

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- i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;
- ii) all orders for the purchase of tangible personal property are submitted to the seller in the jurisdiction by means of telephone or Internet; and
- iii) the seller's employees or agents who accept purchase orders record information relayed by the customer (such as purchaser's name and address; price, type and quantity of items; and method of payment and delivery), but do not negotiate or exercise discretion on behalf of the seller.

B) The place of engaging in the business of selling for retailers who accept purchase orders in a jurisdiction and who meet the criteria set forth in subsection (b)(7)(A) shall be determined based on the composite of selling activities engaged in outside the jurisdiction in which purchase orders are accepted, in accordance with subsections (c)(2) through (c)(4).

c) Application of Composite of Selling Activities Test to Multi-Jurisdictional Intrastate Retailers

- 1) In General. Some sellers are engaged in retail operations with selling activities in multiple jurisdictions in Illinois that do not fall within any of the categories identified in subsection (b). The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Consequently, "it is . . . not possible to prescribe by definition which of the many activities must take place in (a jurisdiction) to constitute it an occupation conducted in (that jurisdiction). . . . (I)t is necessary to determine each case according to the facts which reveal the method by which the business was conducted." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943); see also Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 36. The location of the selling activities most important to each retailer's business of selling dictates the jurisdiction where it is engaged in the business of selling.

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- 2) Primary Factors. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions should consider the following selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:
- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
- B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
- C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
- D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (c)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;

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- B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
- C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);
- D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and
- E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

- A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (c)(2) and (c)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).
- B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the

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Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party, does not in substance, conduct the selling activities identified in subsections (c)(2) and (c)(3).

- a) ~~Mere Solicitation of Orders not Doing Business~~
- 1) ~~For a seller to incur County Water Commission Retailers' Occupation Tax liability in the territory of the Commission, the sale must be made in the course of such seller's engaging in the retail business within such territory. In other words, enough of the selling activity must occur within such territory to justify concluding that the seller is engaged in business within such territory with respect to that sale.~~
 - 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a county or territory of the Commission as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~
- b) ~~Seller's Acceptance of Order~~
- 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the territory of the County Water Commission (Commission) which imposes the County Water Commission Retailers' Occupation Tax or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business~~

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~~within such territory or by someone working out of such place of business, the seller incurs County Water Commission Retailers' Occupation Tax liability in such territory if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.~~

- ~~2) The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.~~
- ~~3) Regardless of the place at which the purchase order is accepted, where tangible personal property is located within such territory at the time of its sale (or is subsequently produced in the territory) then delivered in Illinois to the purchaser, and no municipality or county outside such territory where the tangible personal property is located in this State would receive or would have the power to impose a County Water Commission Retailers' Occupation Tax with respect to such sale, the seller will be considered to be engaged in business in such territory for County Water Commission Retailers' Occupation Tax purposes with respect to such sale.~~

e) ~~Some Considerations Which are not Controlling~~

- ~~1) Delivery of the property within the territory to the purchaser is not necessary for the seller to incur County Water Commission Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercity commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the territory for the seller to be regarded as being engaged in the business of selling within the territory with respect to that sale.~~
- ~~2) The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether or not the seller incurs County Water Commission Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the territory" in Section 4 of the Water~~

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~~Commission Act of 1985 refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made.~~

- d) ~~Place of Business Where Long Term or Blanket Contracts are Involved~~
~~Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for County Water Commission Retailers' Occupation Tax purposes with respect to such orders. (See Standard Oil Company v. Department of Finance, et al., 383 Ill. 136 (1934), for a similar problem under the Retailer's Occupation Tax Act.)~~
- e) ~~Sales Through Vending Machines~~
~~The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when such sales are made.~~
- f) ~~Sales From Vehicles Carrying Uncommitted Stock of Goods~~
~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made—the vehicle carrying such stock of goods for sale being regarded as a portable place of business.~~
- g) ~~Sales of Coal or Other Minerals~~
- 1) ~~For the purpose of determining whether the County Water Commission Retailers' Occupation Tax is applicable for a retail sale by a producer of coal or other mineral mined in Illinois, the sale is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~
- 2) ~~A retail sale is a sale to a user, such as a railroad, public utility or other industrial company for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly~~

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~~regarded as a mineral and extracted from the earth.~~

- 3) ~~A mineral mined in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the territory and transports it over its own line to an out-of-State destination.~~
- 4) ~~A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (retail sale) is the final sale to the user, and the County Water Commission Retailers' Occupation Tax on the sale will be applicable if the retailer is located in such territory that imposes a County Water Commission Retailers' Occupation Tax.~~

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

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- 1) Heading of the Part: Special County Retailers' Occupation Tax for Public Safety
- 2) Code Citation: 86 Ill. Adm. Code 670
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
670.115	Amend
- 4) Statutory Authority: 55 ILCS 5/5-1006.5
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3514; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 670

SPECIAL COUNTY RETAILERS' OCCUPATION TAX FOR PUBLIC SAFETY

Section

670.101	Nature of the Special County Retailers' Occupation Tax For Public Safety
670.105	Registration and Returns
670.110	Claims to Recover Erroneously Paid Tax
670.115	Jurisdictional Questions
670.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
670.125	Penalties, Interest and Procedures
670.130	Effective Date

AUTHORITY: Implementing Section 5-1006.5 of the Special County Occupation Tax For Public Safety Law of the Counties Code [55 ILCS 5/5-1006.5] and authorized by Section 2505-95 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-95].

SOURCE: Adopted at 20 Ill. Reg. 13065, effective September 24, 1996; amended at 22 Ill. Reg. 14926, effective August 3, 1998; amended at 24 Ill. Reg. 8140, effective May 26, 2000; amended at 24 Ill. Reg. 17844, effective November 28, 2000; emergency amendment at 38 Ill. Reg. 4125, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 670.115 Jurisdictional Questions

- a) County Defined
When used in this Part, "county" includes all territory located within the county, including all territory within cities, villages or incorporated towns, including an incorporated town that has superseded a civil township.
- b) Retailer's Selling Activities Determine Taxing Jurisdiction
 - 1) The Special County Retailers' Occupation Tax for Public Safety, Public Facilities or Transportation Law [55 ILCS 5/5-1006.5] authorizes counties to impose a Special County Retailers' Occupation Tax for Public Safety, Public Facilities, or Transportation on those engaged in the business of selling tangible personal property at retail within the county. Because the

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statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the county to impose tax on retailers who conduct business in the county, the Special County Occupation Tax for Public Safety, Public Facilities, or Transportation Law links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
- 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (b)(1) and (b)(2) of this Section, a seller incurs Special County Retailer's Occupation Tax if its predominant and most important selling activities take place in the county. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.

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- c) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations
- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (c)(2) through (c)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.
 - 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately, or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
 - 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
 - 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
 - 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made; i.e.,

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the vehicle carrying the stock of goods for sale is regarded as a portable place of business.

- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.
- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-State destination.
- C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.
- 7) Order Acceptance Not Doing Business in the County
- A) Except as otherwise provided in subsections (c)(2) through (c)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:

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- i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;
 - ii) all orders for the purchase of tangible personal property are submitted to the seller in the jurisdiction by means of telephone or Internet; and
 - iii) the seller's employees or agents who accept purchase orders record information relayed by the customer (such as purchaser's name and address; price, type and quantity of items; and method of payment and delivery), but do not negotiate or exercise discretion on behalf of the seller.
 - B) The place of engaging in the business of selling for retailers who accept purchase orders in a jurisdiction and who meet the criteria set forth in subsection (c)(7)(A) shall be determined based on the composite of selling activities engaged in outside the jurisdiction in which purchase orders are accepted, in accordance with subsections (d)(2) through (d)(4).
- d) Application of Composite of Selling Activities Test to Multi-Jurisdictional Intrastate Retailers
 - 1) In General. Some sellers are engaged in retail operations with selling activities in multiple jurisdictions in Illinois that do not fall within any of the categories identified in subsection (c). The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Consequently, "it is . . . not possible to prescribe by definition which of the many activities must take place in (a jurisdiction) to constitute it an occupation conducted in (that jurisdiction). . . . (I)t is necessary to determine each case according to the facts which reveal the method by which the business was conducted." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943); see also Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 36. The location of the selling activities most important to each retailer's business of selling dictates the jurisdiction where it is engaged in the business of selling.

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- 2) Primary Factors. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions should consider the following selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:
- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
 - C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
 - D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (d)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;

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- C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);
- D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and
- E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

- A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (d)(2) and (d)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).
- B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections (d)(2) and (d)(3).

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- a) ~~County Defined~~
~~When used in this Part, "county" includes all territory located within the county, including all territory within cities, villages or incorporated towns, including an incorporated town which has superseded a civil township.~~
- b) ~~Mere Solicitation of Orders not Doing Business~~
- 1) ~~For a seller to incur Special County Retailers' Occupation Tax For Public Safety liability in a given county, the sale must be made in the course of such seller's engaging in the retail business within such county. In other words, enough of the selling activity must occur within the county to justify concluding that the seller is engaged in business within the county with respect to that sale.~~
- 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a county as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~
- e) ~~Seller's Acceptance of Order~~
- 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the county or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the county or by someone working out of such place of business, the seller incurs Special County Retailers' Occupation Tax For Public~~

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~~Safety liability in that county if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.~~

- 2) ~~If a purchase order is accepted outside this State, but the tangible personal property which is sold is in an inventory of the retailer located within a county at the time of its sale (or is subsequently produced in the county), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in the county) will determine where the seller is engaged in business for Special County Retailers' Occupation Tax For Public Safety purposes with respect to such sale.~~

d) ~~Some Considerations that are not Controlling~~

- 1) ~~Delivery of the property within the county to the purchaser is not necessary for the seller to incur Special County Retailers' Occupation Tax For Public Safety liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercounty commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the county for the seller to be regarded as being engaged in the business of selling within such county with respect to that sale.~~
- 2) ~~The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether or not the seller incurs Special County Retailers' Occupation Tax For Public Safety liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the county" in the Special County Retailers' Occupation Tax For Public Safety Law refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company v. Department of Finance, et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~

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- e) ~~Place of Business Where Long Term or Blanket Contracts are Involved~~
Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Special County Retailers' Occupation Tax For Public Safety purposes with respect to such orders.
- f) ~~Sales Through Vending Machines~~
The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when such sales are made.
- g) ~~Sales from Vehicles Carrying Uncommitted Stock of Goods~~
The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made — the vehicle carrying such stock of goods for sale being regarded as a portable place of business.
- h) ~~Sales of Coal or Other Minerals~~
For the purpose of determining the local governmental unit whose tax is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.
- 1) ~~A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~
 - 2) ~~A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the~~

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~~purchasing carrier takes delivery of the property in the county and transports it over its own line to an out-of-State destination.~~

- 3) ~~A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the Special County Retailers' Occupation Tax For Public Safety on that sale will go to the county where the retailer is located.~~

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

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- 1) Heading of the Part: Salem Civic Center Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 690
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
690.115	Amend
- 4) Statutory Authority: 70 ILCS 200/245-12
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3516; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 690

SALEM CIVIC CENTER RETAILERS' OCCUPATION TAX

Section

690.101	Nature of the Salem Civic Center Retailers' Occupation Tax
690.105	Registration and Returns
690.110	Claims to Recover Erroneously Paid Tax
690.115	Jurisdictional Questions
690.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
690.125	Penalties, Interest and Procedures
690.130	Effective Date

AUTHORITY: Implementing Section 245-12 of the Salem Civic Center Law of 1997 [70 ILCS 200/245-12] and authorized by Section 2505-95 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-95].

SOURCE: Adopted at 21 Ill. Reg. 2390, effective February 3, 1997; amended at 25 Ill. Reg. 8260, effective June 22, 2001; emergency amendment at 38 Ill. Reg. 4138, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 690.115 Jurisdictional Questions

- a) Metropolitan Area Defined
When used in this Part, "metropolitan area" means all territory in the State of Illinois lying within the corporate boundaries of the City of Salem in Marion County.
- b) Retailer's Selling Activities Determine Taxing Jurisdiction
 - 1) The Salem Civic Center Use and Occupation Tax Law [70 ILCS 200/245-12] authorizes the Salem Civic Center Authority to impose a Salem Civic Center Retailers' Occupation Tax on those engaged in the business of selling tangible personal property at retail within the metropolitan area. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local retailers' occupation tax is

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owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the Authority to impose tax on retailers who conduct business in the metropolitan area, the Salem Civic Center Use and Occupation Tax Law links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (b)(1) and (b)(2), a seller incurs Salem Civic Center Retailers' Occupation Tax if its predominant and most important selling activities take place in the metropolitan area. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- c) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations

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- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (c)(2) through (c)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.
- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately, or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made, i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.

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- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.
- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-state destination.
- C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.
- 7) Order Acceptance Not Doing Business in the Metropolitan Area
- A) Except as otherwise provided in subsections (c)(2) through (c)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:
- i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;

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selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
 - C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
 - D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (d)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
 - C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);

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D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and

E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (d)(2) and (d)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).

B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections (d)(2) and (d)(3).

a) Metropolitan Area Defined
When used in this Part, "metropolitan area" means all territory in the State of

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~~Illinois lying within the corporate boundaries of the City of Salem in Marion County.~~

b) ~~Mere Solicitation of Orders not Doing Business~~

- 1) ~~For a seller to incur Salem Civic Center Retailers' Occupation Tax liability in a given metropolitan area, the sale must be made in the course of such seller's engaging in the retail business within such metropolitan area. In other words, enough of the selling activity must occur within the metropolitan area to justify concluding that the seller is engaged in business within the metropolitan area with respect to that sale.~~
- 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the metropolitan area as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~

e) ~~Seller's Acceptance of Order~~

- 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the metropolitan area or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan area or by someone working out of such place of business, the seller incurs Salem Civic Center Retailers' Occupation Tax liability in that metropolitan area if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. The Department will assume that the seller has accepted the purchase~~

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~~order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.~~

- 2) ~~If a purchase order is accepted outside this State, but the tangible personal property which is sold is in an inventory of the retailer located within the metropolitan area at the time of its sale (or is subsequently produced in the metropolitan area), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in the metropolitan area) will determine where the seller is engaged in business for Salem Civic Center Retailers' Occupation Tax purposes with respect to such sale.~~

d) ~~Some Considerations that are not Controlling~~

- 1) ~~Delivery of the property within the metropolitan area to the purchaser is not necessary for the seller to incur Salem Civic Center Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intermetropolitan area commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the metropolitan area for the seller to be regarded as being engaged in the business of selling within such metropolitan area with respect to that sale.~~
- 2) ~~The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether or not the seller incurs Salem Civic Center Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the metropolitan area" in the Salem Civic Center Use and Occupation Tax Law refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company vs. Department of Finance et al., 383 Ill. 136 (1943), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~

e) ~~Place of Business Where Long Term or Blanket Contracts are Involved Under a long term blanket or master contract which (though definite as to price~~

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~~and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Salem Civic Center Retailers' Occupation Tax purposes with respect to such orders.~~

- f) ~~Sales Through Vending Machines~~
~~The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when such sales are made.~~
- g) ~~Sales from Vehicles Carrying Uncommitted Stock of Goods~~
~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made the vehicle carrying such stock of goods for sale being regarded as a portable place of business.~~
- h) ~~Sales of Coal or Other Minerals~~
~~For the purpose of determining the tax that is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~
- 1) ~~A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~
- 2) ~~A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the metropolitan area and transports it over its own line to an out-of-State destination.~~
- 3) ~~A sale by a mineral producer to a wholesaler or retailer for resale would~~

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~~not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the Salem Civic Center Retailers' Occupation Tax on that sale will go to the metropolitan area where the retailer is located.~~

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

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- 1) Heading of the Part: Non-Home Rule Municipal Retailers Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 693
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
693.115	Amend
- 4) Statutory Authority: 65 ILCS 5/8-11-1.3
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3518; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 693

NON-HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX

Section

693.101	Nature of the Non-Home Rule Municipal Retailers' Occupation Tax
693.105	Registration and Returns
693.110	Claims to Recover Erroneously Paid Tax
693.115	Jurisdictional Questions
693.120	Retailers' Occupation Tax Regulations
693.125	Penalties, Interest and Procedures
693.130	Ordinance Filing Deadlines; When Tax Rate Change Applies

AUTHORITY: Implementing the Non-Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1.3] and authorized by Section 2505-15 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-15].

SOURCE: Adopted at 24 Ill. Reg. 17831, effective November 28, 2000; amended at 32 Ill. Reg. 2829, effective February 8, 2008; emergency amendment at 38 Ill. Reg. 4151, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 693.115 Jurisdictional Questions

- a) [Municipal and Municipality Defined](#)
[When used in this Part, "municipal" and "municipality" mean a city, village or incorporated town, including an incorporated town that has superseded a civil township.](#)

- b) [Retailer's Selling Activities Determine Taxing Jurisdiction](#)
 - 1) [The Non-Home Rule Municipal Retailers' Occupation Tax Act \[65 ILCS 5/8-11-1.3\] authorizes non-home rule municipalities to impose a tax on those engaged in the business of selling tangible personal property at retail within the municipality. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is](#)

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engaged in the business of selling that can impose the tax. Automatic Voting Machs. v. Daley, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing Mahon v. Nudelman, 377 Ill. 331 (1941) and Standard Oil Co. v. Dep't of Finance, 383 Ill. 136 (1943)); see also Young v. Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the municipality to impose tax on retailers who conduct business in the municipality, the Non-Home Rule Municipal Retailers' Occupation Tax Act links the retailer's tax liability to where it principally enjoys the benefits of government services. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 32 (citing Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (b)(1) and (b)(2), a seller incurs Non-Home Rule Municipal Retailers' Occupation Tax in the municipality if its predominant and most important selling activities take place in the municipality. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 322-23 (1943); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraphs 30 through 35.
- c) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations

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- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (c)(2) through (c)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.
- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately; or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales From Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried is the place at which the sales and deliveries happen to be made, i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.

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- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.
- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-state destination.
- C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as provided in this Section.
- 7) Order Acceptance Not Doing Business in the Municipality
- A) Except as otherwise provided in subsections (c)(2) through (c)(6), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:
- i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;

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selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
 - C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
 - D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (d)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
 - B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
 - C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);

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D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and

E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (d)(2) and (d)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).

B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections (d)(2) and (d)(3).

a) ~~Municipal and Municipality Defined~~

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~~When used in this Part, "municipal" and "municipality" mean a city, village, or incorporated town, including an incorporated town that has superseded a civil township.~~

b) ~~Mere Solicitation of Orders Not Doing Business~~

1) ~~For a seller to incur Non-Home Rule Municipal Retailers' Occupation Tax liability in a given municipality, the sale must be made in the course of the seller's engaging in the retail business within that municipality. In other words, enough of the selling activity must occur within the municipality to justify concluding that the seller is engaged in business within the municipality with respect to that sale.~~

2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where the orders were subject to acceptance outside the taxing jurisdiction and title passed outside the jurisdiction, with the goods being shipped from outside the jurisdiction to the purchaser in the jurisdiction, did not constitute engaging in the business of selling within the jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the municipality as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~

e) ~~Seller's Acceptance of Order~~

1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of that place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order that is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of that place of business, the seller incurs Non-Home Rule Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. The Department will assume that the seller has accepted the purchase order at~~

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~~the place of business at which the seller receives the purchase order from the purchaser in the absence of clear proof to the contrary.~~

- 2) ~~If a purchase order is accepted outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within the municipality at the time of its sale (or is subsequently produced in the municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in the municipality) will determine where the seller is engaged in business for Non-Home Rule Municipal Retailers' Occupation Tax purposes with respect to the sale.~~

d) ~~Some Considerations That Are Not Controlling~~

- 1) ~~Delivery of the property within the municipality to the purchaser is not necessary for the seller to incur Non-Home Rule Municipal Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intermunicipality commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the municipality for the seller to be regarded as being engaged in the business of selling within the municipality with respect to that sale.~~
- 2) ~~The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether the seller incurs Non-Home Rule Municipal Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in such municipality" in the Non-Home Rule Municipal Retailers' Occupation Tax Act refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company vs. Department of Finance et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~

e) ~~Place of Business Where Long-Term or Blanket Contracts Are Involved~~

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~~Under a long term blanket or master contract that (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Non-Home Rule Municipal Retailers' Occupation Tax purposes with respect to the orders.~~

- f) ~~Sales Through Vending Machines~~
~~The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.~~
- g) ~~Sales from Vehicles Carrying Uncommitted Stock of Goods~~
~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made—the vehicle carrying the stock of goods for sale being regarded as a portable place of business.~~
- h) ~~Sales of Coal or Other Minerals~~
~~For the purpose of determining the tax that is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.~~
- 1) ~~A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.~~
- 2) ~~A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the municipality and transports it to an out-of-State destination.~~

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- 3) ~~A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the Non-Home Rule Municipal Retailers' Occupation Tax on that sale will go to the municipality where the retailer is located.~~

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: County Motor Fuel Tax
- 2) Code Citation: 86 Ill. Adm. Code 695
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
695.115	Amend
- 5) A Complete Description of the Subjects and Issues Involved: These proposed regulations provide guidance for retailers to determine what local taxes they incur based on the location where they are "engaged in the business of selling tangible personal property." The Department's current regulation governing local jurisdictional issues was invalidated by the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130. The proposed rule contains three basic parts. In subsection (b), the rulemaking sets out three core principles underlying determinations for local occupation tax sourcing. As the court in *Hartney* emphasized, a fact-intensive inquiry into the composite of activities that comprise a retailer's business must be analyzed. Subsection (c) applies these principles to commonly occurring types of retail transactions, thereby providing guidance to the vast majority of retailers operating in Illinois. Subsection (d) then applies these principles to retailers that engage in selling activities in multiple jurisdictions. This subsection establishes several primary factors to be used in determining local occupation tax sourcing, as well as several secondary factors to be used when the primary factors, alone, are not dispositive. It also sets out guidance to be used when a determination is very close, due to the fact that a retailer's activities are spread throughout so many jurisdictions. In this case, the rulemaking provides that the Department will evaluate all the factors in keeping with the principle articulated in *Hartney* that a retailer incurs tax in the jurisdiction where it "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." The regulation reiterates *Hartney's* emphasis on the Department's ability to look through the form of a putatively multijurisdictional transaction to its substance in determining where enough of the business of selling takes place to subject it to local occupation taxes. Please note that this rulemaking differs from the emergency rule currently in effect in one important way; it rulemaking does not contain the subsection, currently found in the emergency rules, entitled, "Long Term or Blanket Contracts." In other respects, the rules are substantively identical.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- 7) Will this rulemaking replace any emergency rule currently in effect? Yes. 38 Ill. Reg. 3520; February 7, 2014
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St. 7th Floor
Chicago IL 60601
- 312/814-4680
fax: 312/814-4344
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers; jurisdictions that receive tax revenue under this Part
- B) Reporting, bookkeeping or other procedures required for compliance:
Bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 695
COUNTY MOTOR FUEL TAX

Section

695.101	Nature of the County Motor Fuel Tax
695.105	Registration and Returns
695.110	Claims to Recover Erroneously Paid Tax
695.115	Jurisdictional Questions
695.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
695.125	Penalties, Interest and Procedures
695.130	Effective Date

AUTHORITY: Implementing the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1] and authorized by Section 2505-95 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-95].

SOURCE: Adopted at 25 Ill. Reg. 4922, effective March 23, 2001; emergency amendment at 38 Ill. Reg. 4164, effective January 22, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. _____, effective _____.

Section 695.115 Jurisdictional Questions

- a) County Defined
When used in this Part, "county" means any one of the counties of DuPage, Kane or McHenry authorized under the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1] to impose a County Motor Fuel Tax.

- b) Retailer's Selling Activities Determine Taxing Jurisdiction
 - 1) The County Motor Fuel Tax Law authorizes the county board of the counties of DuPage, Kane and McHenry counties to impose a tax on those engaged in the county in the business of selling motor fuel at retail within the county. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of

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selling that can impose the tax. *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing *Mahon v. Nudelman*, 377 Ill. 331 (1941) and *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136 (1943)); see also *Young v. Hulman*, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of Selling at retail and not on the Sale itself"). By allowing the county to impose tax on retailers who conduct business in the county, the County **Motor Fuel Tax Law** links the retailer's tax liability to where it principally enjoys the benefits of government services. *Svithiod Singing Club v. McKibbin*, 381 Ill. 194, 199 (1942).

- 2) Illinois Supreme Court – Fact-specific Inquiry. The Illinois Supreme Court has held that the occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price." *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, **paragraph 32** (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)).
 - 3) Determination of Taxing Jurisdiction. Applying the provisions in subsections (b)(1) and (b)(2), a seller incurs County **Motor Fuel Tax in the county** if its predominant and most important selling activities take place in the county. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322-23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, **paragraphs 30 through 35.**
- c) Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations
- 1) In General. For most retailers, the jurisdiction in which they are engaged in the business of selling is not open to reasonable dispute because it is

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obvious where the most significant selling activities take place. Retailers engaged in common selling operations, with a clear location of predominant selling activities, constitute the vast majority of retailers in the State. Subsections (c)(2) through (c)(7) provide guidance on applying the fact-specific "composite of selling activities" test to common and longstanding selling operations.

- 2) Over-the-counter Sales. When a person makes an over-the-counter sale of tangible personal property in a jurisdiction and the purchaser takes possession of the property immediately, or the seller ships the property to the purchaser from the location where the sale was made, then the seller is engaged in the business of selling with respect to that sale in the jurisdiction where the over-the-counter sale occurred.
- 3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale. Chemed Corp., Inc. v. Department of Revenue, 186 Ill. App. 3d 402 (4th Dist. 1989).
- 4) Sales Through Vending Machines. The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.
- 5) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made; i.e., the vehicle carrying the stock of goods for sale is regarded as a portable place of business.
- 6) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction where the coal or other mineral mined in Illinois is extracted from the earth. For

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purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.

A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.

B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an out-of-state destination.

C) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling as set forth in this Section.

7) Order Acceptance Not Doing Business in the County

A) Except as otherwise provided in subsections (c)(2) through (c)(7), acceptance of purchase orders for the sale of tangible personal property in a jurisdiction does not constitute engaging in the business of selling in the jurisdiction in which orders are accepted if the following conditions are met:

i) the seller has no other selling activity in the jurisdiction except receipt and acceptance of purchase orders;

ii) all orders for the purchase of tangible personal property are submitted to the seller in the jurisdiction by means of telephone or Internet; and

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iii) the seller's employees or agents who accept purchase orders record information relayed by the customer (such as purchaser's name and address; price, type and quantity of items; and method of payment and delivery), but do not negotiate or exercise discretion on behalf of the seller.

B) The place of engaging in the business of selling for retailers who accept purchase orders in a jurisdiction and who meet the criteria set forth in subsection (c)(7)(A) shall be determined based on the composite of selling activities engaged in outside the jurisdiction in which purchase orders are accepted, in accordance with subsections (d)(2) through (d)(4).

d) Application of Composite of Selling Activities Test to Multi-Jurisdictional Intrastate Retailers

1) In General. Some sellers are engaged in retail operations with selling activities in multiple jurisdictions in Illinois that do not fall within any of the categories identified in subsection (c). The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321 (1943). Consequently, "it is . . . not possible to prescribe by definition which of the many activities must take place in (a jurisdiction) to constitute it an occupation conducted in (that jurisdiction). . . . (I)t is necessary to determine each case according to the facts which reveal the method by which the business was conducted." Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 321-22 (1943); see also Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 36. The location of the selling activities most important to each retailer's business of selling dictates the jurisdiction where it is engaged in the business of selling.

2) Primary Factors. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions should consider the following selling activities to determine where they are engaged in the business of selling and, therefore, the correct taxing jurisdiction:

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- A) Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller, Automatic Voting Machs. v. Daley, 409 Ill. 438, 440 (1951); Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
- B) Location where offers are prepared and made, Automatic Voting Machs. v. Daley, 409 Ill. 438, 441, 452 (1951);
- C) Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316 (1943); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); and
- D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 401, 406 (1st Dist. 1976); Chemed Corp., Inc. v. State, 186 Ill. App. 3d 402, 421-22 (4th Dist. 1989).
- 3) Secondary Factors. If, after consideration of the factors listed in subsection (d)(2), the jurisdiction in which the seller is engaged in the business of selling is unclear, the following additional factors should be considered to resolve the issue:
- A) Location where marketing and solicitation occur, Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62;
- B) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
- C) Location of the delivery of the property to the purchaser, Ex-Cell-O Corp. v. McKibbin, 383 Ill. 316, 323 (1943);
- D) Location where title passes, Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); and

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E) Location of the retailer's ordering, billing, accounts receivable and other administrative functions, Federal Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 68 (1968); Automatic Voting Machs. v. Daley, 409 Ill. 438, 452 (1951); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 62.

4) Principles Underlying Determination of Seller's Location

A) When a retailer's selling activities are spread through multiple Illinois jurisdictions, and when the question of where the retailer is engaged in the business of selling presents a close question, the Department will evaluate the factors in subsections (d)(2) and (d)(3) in keeping with the principle that the retailer incurs local retailers' occupation tax in the jurisdiction where it "enjoyed the greater part of governmental protection (and) benefitted by being conducted under that protection." Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 34 (quoting Svithiod Singing Club v. McKibbin, 381 Ill. 194, 197 (1942)).

B) The Department "may look through the form of a putatively (multijurisdictional) transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. Marshall & Huschart Mach. Co. v. Dep't of Revenue, 18 Ill. 2d 496, 501 (1960); Fed. Bryant Mach. Co. v. Dep't of Revenue, 41 Ill. 2d 64, 67 (1968); Int'l-Stanley Corp. v. Dep't of Revenue, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); Hartney Fuel Oil Co. v. Hamer, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities identified in subsections (d)(2) and (d)(3).

a) County Defined
When used in this Part, "county" means any one of the counties of DuPage, Kane or McHenry authorized under the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1] to impose a County Motor Fuel Tax.

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- b) ~~Mere Solicitation of Orders Not Doing Business~~
- 1) ~~For a seller to incur County Motor Fuel Tax liability in a given county, the sale must be made in the course of such seller's engaging in the retail business within such county. In other words, enough of the selling activity must occur within the county to justify concluding that the seller is engaged in business within the county with respect to that sale.~~
 - 2) ~~For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the county as the taxing jurisdiction as much as to the State as the taxing jurisdiction.~~
- e) ~~Seller's Acceptance of Order~~
- 1) ~~Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the county or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order that is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the county or by someone working out of such place of business, the seller incurs County Motor Fuel Tax liability in that county if the sale is at retail and the purchaser receives the physical possession of the motor fuel in Illinois. The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.~~
 - 2) ~~If a purchase order is accepted outside the county, but the motor fuel that~~

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~~is sold is in an inventory of the retailer located within the county at the time of its sale (or is subsequently produced in the county), then delivered in Illinois to the purchaser, the place where the motor fuel is located at the time of the sale (or subsequent production in the county) will determine where the seller is engaged in business for County Motor Fuel Tax purposes with respect to such sale.~~

- d) ~~Some Considerations that are Not Controlling~~
- 1) ~~Delivery of the motor fuel within the county to the purchaser is not necessary for the seller to incur County Motor Fuel Tax liability. It is sufficient that the purchaser receives the physical possession of the motor fuel somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercounty commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the county for the seller to be regarded as being engaged in the business of selling within such county with respect to that sale.~~
 - 2) ~~The point at which the motor fuel will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether the seller incurs County Motor Fuel Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the county" in the County Motor Fuel Tax Law refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company vs. Department of Finance et al., 383 Ill. 136 (1943), for a similar problem under the Illinois Retailers' Occupation Tax Act.)~~
- e) ~~Place of Business Where Long Term or Blanket Contracts are Involved~~
~~Under a long term blanket or master contract that (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for County Motor Fuel Tax purposes with respect to such orders.~~
- f) ~~Sales from Vehicles Carrying Uncommitted Stock of Goods~~

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~~The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which motor fuel is being carried for sale is the place at which such sales and deliveries happen to be made -- the vehicle carrying such motor fuel.~~

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

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- 1) Heading of the Part: Abandoned Residential Property Municipality Relief Program
- 2) Code Citation: 47 Ill. Adm. Code 381
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
381.107	Amend
381.201	Amend
381.202	Amend
381.205	Amend
- 4) Statutory Authority: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.31(a) of the Illinois Housing Development Act [20 ILCS 3805/7.31(a)]
- 5) Effective Date of Rule: March 10, 2014
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: August 9, 2013; 37 Ill. Reg. 12670
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between Proposal and Final Version:

Section 381.201:

 - The first paragraph was deleted in its entirety.
 - Subsection (a) was deleted in its entirety and the following was added"
 - "a) Distribution of Funds
Subject to the annual receipt of funds, the Authority shall first deduct the funds it requires to meet its administrative expenses as described in Section 381.107. It shall distribute the

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remainder of the funds among the 4 geographic set-asides as described in subsection (b)."

- Subsection (b) was amended to add the following after "b)"

"Geographic Set-Asides

1)".

- Subsection (b) was amended to add ". The Applicants shall be divided into 4 geographic set-aside categories with the money divided" after "Property".
- Subsection (b)(1) was amended to strike "1)" and add "A".
- Subsection (b)(1) was amended to strike "2)" and add "B".
- Subsection (b)(1) was amended to strike "3)" and add "C".
- Subsection (b)(1) was amended to strike "4)" and add "D".
- Subsection (b)(1)(4) was amended to strike "The Grants made pursuant to this subsection (b)(4) shall be based on:".
- Subsections (b)(1)(4)(A)&(B) were deleted in their entirety.
- Subsection (c) was amended to strike "c)" add "2)" and strike "Where" and add "When" in the first line.
- Subsection (c) was amended to strike "areas" and add "set-asides" and after "(b)" add "(1)" in the second line.
- The following was added after subsection (c):

"3) *Grants distributed to the municipalities and counties under subsection (b)(1)(D) shall be based on areas of greatest need within these counties, which shall be determined, to the extent practicable, proportionately on the amount of fees paid to the respective clerks of the courts within these counties, and on any other factors that the Authority deems appropriate* [20 ILCS 3805/7.31(b)(4)]. The

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Authority will meet the statutory requirement to provide funding to areas of greatest need within this 96-county set-aside primarily through subsection (c)(1)(A) (Need). Instances in which it is impracticable to base Grant awards proportionately on the amount of fees paid to the respective clerks of the court include, but are not limited to: when no application is received within the county; when no application received in the county meets the minimum application requirements; when funding is unavailable due to inadequate receipts; and when the amount collected by a county is less than the cost to administer the Grant. Additionally, proportionate share funding may be impracticable when there are extraordinary circumstances warranting a larger Grant amount than the fees that have been remitted by that county. Extraordinary circumstances include such situation as: when an Applicant demonstrates exemplary capacity, need and impact; when there has been a natural disaster, a significant loss of employment, or other event generating extreme need within a county; and as demonstrated in the materials provided by the Applicant.

c) Application Ranking

- 1) The Authority will rank Applications against other Applications in the same geographic set-aside category based on the criteria in subsections (c)(1)(A) through (E):

A) Need

Applicants should clearly demonstrate need within the jurisdiction. This demonstration may include, but is not limited to, the fees paid to the clerks of the court in the county, along with historical information on the financial burden that maintaining and demolishing abandoned residential properties has imposed on the Applicant. For the geographic set-aside referenced in subsection (b)(1)(D), and when the Treasurer provides regular and reliable data to the Authority on receipts for each county, the Authority will consider the amount remitted from the clerk of the court in the Applicant's county, along with information provided by the Applicant, to determine which Applications demonstrate the greatest need for the Grant and therefore will receive the highest score.

B) Capacity

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Applicants should clearly demonstrate capacity to undertake the proposed activities. This demonstration may include, without limitation, evidence that the Applicant has administered similar grant programs.

- C) Impact
Applicants should clearly demonstrate that the Grant will have a strong positive impact, whether upon the entire jurisdiction or an identified portion of the jurisdiction.
- D) Budget and Cost Reasonableness
Applicants should provide an estimated budget and demonstrate a systematic, thorough and well-documented approach to ensuring that costs are reasonable, including any costs associated with third party vendors.
- E) Readiness to Proceed
Applicants should clearly demonstrate a thorough, detailed and reasonable work plan for the expeditious completion of proposed reimbursable activities.

- 2) The Authority will equally weigh these criteria unless adjustment is necessary to further program requirements or legislative findings. In the event the Authority seeks to revise the weighting of these criteria, the Authority will propose amendments to this Part."

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rule replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The amendments are established to carry out the Abandoned Residential Property Municipality Relief Program. The purpose of these amendments is to create uniform procedures in order to operate the Program.
- 16) Information and questions regarding this adopted rule should be directed to:

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Kristi S. Poskus
Deputy General Counsel
Legal Department
Illinois Housing Development Authority
401 N. Michigan Avenue, Suite 700
Chicago IL 60611

312/836-7416

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

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TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 381

ABANDONED RESIDENTIAL PROPERTY MUNICIPALITY RELIEF PROGRAM

SUBPART A: GENERAL RULES

Section:

- 381.101 Authority
- 381.102 Purpose and Objectives
- 381.103 Definitions
- 381.104 Compliance with Federal and State Law
- 381.105 Forms and Procedures for the Program
- 381.106 Fees and Charges
- 381.107 Authority Administrative Expenses
- 381.108 Amendment
- 381.109 Severability
- 381.110 Gender and Number
- 381.111 Non-Discrimination
- 381.112 Titles and Captions

SUBPART B: GRANTS TO MUNICIPALITIES AND COUNTIES

Section:

- 381.201 Grants to Municipalities and Counties
- 381.202 Abandoned Residential Property
- 381.203 Eligible Uses of Grant Funds
- 381.204 Application Cycle
- 381.205 Application Requirements
- 381.206 Review of Applications
- 381.207 Grant Administration
- 381.208 Funding of Grants
- 381.209 Reporting Requirements

AUTHORITY: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.31(a) of the Illinois Housing Development Act [20 ILCS 3805/7.31(a)].

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SOURCE: Adopted at 37 Ill. Reg. 11327, effective July 3, 2013; amended at 38 Ill. Reg. 6678, effective March 10, 2014.

SUBPART A: GENERAL RULES

Section 381.107 Authority Administrative Expenses

Subject to approval of the Department of Revenue, the Authority shall be entitled to deduct from each Appropriation, subject to the annual receipt of funds, prior to making any Grants, an amount not to exceed 4% of each Appropriation for expenses associated with the administration of the Program, including, without limitation, expenses for staff salaries and benefits for time spent on design and administration of the Program; expenses incurred in performing outreach activities and providing technical assistance to the Applicants; the use of the Authority's equipment for Program purposes; the cost of office space and utilities incurred in connection with the Program; and any other expenses incurred in the administration of the Program. The Authority shall maintain a detailed accounting of its administrative expenses, using the generally accepted accounting principles (GAAP) of the Financial Standards Board of the ~~American~~ Institute of Certified Public Accountants as contained in the publication entitled AICPA Professional Standards, 1211 Avenue of the Americas, New York NY 10036-8775 (June 2012, no later editions are incorporated). These records shall be available to the public for review.

(Source: Amended at 38 Ill. Reg. 6678, effective March 10, 2014)

SUBPART B: GRANTS TO MUNICIPALITIES AND COUNTIES

Section 381.201 Grants to Municipalities and Counties

~~The Authority shall distribute funds from annual Appropriations in accordance with the following priorities:~~

- a) Distribution of Funds
~~Subject to the annual receipt of funds, the Authority shall first deduct the funds it requires to meet its administrative expenses as described in Section 381.107. It shall distribute the remainder of the funds among the 4 geographic set-asides as described in section (b). To the Authority for its administrative expenses.~~
- b) Geographic Set-Asides

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- 1) After distributing the amount necessary for the purposes of subsection (a), the Authority shall make Grants to municipalities and counties for use in connection with Abandoned Residential Property. The Applicants shall be divided into 4 geographic set-aside categories with the money divided as follows:
- A4) 30% of the moneys in the Fund that have been appropriated, subject to the annual receipt of funds, shall be used to make Grants to municipalities in the County of Cook (other than the City) and to the County of Cook.
- B2) 25% of the moneys in the Fund that have been appropriated, subject to the annual receipt of funds, shall be used to make Grants to the City of Chicago.
- C3) 30% of the moneys in the Fund that have been appropriated, subject to the annual receipt of funds, shall be used to make Grants to the municipalities in the Collar Counties and to the Collar Counties.
- D4) 15% of the moneys in the Fund that have been appropriated, subject to the annual receipt of funds, shall be used to make Grants to municipalities in the State (other than the municipalities in the County of Cook and the Collar Counties), and to the other counties in the State (other than the County of Cook and the Collar Counties). ~~The Grants made pursuant to this subsection (b)(4) shall be based proportionately on the amount of fees paid to the respective clerks of the court in the affected counties and other factors as deemed appropriate by the Authority.~~
- 2e) ~~When~~ Where the jurisdiction of a municipality is included within more than one of the geographic ~~set-aside areas~~ set forth in subsection (b)(1), the Authority may elect to fully fund the Application from one of the relevant geographic areas.
- 3) Grants distributed to the municipalities and counties under subsection (b)(1)(D) shall be based on areas of greatest need within these counties, which shall be determined, to the extent practicable, proportionately on the amount of fees paid to the respective clerks of the courts within these

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counties, and on any other factors that the Authority deems appropriate [20 ILCS 3805/7.31(b)(4)]. The Authority will meet the statutory requirement to provide funding to areas of greatest need within this 96-county set-aside primarily through subsection (c)(1)(A) (Need). Instances in which it is impracticable to base Grant awards proportionately on the amount of fees paid to the respective clerks of the court include, but are not limited to: when no application is received within the county; when no application received in the county meets the minimum application requirements; when funding is unavailable due to inadequate receipts; and when the amount collected by a county is less than the cost to administer the Grant. Additionally, proportionate share funding may be impracticable when there are extraordinary circumstances warranting a larger Grant amount than the fees that have been remitted by that county. Extraordinary circumstances include such situation as: when an Applicant demonstrates exemplary capacity, need and impact; when there has been a natural disaster, a significant loss of employment, or other event generating extreme need within a county; and as demonstrated in the materials provided by the Applicant.

c) Application Ranking

1) The Authority will rank Applications against other Applications in the same geographic set-aside category based on the criteria in subsections (c)(1)(A) through (E):

A) Need

Applicants should clearly demonstrate need within the jurisdiction. This demonstration may include, but is not limited to, the fees paid to the clerks of the court in the county, along with historical information on the financial burden that maintaining and demolishing abandoned residential properties has imposed on the Applicant. For the geographic set-aside referenced in subsection (b)(1)(D), and when the Treasurer provides regular and reliable data to the Authority on receipts for each county, the Authority will consider the amount remitted from the clerk of the court in the Applicant's county, along with information provided by the Applicant, to determine which Applications demonstrate the greatest need for the Grant and therefore will receive the highest score.

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- B) Capacity
Applicants should clearly demonstrate capacity to undertake the proposed activities. This demonstration may include, without limitation, evidence that the Applicant has administered similar grant programs.
- C) Impact
Applicants should clearly demonstrate that the Grant will have a strong positive impact, whether upon the entire jurisdiction or an identified portion of the jurisdiction.
- D) Budget and Cost Reasonableness
Applicants should provide an estimated budget and demonstrate a systematic, thorough and well-documented approach to ensuring that costs are reasonable, including any costs associated with third party vendors.
- E) Readiness to Proceed
Applicants should clearly demonstrate a thorough, detailed and reasonable work plan for the expeditious completion of proposed reimbursable activities.
- 2) The Authority will equally weigh these criteria unless adjustment is necessary to further program requirements or legislative findings. In the event the Authority seeks to revise the weighting of these criteria, the Authority will propose amendments to this Part.

(Source: Amended at 38 Ill. Reg. 6678, effective March 10, 2014)

Section 381.202 Abandoned Residential Property

Abandoned ~~Residential Property~~residential property shall mean residential real estate that:

- a) Either:
- 1) Is not occupied by any mortgagor or lawful occupant as a principal residence; or

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- 2) Contains an incomplete structure if the real estate is zoned for residential development, when the structure is empty or otherwise uninhabited and is in need of maintenance, repair or securing; and
- b) With respect to which, either:
 - 1) Two or more of the following conditions are shown to exist:
 - A) Construction was initiated on the property and was discontinued prior to completion, leaving a building unsuitable for occupancy, and no construction has taken place in 6 months;
 - B) Multiple windows on the property are boarded up, closed off or smashed through, broken off or unhinged, or multiple window panes are broken and unrepaired;
 - C) Doors on the property are smashed through, broken off, unhinged or continuously unlocked;
 - D) The property has been stripped of copper or other materials, or interior fixtures to the property have been removed;
 - E) Gas, electrical or water services to the entire property have been terminated;
 - F) One or more written statements of the mortgagor or the mortgagor's personal representative or assigns, including documents of conveyance, indicate a clear intent to abandon the property;
 - G) Law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the property in the last 6 months;
 - H) The property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction;

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF ADOPTED AMENDMENTS

- I) The local police, fire or code enforcement authority has requested the owner or other interested or authorized party to secure or winterize the property due to the local authority declaring the property to be an imminent danger to the health, safety and welfare of the public;
 - J) The property is open and unprotected and in reasonable danger of significant damage due to exposure to the elements, vandalism or freezing; or
 - K) Other evidence indicates a clear intent to abandon the property; or
- 2) The real estate is zoned for residential development and is a vacant lot that is in need of maintenance, repair and securing.

(Source: Amended at 38 Ill. Reg. 6678, effective March 10, 2014)

Section 381.205 Application Requirements

Each Application shall include the information required by this Section and any additional information the Authority may require to promote the efficient administration of the Program.

- a) **Qualifications.** Each Applicant shall document qualifications to complete the Program activities. These qualifications shall without limitation include the following:
 - 1) The applicant is a county or municipality;
 - 2) The Applicant has the experience or expertise to manage the activities listed in Section 381.203 for which grant funds will be utilized;
 - 3) The Applicant has demonstrated its capacity for effective fiscal management. This is typically proven through a third-party audit; and
 - 4) The Applicant is willing and able to abide by all program requirements.
- b) **Applicant's Capacity.** Each Applicant shall document its capacity to administer Program funds for Eligible Uses.

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NOTICE OF ADOPTED AMENDMENTS

- c) Activities to be Undertaken. Each Applicant shall list which Eligible Uses are to be undertaken with Program funds, including, without limitation, those activities outlined in Section [381385](#).203.
- d) Time for Expending. Each Applicant shall include a budget and timeline schedule for performing the Eligible Uses of Program funds outlined in the Application.

(Source: Amended at 38 Ill. Reg. 6678, effective March 10, 2014)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Live Adult Entertainment Facility Surcharge Act
- 2) Code Citation: 86 Ill. Adm. Code 900
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
900.105	New
900.110	New
900.115	New
900.120	New
900.125	New
900.130	New
- 4) Statutory Authority: 35 ILCS 175
- 5) Effective Date of Rules: March 10, 2014
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 37 Ill. Reg. 18832; November 22, 2013
- 10) Has JCAR issued a Statement of Objection to this Rulemaking? No
- 11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED RULES

- 15) Summary and Purpose of Rulemaking: The proposed Part 900 implements PA 97-1035, the Live Adult Entertainment Facility Surcharge Act, codified at 35 ILCS 175 ("Act"). The Act imposes an annual surcharge upon each operator that operates a Live Adult Entertainment Facility, commonly known as a striptease club. The surcharge is \$3 per person admitted to a facility; or alternatively, \$25,000 if gross receipts taxable under Retailers' Occupation Tax Act are equal to or greater than \$2,000,000; \$15,000 if gross receipts taxable under Retailers' Occupation Tax Act are equal to or greater than \$500,000 but are less than \$2,000,000; or \$5,000 if gross receipts taxable under Retailers' Occupation Tax Act are less than \$500,000. "Live adult entertainment facility" means a striptease club or other business that serves or permits the consumption of alcohol on its premises, and, during at least 30 consecutive or nonconsecutive days in a calendar year, offers or provides activities by employees, agents, or contractors of the business that involve nude or partially denuded individuals that, when considered as a whole, appeal primarily to an interest in nudity or sex." The proposed rules address the nature and rate of the surcharge, persons subject to the surcharge, tax returns that must be filed by an operator, books and records that must be kept by an operator, and penalties and interest that may be assessed against an operator for failure to comply with the Act.

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

Richard S. Wolters
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield IL 62794

217/782-2844

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

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED RULES

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 900
LIVE ADULT ENTERTAINMENT FACILITY SURCHARGE ACT

Section	
900.105	Definitions
900.110	Nature and Rate of the Surcharge
900.115	Persons Subject to the Surcharge
900.120	Returns
900.125	Books and Records
900.130	Penalties, Interest and Procedures

AUTHORITY: Implementing the Live Adult Entertainment Facility Surcharge Act [35 ILCS 175] and authorized by Section 30 of the Live Adult Entertainment Facility Surcharge Act.

SOURCE: Adopted at 38 Ill. Reg. 6691, effective March 10, 2014.

Section 900.105 Definitions

"Act" means the Live Adult Entertainment Facility Surcharge Act [35 ILCS 175].

"Admission" means entry by a person into a live adult entertainment facility [35 ILCS 175/5].

"Department" means the Department of Revenue [35 ILCS 175/5].

"Gross receipts" has the meaning ascribed to the term in Section 1 of the Retailers' Occupation Tax Act [35 ILCS 120/1].

"Live adult entertainment facility" means a striptease club or other business that meets all of the following conditions:

the business serves alcohol or permits the consumption of alcohol on its premises;

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during at least 30 consecutive or nonconsecutive days in a calendar year, the business offers or provides activities by employees, agents, or contractors of the business that involve nude or partially denuded individuals. Customers of the business participating in activities such as wet tee-shirt contests are not considered employees, agents, or contractors; and

the activities by the employees, agents, or contractors, when considered as a whole, appeal primarily to an interest in nudity or sex. [35 ILCS 175/5]

"Nude or partially denuded individual" means an individual who is:

entirely unclothed; or

clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is female, or any portion of the genitals or buttocks. [35 ILCS 175/5]

"Operator" means any person who owns or operates a live adult entertainment facility in this State [35 ILCS 175/5].

"Premises" means the property on which the adult entertainment facility is located and all property contiguous to the live adult entertainment facility owned or leased by, or otherwise under the control of, the operator, including beer gardens and parking lots. Property that is contiguous to a live adult entertainment facility but is not owned or leased by, or otherwise under the control of, the operator will nonetheless be considered part of the facility's "premises" if alcohol is served or consumed there and if customers can move freely between the contiguous property and the live adult entertainment facility.

"ROTA" means the Retailers' Occupation Tax Act [35 ILCS 120].

Section 900.110 Nature and Rate of the Surcharge

- a) Nature and Rate of Tax
An annual surcharge is imposed upon each operator who operates a live adult entertainment facility in this State. By January 20, 2014, and by January 20 of

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each year thereafter, each operator shall elect to pay the surcharge according to one of the two methods set forth in this Section.

- 1) *An operator who elects to be subject to this subsection (a)(1) shall pay to the Department a surcharge imposed upon admissions to a live adult entertainment facility operated by the operator in this State in an amount equal to \$3 per person admitted to that live adult entertainment facility. This subsection (a)(1) does not require a live entertainment facility to impose a fee on a customer of the facility. An operator has the discretion to determine the manner in which the facility derives the moneys required to pay the surcharge imposed under this Section. In the event that an operator has not filed the applicable returns under ROTA for a full calendar year prior to any January 20, then the operator shall pay the surcharge pursuant to this subsection (a)(1) for moneys owed to the Department subject to the Act for the previous calendar year.*
- 2) *An operator may, in the alternative, pay to the Department the surcharge as follows:*
 - A) *If the gross receipts received by the live adult entertainment facility during the preceding calendar year, upon the basis of which a tax is imposed under Section 2 of ROTA, are equal to or greater than \$2,000,000 during the preceding calendar year, the operator shall pay the Department a surcharge of \$25,000.*
 - B) *If the gross receipts received by the live adult entertainment facility during the preceding calendar year, upon the basis of which a tax is imposed under Section 2 of ROTA, are equal to or greater than \$500,000 but less than \$2,000,000 during the preceding calendar year, the operator shall pay to the Department a surcharge of \$15,000.*
 - C) *If the gross receipts received by the live adult entertainment facility during the preceding calendar year, upon the basis of which a tax is imposed under Section 2 of ROTA, are less than \$500,000 during the preceding calendar year, the operator shall pay the Department a surcharge of \$5,000. [35 ILCS 175/10]*

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- b) An operator may elect on an annual basis the method to pay the surcharge and is not bound by a prior election.

Section 900.115 Persons Subject to the Surcharge

- a) *An annual surcharge is imposed upon each operator who operates a live adult entertainment facility in this State [35 ILCS 175/10].*
- b) The Act applies to operators of live adult entertainment facilities.
 - 1) The operator for purposes of the Act is the person or entity that has managerial and operational control of the live adult entertainment facility and retains the revenues from the operations.
 - 2) An owner that contracts with an entity to manage a live adult entertainment facility and pays the entity a contractual sum to manage the facility is the operator for purposes of the Act.
 - 3) A lessor of the real property is not an operator for purposes of the Act if the lessor has leased the premises to a lessee that operates the live adult entertainment facility and the lessor has no interest in the proceeds derived from the live adult entertainment facility except for payments due under the terms of the lease.
 - 4) A person having a security interest in the real estate upon which the live adult entertainment facility is located, the building that houses the live adult entertainment facility, or the contents or fixtures located on the premises, is not an operator for purposes of the Act.
- c) The Act applies to a facility operated as a business that is open to the public. The Act does not apply to private clubs. The following factors are relevant for purposes of determining if an entity is open to the public or is considered a private club:
 - 1) Whether an entity uses genuine selectivity in the admission of its members, reflected, in part, by:

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- A) permanent and formal procedures established to select and approve applicants; and
 - B) strict limitation on the use of the club's facilities and services by members and their guests only.
- 2) Whether the membership exercises substantial and meaningful control over the club's operations, reflected by the occurrence of general meetings and an organizational form that permits members to select officers who direct and manage the club.
 - 3) Whether the club advertises or publicizes its activities, events, services or facilities to nonmembers.
 - 4) Whether the club operates solely for the benefit of its members, or for the profit or benefit of one person or a small group.
 - 5) Whether the club observes formalities appropriate for a private club and adheres to them in practice, e.g., establishing bylaws, holding meetings, recording minutes and issuing and tracking membership.
 - 6) The club's history and purpose.

Section 900.120 Returns

- a) Payment of Surcharge Based on Admissions
 - 1) *For each live adult entertainment facility paying the surcharge based on admissions, the operator must file a return electronically as provided by the Department and remit payment to the Department on an annual basis no later than January 20 covering the previous calendar year. Each return made to the Department must state the following:*
 - A) *the name of the operator;*
 - B) *the address of the live adult entertainment facility and the address of the principal place of business (if that is a different address) of the operator;*

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- C) the total number of admissions to *the facility in the preceding calendar year; and*
 - D) *the total amount of surcharge collected in the preceding calendar year.* [35 ILCS 175/10]
- 2) *A live adult entertainment facility paying the surcharge as set forth in Section 900.110(a)(1) is not required to impose a fee on a customer of the facility. An operator has the discretion to determine the manner in which the facility derives the moneys required to pay the surcharge imposed under the Act.* [35 ILCS 175/10] The total amount of surcharge collected in the preceding calendar year for purposes of subsection (a)(1)(D) of this Section shall be determined by multiplying the total number of admissions to the facility in the preceding calendar year by \$3.
- 3) An operator may remit payment of the surcharge electronically at the time the return is filed. Payment must be remitted no later than January 20 and, if made electronically, must be made in accordance with the Department's rules governing electronic payments (86 Ill. Adm. Code 750.900).
- b) Payment of Surcharge Based on Gross Receipts
- 1) *For each live adult entertainment facility paying the surcharge based on gross receipts, the operator must file a return electronically as provided by the Department and remit payment to the Department on an annual basis no later than January 20 covering the previous calendar year. Each return made to the Department must state the following:*
- A) *the name of the operator;*
 - B) *the address of the live adult entertainment facility and the address of the principal place of business (if that is a different address) of the operator;*
 - C) *the gross receipts received by the live adult entertainment facility during the preceding calendar year, upon the basis of which tax is imposed under Section 2 of ROTA; and*

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- D) *the applicable surcharge from Section 10(a)(2) of the Act to be paid by the operator.* [35 ILCS 175/10]
- 2) An operator may remit payment of the surcharge electronically at the time the return is filed. Payment must be remitted no later than January 20 and, if made electronically, must be made in accordance with the Department's rules governing electronic payments (86 Ill. Adm. Code 750.900).
- 3) *If an operator has not filed the applicable returns under ROTA for a full calendar year prior to any January 20, then the operator may not pay the surcharge based on the gross receipts method and must pay the surcharge based on the number of admissions during the previous calendar year* [35 ILCS 175/10].
- 4) For purposes of determining the gross receipts received by the live adult entertainment facility during the preceding calendar year for purposes of subsection (b)(1)(C), gross receipts are calculated using the total taxable receipts from the prior year's ST-1 Sales and Use Tax and E911 Surcharge Return forms.
- c) An operator that has provided live adult entertainment less than 30 days during the calendar year is not required to file an annual return.
- d) *Notwithstanding any other provision of this Section concerning the time within which an operator may file his or her return, if an operator ceases to operate a live adult entertainment facility, then he or she must file a final return under the Act with the Department not more than one calendar month after discontinuing that business* [35 ILCS 175/10]. A business that has provided live adult entertainment less than 30 days during the calendar year and permanently ceases to provide live adult entertainment is not required to file a final return. A business may cease to provide live adult entertainment for purposes of this Section but continue its operations for other purposes (e.g., operating a bar).
- e) An operator must elect at the time a return is due which method under Section 900.110(a) it uses to calculate the surcharge. An operator may change the method it uses to calculate the surcharge at the time it files its next return.

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- f) *Any operator who fails to make a return or who makes a fraudulent return is guilty of a Class 4 felony [35 ILCS 175/45].*

Section 900.125 Books and Records

- a) *Every operator electing to pay the surcharge pursuant to Section 900.110(a)(1) shall record the admissions of customers subject to the surcharge under the Act [35 ILCS 175/20]. An operator meets its obligations under this subsection if an employee located at the entrance of the live adult entertainment facility sells tickets to customers entering the facility and collects them from the customers after entry to the facility and the operator maintains a daily record of ticket sales in his or her books and records.*
- b) A customer that enters and leaves the facility on multiple occasions need only be counted once by an operator during a 24-hour period, beginning at 8 AM each day, for purposes of the surcharge, if the operator uses a method to verify the customer previously has been counted upon reentry. The method selected may not permit the customer to transfer re-entry privileges to another customer. The following are acceptable, but not exclusive, methods of verification:
- 1) the use of a stamp with indelible ink, the color of which changes daily at 8 AM; or
 - 2) a card permitting re-entry by the customer upon which the date and customer's name have been written with indelible ink and that matches a customer's government-issued identification upon re-entry.
- c) *All of the provisions of Section 7 of ROTA regarding books and records that are not inconsistent with the Act apply, as far as practicable, to the surcharge imposed by the Act to the same extent as if those provisions were included in the Act. References in the incorporated Sections of ROTA to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean operators. [35 ILCS 175/25]*

Section 900.130 Penalties, Interest and Procedures

- a) *All provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Act shall apply.*

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- b) *All the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 13 of ROTA that are not inconsistent with the Act apply, as far as practicable, to the surcharge imposed by the Act to the same extent as if those provisions were included in the Act. References in ROTA Sections to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean operators. [35 ILCS 175/25]*
- c) *Any operator who fails to make a return or who makes a fraudulent return is guilty of a Class 4 felony [35 ILCS 175/45].*
- d) Any person aggrieved by any decision of the Department under this Part may, within 60 days after notice of the decision, protest in writing and request a hearing. Upon receiving a written request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of this Part. The Department shall issue to that person its final administrative decision in the matter. In the absence of a protest and request for a hearing within 60 days, the Department's decision shall become final without any further determination being made or notice given.
- e) *The circuit court of any county in which a hearing is held has the power to review all final administrative decisions of the Department in administering the surcharge imposed under the Act. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101]. [35 ILCS 175/40]*

DEPARTMENT OF AGRICULTURE

NOTICE OF EMERGENCY RULES

- 1) Heading of Part: Forever Green Illinois Program
- 2) Code Citation: 8 Ill. Adm. Code 241
- 3)

<u>Section Number:</u>	<u>Emergency Action:</u>
241.10	New
241.20	New
241.30	New
241.40	New
241.50	New
241.60	New
- 4) Statutory Authority: Section 205-103 of the Civil Administrative Code of Illinois [20 ILCS 205/205-103]
- 5) Effective Date of Rulemaking: March 6, 2014
- 6) This emergency rule will not expire before the 150-day period.
- 7) Date Filed with the Index Department: March 6, 2014
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The authorizing statute expressly gives the Department authority to adopt emergency rules to begin implementation of the Forever Green Program. (20 ILCS 205/205-103(c)) The filing of emergency rules is clearly consistent with the legislature's intent to ensure the timely implementation of the Forever Green Program.

Insect pests and plant diseases can significantly damage the structural integrity of infected trees, as exemplified by the emerald ash borer. It is in the best interest of the public safety and welfare that these rules be established on an emergency basis to afford the Department the opportunity to quickly remove and replace impacted trees before they become a public safety hazard and pose a threat to the general public safety and welfare.

In addition, any potential loss of the funding for this program as a result of the delayed implementation of these rules would constitute a threat to the public interest. The funding for grants pursuant to the Forever Green Illinois Program has only been appropriated for the current fiscal year. Therefore, adoption of emergency rules is

DEPARTMENT OF AGRICULTURE

NOTICE OF EMERGENCY RULES

necessary to ensure that these appropriated funds are used in a timely, appropriate, and fair manner.

Finally, as the Forever Green Program involves the removing and planting of greenery, it is imperative that these rules go into effect in order to assure the public that the greenery will be planted during optimal conditions.

- 10) A Complete Description of the Subjects and Issues Involved: Section 205-103 of the Civil Administrative Code of Illinois (20 ILCS 205/205-103) creates within the Illinois Department of Agriculture the Forever Green Illinois Program. The program is to be administered by the Department of Agriculture as provided in the Code and this Part. The program is established to maintain and beautify greenery on property owned or controlled by the State or a unit of local government. The program will consist of a series of pilot projects wherein the Department will execute cooperative agreements with a limited number of municipalities to remove a specified number of trees negatively impacting public and/or private property infrastructure and replant with more appropriate trees and/or shrubs.
- 11) Are there any emergency rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objective: This rulemaking does not adversely affect units of local government. Local governments may benefit from the tree removal and replanting services provided under the program.
- 13) Information and questions regarding this rulemaking shall be directed to:

Susan Baatz
Illinois Department of Agriculture
State Fairgrounds, P.O.Box 19281
Springfield IL 62794-9281

217/524-6905
fax: 217/785-4505

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

DEPARTMENT OF AGRICULTURE

NOTICE OF EMERGENCY RULES

TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: DEPARTMENT OF AGRICULTURE
SUBCHAPTER h: PESTS AND PLANT DISEASESPART 241
FOREVER GREEN ILLINOIS PROGRAM

Section

241.10 Definitions

EMERGENCY

241.20 General Provisions and Purpose

EMERGENCY

241.30 Eligibility

EMERGENCY

241.40 Priority to Existing Tree City USA Communities

EMERGENCY

241.50 Government Record of Problem Trees

EMERGENCY

241.60 Tree Removal and Greenery Placement

EMERGENCY

AUTHORITY: Implementing and authorized by Section 205-103 of the Civil Administrative Code of Illinois [20 ILCS 205/205-103].

SOURCE: Adopted by Emergency rulemaking at 38 Ill. Reg. 6702, effective March 6, 2014, for a maximum of 150 days.

Section 241.10 Definitions**EMERGENCY**

"Participating Entity" means a State agency or unit of local government that has been selected by the Department as a participant of the Forever Green Illinois Program.

"Problem Trees" means trees located on property owned or controlled by the State or a unit of local government in a pilot project area that are currently damaging public or private infrastructure; are of ill health and are presently or may soon pose a threat to public safety; or are currently infested with an invasive insect pest or plant disease such as, but not limited to, the Emerald Ash Borer.

DEPARTMENT OF AGRICULTURE

NOTICE OF EMERGENCY RULES

"Greenery" means grass, weeds, trees, shrubs, bushes, plants, and other plant material.

Section 241.20 General Provisions and Purpose
EMERGENCY

Section 205-103 of the Civil Administrative Code of Illinois [20 ILCS 205/205-103] creates within the Department the Forever Green Illinois Program, to be administered by the Department as provided in the Code and this Part. The program is established to maintain and beautify greenery on property owned or controlled by the State or a unit of local government. The goals of the program are to:

- a) Assist participating entities in dealing with negative impacts on community and private infrastructure from improperly maintained trees on public rights of way;
- b) Assist participating entities in dealing with the aftermath of devastating invasive insect pests and plant disease infestations including, but not limited to, the Emerald Ash Borer; and
- c) Promote adoption of tree planting and maintenance programs for trees and other greenery intended to avoid future infrastructure damage from those plantings.

Section 241.30 Eligibility
EMERGENCY

- a) Participation in the Forever Green Illinois Program is limited to State agencies and units of local government for the maintenance and beautification of property owned or controlled by the State or a unit of local government.
- b) The Department will select and approve pilot projects for the Forever Green Illinois Program. These pilot projects will be identified and selected by the Department based on geographic size, location, need, local government interest, availability of local government resources, available funding, available contractors, and available Department staffing.
- c) Pilot projects may be conducted in one or more of the following counties: Cook, DeKalb, Jefferson, McDonough, McLean, Sangamon, and St. Clair.

Section 241.40 Priority to Existing Tree City USA Communities
EMERGENCY

DEPARTMENT OF AGRICULTURE

NOTICE OF EMERGENCY RULES

To assist the Department in establishing the pilot projects, existing Tree City USA communities shall be given priority for participation in the Forever Green Illinois Program.

**Section 241.50 Government Record of Problem Trees
EMERGENCY**

A participating entity shall maintain a prioritized list of problem trees. The participating entity shall make this record available to the Department.

**Section 241.60 Tree Removal and Greenery Placement
EMERGENCY**

- a) After reviewing the participating entity's prioritized list of problem trees, the Department will determine the number of trees to be removed as well as the number and type of trees and other greenery to be planted back on the public property.
- b) The Department may enter into intergovernmental agreements with participating entities whereby the participating entities would allow the Department's approved and credentialed contractors to remove up to 150 problem trees located on public property and to replace the removed trees with an appropriate combination of trees and/or other greenery from predetermined lists. The predetermined lists are entitled "Increasing Tree Diversity in the Urban Landscape – Northern Illinois", "Increasing Tree Diversity in the Urban Landscape – Central Illinois", and "Increasing Tree Diversity in the Urban Landscape – Southern Illinois", (revised 11/27/07) and are available from the Department at http://www.agr.state.il.us/eab/PDFs_for_web/Reforestation/Northern_IL.pdf, http://www.agr.state.il.us/eab/PDFs_for_web/Reforestation/Central_IL.pdf, and http://www.agr.state.il.us/eab/PDFs_for_web/Reforestation/Southern_IL.pdf, respectively.
- c) The Department may enter into intergovernmental agreements with participating entities whereby the participating entities would allow the Department's approved and credentialed contractors to place greenery on property owned or controlled by the participating entities.
- d) The participating entity shall be responsible for the removal and/or repair of any infrastructure that would be disturbed as a result of the tree removal or greenery placement process, such as, but not limited to, sidewalks, pavement and curbing.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO EMERGENCY RULE

- 1) Heading of the Part: Reimbursement for Nursing Costs for Geriatric Facilities
- 2) Code Citation: 89 Ill. Adm. Code 147
- 3) Section Number: 147.335 Emergency Action: Amend
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] PA 97-0689, PA 98-104 and PA 96-1530
- 5) Effective Date: March 7, 2014
- 6) The emergency rulemaking is to expire on May 30, 2014.
- 7) Date Filed with the Index Department: March 7, 2014
- 8) A copy of the emergency rulemaking, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: This emergency rulemaking establishes a new nursing component reimbursement methodology based on RUG-IV 48 methodology. This new methodology goes into effect on January 1, 2014.
- 10) Complete Description of the Subjects and Issues Involved: The rulemaking implements PA 97-689 and PA 98-104, which require the Department to implement a new nursing component reimbursement methodology based on Resource Utilization Group (RUG)-IV 48 methodology. JCAR objected to and suspended Section 147.335(a)(7)(B) and the repealed Section 147.355(b) because HFS did not show sufficient cause to reduce the enhanced care add-on rate for ventilator care. In response, HFS increased the add-on to \$208 effective 1/1/14 and reinstated the repeal of Section 147.355(b) for the remainder of the 150 days.
- 11) Are there any other rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objective: This emergency amendment neither creates nor expands any State mandate affecting units of local government.
- 13) Information and questions regarding this rulemaking shall be directed to:

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO EMERGENCY RULE

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

217/782-1233
HFS.Rules@illinois.gov

The full text of the Notice of Modification to Emergency Amendment begins on the next page:

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF MODIFICATION TO EMERGENCY RULE

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER d: MEDICAL PROGRAMS

PART 147

REIMBURSEMENT FOR NURSING COSTS FOR GERIATRIC FACILITIES

Section

- 147.5 Minimum Data Set-Mental Health (MDS-MH) Based Reimbursement System (Repealed)
- 147.15 Comprehensive Resident Assessment (Repealed)
- 147.25 Functional Needs and Restorative Care (Repealed)
- 147.50 Service Needs (Repealed)
- 147.75 Definitions (Repealed)
- 147.100 Reconsiderations (Repealed)
- 147.105 Midnight Census Report
- 147.125 Nursing Facility Resident Assessment Instrument (Repealed)
- 147.150 Minimum Data Set (MDS) Based Reimbursement System (Repealed)
- 147.175 Minimum Data Set (MDS) Integrity (Repealed)
- 147.200 Minimum Data Set (MDS) On-Site Review Documentation (Repealed)
- 147.205 Reimbursement for Ventilator Dependent Residents (Repealed)
- 147.250 Costs Associated with the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) (Repealed)
- 147.300 Payment to Nursing Facilities Serving Persons with Mental Illness
- 147.301 Sanctions for Noncompliance
- 147.305 Psychiatric Rehabilitation Service Requirements for Individuals With Mental Illness in Residential Facilities (Repealed)
- 147.310 Implementation of a Case Mix System
- 147.315 Nursing Facility Resident Assessment Instrument
- 147.320 Definitions
- 147.325 Resident Reimbursement Classifications and Requirements
- 147.330 Resource Utilization Groups (RUGs) Case Mix Requirements
- 147.335 Enhanced Care Rates
- EMERGENCY
- 147.340 Minimum Date Set On-Site Reviews
- 147.345 Reimbursement for Program Costs in Nursing Facilities Providing Psychiatric Rehabilitation Services for Individuals with Mental Illness (Repealed)
- 147.346 Appeals of Nursing Rate Determination
- 147.350 Reimbursement for Additional Program Costs Associated with Providing

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Specialized Services for Individuals with Developmental Disabilities in Nursing Facilities

- 147.355 Reimbursement for Residents with Exceptional Needs (Repealed)
- 147.TABLE A Staff Time (in Minutes) and Allocation by Need Level (Repealed)
- 147.TABLE B MDS-MH Staff Time (in Minutes and Allocation by Need Level) (Repealed)
- 147.TABLE C Comprehensive Resident Assessment (Repealed)
- 147.TABLE D Functional Needs and Restorative Care (Repealed)
- 147.TABLE E Service (Repealed)
- 147.TABLE F Social Services (Repealed)
- 147.TABLE G Therapy Services (Repealed)
- 147.TABLE H Determinations (Repealed)
- 147.TABLE I Activities (Repealed)
- 147.TABLE J Signatures (Repealed)
- 147.TABLE K Rehabilitation Services (Repealed)
- 147.TABLE L Personal Information (Repealed)

AUTHORITY: Implementing and authorized by Articles III, IV, V, VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Recodified from 89 Ill. Adm. Code 140.900 thru 140.912 and 140.Table H and 140.Table I at 12 Ill. Reg. 6956; amended at 13 Ill. Reg. 559, effective January 1, 1989; amended at 13 Ill. Reg. 7043, effective April 24, 1989; emergency amendment at 13 Ill. Reg. 10999, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 16796, effective October 13, 1989; amended at 14 Ill. Reg. 210, effective December 21, 1989; emergency amendment at 14 Ill. Reg. 6915, effective April 19, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 9523, effective June 4, 1990, for a maximum of 150 days; emergency expired November 1, 1990; emergency amendment at 14 Ill. Reg. 14203, effective August 16, 1990, for a maximum of 150 days; emergency expired January 13, 1991; emergency amendment at 14 Ill. Reg. 15578, effective September 11, 1990, for a maximum of 150 days; emergency expired February 8, 1991; amended at 14 Ill. Reg. 16669, effective September 27, 1990; amended at 15 Ill. Reg. 2715, effective January 30, 1991; amended at 15 Ill. Reg. 3058, effective February 5, 1991; amended at 15 Ill. Reg. 6238, effective April 18, 1991; amended at 15 Ill. Reg. 7162, effective April 30, 1991; amended at 15 Ill. Reg. 9001, effective June 17, 1991; amended at 15 Ill. Reg. 13390, effective August 28, 1991; emergency amendment at 15 Ill. Reg. 16435, effective October 22, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 4035, effective March 4, 1992; amended at 16 Ill. Reg. 6479, effective March 20, 1992; emergency amendment at 16 Ill. Reg. 13361, effective August 14, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 14233, effective August 31, 1992; amended at 16 Ill. Reg. 17332, effective November 6, 1992; amended at 17 Ill. Reg. 1128,

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effective January 12, 1993; amended at 17 Ill. Reg. 8486, effective June 1, 1993; amended at 17 Ill. Reg. 13498, effective August 6, 1993; emergency amendment at 17 Ill. Reg. 15189, effective September 2, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 2405, effective January 25, 1994; amended at 18 Ill. Reg. 4271, effective March 4, 1994; amended at 19 Ill. Reg. 7944, effective June 5, 1995; amended at 20 Ill. Reg. 6953, effective May 6, 1996; amended at 21 Ill. Reg. 12203, effective August 22, 1997; amended at 26 Ill. Reg. 3093, effective February 15, 2002; emergency amendment at 27 Ill. Reg. 10863, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18680, effective November 26, 2003; expedited correction at 28 Ill. Reg. 4992, effective November 26, 2003; emergency amendment at 29 Ill. Reg. 10266, effective July 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 18913, effective November 4, 2005; amended at 30 Ill. Reg. 15141, effective September 11, 2006; expedited correction at 31 Ill. Reg. 7409, effective September 11, 2006; amended at 31 Ill. Reg. 8654, effective June 11, 2007; emergency amendment at 32 Ill. Reg. 415, effective January 1, 2008, for a maximum of 150 days; emergency amendment suspended at 32 Ill. Reg. 3114, effective February 13, 2008; emergency suspension withdrawn in part at 32 Ill. Reg. 4399, effective February 26, 2008 and 32 Ill. Reg. 4402, effective March 11, 2008 and 32 Ill. Reg. 9765, effective June 17, 2008; amended at 32 Ill. Reg. 8614, effective May 29, 2008; amended at 33 Ill. Reg. 9337, effective July 1, 2009; emergency amendment at 33 Ill. Reg. 14350, effective October 1, 2009, for a maximum of 150 days; emergency amendment modified in response to the objection of the Joint Committee on Administrative Rules at 34 Ill. Reg. 1421, effective January 5, 2010, for the remainder of the 150 days; emergency expired February 27, 2010; amended at 34 Ill. Reg. 3786, effective March 14, 2010; amended at 35 Ill. Reg. 19514, effective December 1, 2011; amended at 36 Ill. Reg. 7077, effective April 27, 2012; emergency amendment at 38 Ill. Reg. 1205, effective January 1, 2014, for a maximum of 150 days; Sections 147.335(a)(7)(B) and 147.355(b) of the emergency amendment suspended by the Joint Committee on Administrative Rules at 38 Ill. Reg. 3385, effective January 14, 2014; suspension withdrawn at 38 Ill. Reg. 5898, effective March 7, 2014; emergency amendment modified in response to JCAR Objection at 38 Ill. Reg. 6707, effective March 7, 2014, for the remainder of the 150 days.

Section 147.335 Enhanced Care Rates**EMERGENCY**

An additional enhance rate is applied for certain categories of residents that are in need of more resources.

- a) Ventilator Services – The following criteria shall be met to be eligible for enhanced rates.

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- 1) Ventilators are defined as any type of electrical or pneumatically powered closed mechanical system for residents who are, or who may become, unable to support their own respiration. It does not include Continuous Positive Airway Pressure (CPAP) or Bi-level Positive Airway Pressure (BiPAP) devices. When ventilators are used to deliver CPAP or BiPAP they shall not be counted as ventilator services for enhanced rates.
- 2) Ventilator(s) set to PEEP or CPAP to aid in weaning a resident from the ventilator are included. The weaning process shall be documented in the clinical record. Ventilator(s) used to deliver CPAP or BiPAP services for the resident with Sleep Apnea are not included.
- 3) Nursing facility shall notify the Department using a Department designated form that includes a physician order sheet that identifies the need and delivery of ventilator services. A facility shall also use the designated form to notify the Department when a resident is no longer receiving ventilator services. In addition, a Section S item response of the MDS may be used.
- 4) The following criteria shall be met in order for a facility to qualify for ventilator care reimbursement.
 - A) A facility shall establish admission criteria to ensure the medical stability of patients prior to transfer from an acute care setting.
 - B) Facilities shall be equipped with technology that enables it to meet the respiratory therapy, mobility and comfort needs of its patients.
 - C) Clinical assessment of oxygenation and ventilation-arterial blood gases or other methods of monitoring carbon dioxide and oxygenation shall be available on-site for the management of residents. Documentation shall support clinical monitoring of oxygenation stability was completed at least twice a day.
 - D) Emergency and life support equipment, including mechanical ventilators, shall be connected to electrical outlets with back-up generator power in the event of a power failure.

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- E) Ventilators shall be equipped with internal batteries to provide a short term back-up system in case of a total loss of power.
- F) An audible, redundant ventilator alarm system shall be required to alert staff of a ventilator malfunction, failure or resident disconnect. A back-up ventilator shall be available at all times.
- G) For facilities licensed under the Nursing Home Care Act, a minimum of one RN on duty for 8 consecutive hours, 7 days per week, as required by 77 Ill. Adm. Code 300.1240. For facilities licensed under the Hospital Licensing Act, an RN shall be on duty at all times, as required by 77 Ill. Adm. Code 250.910. Additional RN staff may be determined necessary by the Department, based on the Department's review of the ventilator services.
- H) Licensed nursing staff shall be on duty in sufficient numbers to meet the needs of residents as required by 77 Ill. Adm. Code 300.1230. For facilities licensed under the Nursing Home Care Act, the Department requires that an RN shall be on call, if not on duty, at all times.
- I) No less than one licensed respiratory care practitioner licensed in Illinois shall be available at the facility or on call 24-hours a day to provide care, monitor life support systems, administer medical gases and aerosol medications, and perform diagnostic testing as determined by the needs and number of the residents being served by a facility. The practitioner shall evaluate and document the respiratory status of a ventilator resident on no less than a weekly basis.
- J) A pulmonologist, or physician experienced in the management of ventilator care, shall direct the care plan for ventilator residents on no less than a twice per week basis.
- K) At least one of the full-time licensed nursing staff members shall have successfully completed a course in the care of ventilator dependent individuals and the use of the ventilators, conducted and documented by a licensed respiratory care practitioner or a

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qualified registered nurse who has at least one-year experience in the care of ventilator dependent individuals.

- L) All staff caring for ventilator dependent residents shall have documented in-service training in ventilator care prior to providing such care. In-service training shall be conducted at least annually by a licensed respiratory care practitioner or qualified registered nurse who has at least one-year experience in the care of ventilator dependent individuals. Training shall include, but is not limited to, status and needs of the resident, infection control techniques, communicating with the ventilator resident, and assisting the resident with activities. In-service training documentation shall include name and title of the in-service director, duration of the presentation, content of presentation, and signature and position description of all participants.
 - M) Documentation shall support the resident has a health condition that requires medical supervision 24-hours a day of licensed nursing care and specialized services or equipment.
 - N) The medical records shall contain physician's orders for respiratory care that includes, but is not limited to, diagnosis, ventilator settings, tracheostomy care and suctioning, when applicable.
 - O) Documentation shall support the resident receive tracheostomy care at least daily.
- 5) To be eligible to receive ventilator add-on, facilities shall also be required to implement the established written protocols on the following areas:
- A) Pressure Ulcers. A facility shall have established policies and procedures on assessing, monitoring and prevention of pressure ulcers, including development of a method of monitoring the occurrence of pressure ulcers. Staff shall receive in-service training on those areas.
 - i) Documentation shall support the resident has been assessed quarterly for their risk for developing pressure ulcers.

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- ii) Documentation shall support that interventions for pressure ulcer prevention were implemented and include, but are not limited to, a turning and repositioning schedule, use of pressuring reducing devices, hydration and nutritional interventions and daily skin checks.
- B) Pain. A facility shall have established policies and procedures on assessing the occurrence of pain, including development of a method of monitoring the occurrence of pain. Staff shall receive in-service training on this area.
 - i) Documentation shall support the resident has been assessed quarterly for the presence of pain and the risk factors for developing pain.
 - ii) Documentation shall support an effective pain management regime is in place for the resident.
- C) Immobility. A facility shall have established policies and procedures to assess the possible effects of immobility. These shall include, but not be limited to, range of motion techniques, contracture risk. Staff shall receive in-service training on this area.
 - i) Documentation shall support the resident's risk for contractures were assessed quarterly and interventions are in place to reduce the risk.
 - ii) Effects of immobility will be monitored and interventions implemented as needed.
- D) Risk of infection. A facility shall have established policies and procedures on assessing risk for developing infection and prevention techniques. These shall include, but are not limited to proper hand washing techniques, aseptic technique in delivery care to a resident, and proper care of equipment and supplies. Staff shall receive in-service training on this area.
 - i) Documentation shall support the resident was given oral care every shift to reduce the risk of infection.

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- ii) Documentation shall support the facility has a method to monitor and track infections.
 - E) Social Isolation. A facility shall have a method of assessing a resident's risk for social isolation. Interventions shall be in place to involve a resident in activities when possible.
 - F) Ventilator Weaning. A facility shall have a method of routinely assessing a resident's weaning potential and interventions implemented as needed. Documentation shall support the weaning process and the use of mechanical ventilation for a portion of each day for stabilization.
 - G) Policies shall include monitoring expectations of the ventilator resident, routine maintenance of equipment and specific staff training related to ventilator settings and care.
 - H) In order to maintain quality standards and reduce cross contamination, the facility shall have a policy for cleaning and maintaining equipment.
- 6) Department staff shall conduct on-site visits on a random or targeted basis to ensure both facility and resident compliance with requirements. All records shall be accessible to determine that the needs of a resident are being met and to determine the appropriateness of ventilator services. In addition to the requirements of this subsection, Department review shall include, at a minimum, the following:
- A) The tracking of Ventilator Associated Pneumonia;
 - B) Documentation to track hospitalizations, reason for hospitalizations, and interventions aimed at reducing hospitalizations for ventilator residents;
 - C) Ventilator weaning;
- 7) An enhanced payment shall be added to the rate determined by the methodology currently in place:

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- A) Payment shall be made for each individual resident receiving ventilator services;
 - B) For supplies and services provided on or after January 1, 2014, the rate add-on for ventilator supplies and services is \$208 per day. ~~The rate add-on for ventilator services is \$174 per day.~~
- b) Traumatic Brain Injury (TBI) – The following criteria shall be met to be eligible for enhanced rates.
- 1) A facility shall meet all the criteria set forth in this subsection for TBI care to a resident in order to receive the enhanced TBI reimbursement rate identified.
 - 2) TBI is a nondegenerative, noncongenital insult to the brain from an external mechanical force, possibly leading to permanent or temporary impairment of cognitive, physical, and psychosocial functions, with an associated diminished or altered state of consciousness.
 - 3) The following criteria shall be met in order for a facility to qualify for TBI reimbursement.
 - A) The facility shall have written policies and procedures for care of the residents with TBI and behaviors that include, but are not limited to, monitoring for behaviors, identification and reduction of agitation, safe and effective interventions for behaviors, and assessment of risk factors for behaviors related to safety of residents, staff and staff shall be in-serviced on these policies.
 - B) The facility shall have staff to complete the required physical (PT), occupational (OT) or speech therapy (SP), as needed. Additionally, a facility shall have staffing sufficient to meet the behavior, physical and psychosocial needs of the resident.
 - C) Staff shall receive in-service for the care of a TBI resident and dealing with behavior issues identifying and reducing agitation, and rehabilitation for the TBI resident. In-service training shall be conducted at least annually. In-service documentation shall

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include name and title of the in-service director, duration of the presentation, content of presentation, and signature and position description of all participants.

- D) The facility environment shall be such that it is aimed at reducing distractions for the TBI resident during activities and therapies. This shall include, but not be limited to, avoiding overcrowding, loud noises, lack of privacy, seclusion and social isolation.
 - E) Care plans on all residents shall address the physical, behavioral and psychosocial needs of the TBI residents. Care plans shall be individualized to meet the resident's needs, and shall be revised as necessary.
 - F) The facility shall use the "Rancho Los Amigos Cognitive Scale" to determine the level of cognitive functioning. The assessment shall be completed quarterly by a trained rehabilitation registered nurse. Based on the level of functioning, and the services and interventions implemented, a resident will be placed in 1 of 3 tiers of payments. Tier 3 is the highest reimbursement. By completing a Department designated form, facilities will be responsible for notifying the Department of the applicable tier in which a resident is placed.
 - G) Documentation found elsewhere in the resident records shall support the scoring on the Rancho Los Amigos Scale as well as the delivery of coded interventions.
- 4) Admission Criteria
- A) Documentation by a neurologist that the resident has a severe and extensive TBI diagnosis.
 - B) The diagnosis meets RAI Manual requirements for coding.
 - C) The diagnosis has resulted in significant deficits and disabilities that required intense rehabilitation therapy. In addition, documentation from the neurologist shall identify the resident has

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the ability to benefit from rehabilitation and a potential for independent living.

- D) Diagnostic testing shall support the presence of a severe and extensive TBI as a result of external force.
 - E) Documentation the resident was assessed using the Rancho Los Amigos Cognitive Scale and scored a Level IV-X. Residents scoring a Level I, II or III on the Rancho Los Amigos Cognitive Scale shall not be eligible for TBI reimbursement.
 - F) Documentation the resident is medically stable and has been assessed for potential behaviors and safety risk to self, staff and others.
- 5) Tier I requirements are as follows:
- A) Tier I shall not exceed six months.
 - B) The resident shall have previously scored in Tier II or Tier III.
 - C) The resident has received intensive rehabilitation and is preparing for discharge to the community. The resident shall receive intervention and training focusing on independent living skills, prevocational training and employment support. This includes, but is not limited to, community support options, substance abuse counseling, as appropriate, time management and goal setting.
 - D) Resident scores a Level VIII-X on the Rancho Los Amigos Cognitive Scale (Purposeful, Appropriate, and stand-by assistance to Modified Independence).
 - E) No behaviors or Behaviors present, but less than 4 days (E0200A-C<2 AND E0500A-C=0 AND E0800< 2 and E1000A+B=0). If behaviors are present, resident receives behavior management training to address the specific behaviors identified.
 - F) Cognitive- Brief Interview for Mental Status (BIMS) is 13-15 (Cognitively intact, C0500).

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- G) Activities of daily living (ADL) functioning. All ADL tasks shall be coded less than 3 (Section G).
 - H) An assessment shall be completed quarterly to identify the resident's needs and risk factors related to independent living. This assessment shall include, but is not limited to, physical development and mobility, communication skills, cognition level, food preparation and eating behaviors, personal hygiene and grooming, health and safety issues, social and behavioral issues, ADL potential with household chores, transportation, vocational skills and money management.
 - I) Discharge Potential. There is an active discharge plan in place (Q0400A=1) or referral has been made to the local contact agency (Q0600=1). There shall be weekly documentation by a licensed social worker related to discharge potential and progress. This shall include working with the resident on community resources and prevocational employment options.
 - J) The resident shall receive interventions and/or training related to their specific discharge needs.
- 6) Tier II requirements are as follows:
- A) Tier II shall not exceed twelve months.
 - B) Resident has reached a plateau in rehabilitation ability, but still requires services related to the TBI. Resident shall have previously scored in Tier III. The resident continues to receive restorative nursing services.
 - C) Resident scores a Level IV-VII on the Rancho Los Amigos Cognitive Scale (Confusion, may or may not be appropriate).
 - D) Cognition. BIMS is less than 13 (C0500) or Cognitive Skills for decision making are moderately to severely impaired (C1000=2 or 3).

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- E) Resident has behaviors (E0300=1 or E1000=1) and these behaviors impact resident (E0500A-C=1) or impact others (E0600A-C=1). Behaviors shall be tracked daily and interventions implemented. There shall be documentation of weekly meetings with interdisciplinary staff to discuss behaviors, effectiveness of interventions and to implement revisions as necessary.
- F) ADL function (Section G) 3 or more ADL requires limited or extensive assistance.
- G) Resident is on 2 or more of the following restorative: Bed Mobility (O0500D=1), Transfer (O0500E=1), Walking (O0500F=1), Dressing/Grooming (O0500G=1), Eating (O0500H=1) or Communication (O0500J=1).
- H) Resident receives either Psychological (O0400E2>1) or Recreational Therapy (O0400F2>1) at least two or more days a week. Documentation shall include a summary of the sessions, resident's progress and potential goals, and identify any revisions needed.
- I) Documentation shall support one to one meeting with a licensed social worker at least twice a week to discuss potential needs, goals and any behavior issues.
- J) Documentation of at least quarterly oversight of care plan by a neurologist.
- K) Documentation the resident has received instruction and training at least twice per week that includes, but is not limited to, behavior modification, anger management, time management goal setting, life skills and social skills.
- L) Behavioral rehabilitation assessment and evaluations shall be completed quarterly and shall include cognition, behaviors, interventions and outcomes.
- M) Documentation shall support the residents requires intensive counseling, behavioral management and neuro-cognitive therapy.

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The resident behaves in such a manner as to indicate an inability, without ongoing supervision and assistance of others, they would be unable to satisfy the need for nourishment, personal care, medical care, shelter, self-protection and safety.

- 7) Tier III requirements are as follows:
- A) Tier III shall not exceed nine months.
 - B) The injury resulting in a TBI diagnosis must have occurred within the prior six months to score in Tier III.
 - C) Includes the acutely diagnosed resident with extensive deficits in physical functioning and identifies intensive rehabilitation needs.
 - D) Resident scores an IV-VII on the Rancho Los Amigos Cognitive Scale.
 - E) Cognition- BIMS is less than 13 (C0500) or Cognitive Skills for decision making are moderately to severely impaired (C1000=2 or 3).
 - F) Documentation shall support the facility is monitoring behaviors and has implemented interventions to identify the risk factors for behaviors and to reduce the occurrence of behaviors.
 - G) Resident receives Rehabilitation therapy (PT, OT or ST) at least 500 minutes per week and at least one rehabilitation discipline five days per week (O0400). The therapy shall meet the RAI Manual guidelines for coding. The resident shall continue to show the potential for improvement in the therapy programs.
 - H) The facility shall have trained rehabilitation staff on-site working with the resident on a daily basis. This shall include a trained rehabilitation nurse and rehabilitation aides. The resident requires a minimum of six to eight hours per day of one-to-one support as a result of functional issues.

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- I) Documentation shall support there are weekly meetings of the interdisciplinary team to discuss the resident's rehabilitation progress and potential.
 - J) Resident receives Psychological Therapy (O0400E2>1) at least two days per week. Documentation shall include a summary of the sessions, resident's progress and potential goals, and identify any revisions needed.
 - K) There shall be documentation to support monthly oversight by a neurologist.
 - L) A comprehensive medical and neuro-psychological assessment is done upon admission and quarterly. It shall include, but is not limited to, the following:
 - i) Physical ability and mobility;
 - ii) Motor coordination;
 - iii) Hearing, vision and speech;
 - iv) Behavior and impulse control;
 - v) Social functionality;
 - vi) Cognition;
 - vii) Safety and medical needs; and
 - viii) Communication needs.
- 8) Rates of payment for each Tier are as follows:
- A) The payment amount for Tier I is \$265.17 per day.
 - B) The payment amount for Tier II is \$486.49 per day.
 - C) The payment amount for Tier III is \$767.46 per day.

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(Source: Old Section 147.335 repealed at 26 Ill. Reg. 3093, effective February 15, 2002; new Section 147.335 added by emergency rulemaking at 38 Ill. Reg. 1205, effective January 1, 2014, for a maximum of 150 days; emergency rule modified in response to JCAR objection at 38 Ill. Reg. 6707, effective March 7, 2014, for the remainder of the 150 days)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

- 1) Heading of the Part: Pay Plan
- 2) Code Citation: 80 Ill. Adm. Code 310
- 3)

<u>Section Number:</u>	<u>Peremptory Action:</u>
310.APPENDIX A TABLE A	Amend
- 4) Reference to the Specific State or Federal Court Order, Federal Rule or Statute which Requires this Peremptory Rulemaking: The Department of Central Management Services (CMS) is amending the Pay Plan (80 Ill. Adm. Code 310) Section 310.Appendix A Table A to reflect the Agreement by and between the Illinois Fraternal Order of Police Labor Council and the State of Illinois Department of Central Management Service (Natural Resources) Conservation Police – Sergeants and Lieutenants effective July 1, 2012 through June 30, 2015 signed February 4, 2014. Employees shall receive longevity pay at the beginning of the 9, 10, 12.5, 14, 15, 17.5, 20, 21, 22.5 and 25 years of service. Effective July 1, 2013 and 2014, the salary scale of all positions shall be increased by 2.0%. Effective February 14, 2014, a new employee shall be hired at 33% of the differential between a Conservation Police Officer II and the employee's new rank at the appropriate longevity level. Upon successful completion of 18 months of service, the employee shall be paid 66% of the rank differential between a Conservation Police Officer II and the employee's new rank at the appropriate longevity level. Upon successful completion of 36 months of service, the employee shall be paid 100% of the rank differential between a Conservation Police Officer II and the employee's new rank at the appropriate longevity level. Effective January 1, 2014, Conservation Police Sergeants with 15 or more years of service receive to their rate of pay a onetime adjustment increase, which is 7.9% above the rate of pay of the Conservation Police Officer II with the same years of service. The Agreement's Appendix A – Wages chart calculation assumes that the Conservation Police Officer II title receives the same general increase as the Conservation Police Sergeants. Effective January 1, 2014, Conservation Police Lieutenants' rate of pay shall reflect an amount 3.9% greater than Sergeants with the same steps or years of service. The Step 7 and 14 Years are increased to the midpoint between the adjoining rates effective January 1, 2014 in Appendix A – Wages.

The Senior Public Service Administrator title, Option 7 (captain function) Department of Natural Resources positions were excluded from collective bargaining representation effective October 7, 2013 when the Illinois Labor Relations Board issued the Corrected Certification of Governatorial Designation of Positions Excluded from Collective Bargaining (Case No. S-DE-14-096). The removal of the positions from the title table will occur in forthcoming proposed amendments.

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NOTICE OF PEREMPTORY AMENDMENT

- 5) Statutory Authority: Authorized by Sections 8, 8a and 9(7) of the Personnel Code [20 ILCS 415/8, 20 ILCS 415/8a and 20 ILCS 415/9(7)], subsection (d) of Section 1-5 of the Illinois Administrative Procedure Act [5 ILCS 100/1-5(d)] and by Sections 4, 6, 15 and 21 of the Illinois Public Labor Relations Act [5 ILCS 315/4, 5 ILCS 315/6, 5 ILCS 315/15 and 5 ILCS 315/21]
- 6) Effective Date: March 6, 2014
- 7) A Complete Description of the Subjects and Issues Involved: In Section 310.Appendix A Table A, the Note includes the in-hire rate, longevity bonus and supervisory enhancement provisions. The Note's information on locating the meaning of Option 7 is given the heading Option Clarification for easier access. The rate tables effective July 1, 2012, 2013 and 2014 and January 1, 2014 are added. Rate tables no longer in effect are removed.
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Date filed with the Index Department: March 6, 2014
- 10) This and other Pay Plan amendments are available in the Division of Technical Services of the Bureau of Personnel.
- 11) Is this in compliance with Section 5-50 of the Illinois Administrative Procedure Act?
Yes
- 12) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
310.47	Amend	38 Ill. Reg. 196, January 3, 2014
310.100	Amend	38 Ill. Reg. 196, January 3, 2014
310.410	Amend	38 Ill. Reg. 196, January 3, 2014
310.460	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE B	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE C	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE D	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE E	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE F	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE G	Amend	38 Ill. Reg. 196, January 3, 2014

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NOTICE OF PEREMPTORY AMENDMENT

310.APPENDIX A TABLE H	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE I	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE J	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE K	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE N	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE O	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE P	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE Q	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE R	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE S	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE V	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE W	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE X	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE Y	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE Z	Amend	38 Ill. Reg. 196, January 3, 2014
310.APPENDIX A TABLE AA	Amend	38 Ill. Reg. 196, January 3, 2014

- 13) Statement of Statewide Policy Objectives: The amendment to the Pay Plan affects only the employees subject to the Personnel Code and does not set out any guidelines that affect local or other jurisdictions in the State.
- 14) Information and questions regarding this peremptory amendment shall be directed to:

Mr. Jason Doggett, Manager
Compensation Section
Division of Technical Services and Agency Training and Development
Bureau of Personnel
Department of Central Management Services
504 William G. Stratton Building
Springfield IL 62706

217/782-7964
Fax: 217/524-4570
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The full text of the Peremptory Amendment begins on the next page:

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND
POSITION CLASSIFICATIONS

CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 310

PAY PLAN

SUBPART A: NARRATIVE

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310.20	Policy and Responsibilities
310.30	Jurisdiction
310.40	Pay Schedules
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310.80	Increases in Pay
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310.205	Introduction
310.210	Prevailing Rate
310.220	Negotiated Rate
310.230	Part-Time Daily or Hourly Special Services Rate (Repealed)
310.240	Daily or Hourly Rate Conversion
310.250	Member, Patient and Inmate Rate
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310.270	Legislated Rate
310.280	Designated Rate
310.290	Out-of-State Rate (Repealed)

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310.295	Foreign Service Rate (Repealed)
310.300	Educator Schedule for RC-063 and HR-010
310.310	Physician Specialist Rate
310.320	Annual Compensation Ranges for Executive Director and Assistant Executive Director, State Board of Elections (Repealed)
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310.440	Merit Compensation Salary Schedule
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310.530	Implementation
310.540	Annual Merit Increase and Bonus Guidechart
310.550	Fiscal Year 1985 Pay Changes in Merit Compensation System, effective July 1, 1984 (Repealed)

SUBPART D: FROZEN NEGOTIATED-RATES-OF-PAY DUE TO
FISCAL YEAR APPROPRIATIONS AND EXPIRED SALARY SCHEDULES IN
COLLECTIVE BARGAINING UNIT AGREEMENTS

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310.600	Jurisdiction (Repealed)
310.610	Pay Schedules (Repealed)
310.620	In-Hiring Rate (Repealed)
310.630	Definitions (Repealed)
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310.650	Other Pay Provisions (Repealed)
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310.TABLE W	RC-062 (Technical Employees, AFSCME)
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310.TABLE H	Frozen RC-006-Rates-of-Pay (Corrections Employees, AFSCME) (Repealed)
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AUTHORITY: Implementing and authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

SOURCE: Filed June 28, 1967; codified at 8 Ill. Reg. 1558; emergency amendment at 8 Ill. Reg. 1990, effective January 31, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 2440, effective February 15, 1984; emergency amendment at 8 Ill. Reg. 3348, effective March 5, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 4249, effective March 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 5704, effective April 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 7290, effective May 11, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 11299, effective June 25, 1984; emergency amendment at 8 Ill. Reg. 12616, effective July 1, 1984, for a maximum of 150 days;

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emergency amendment at 8 Ill. Reg. 15007, effective August 6, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 15367, effective August 13, 1984; emergency amendment at 8 Ill. Reg. 21310, effective October 10, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21544, effective October 24, 1984; amended at 8 Ill. Reg. 22844, effective November 14, 1984; emergency amendment at 9 Ill. Reg. 1134, effective January 16, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 1320, effective January 23, 1985; amended at 9 Ill. Reg. 3681, effective March 12, 1985; emergency amendment at 9 Ill. Reg. 4163, effective March 15, 1985, for a maximum of 150 days; emergency amendment at 9 Ill. Reg. 9231, effective May 31, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9420, effective June 7, 1985; amended at 9 Ill. Reg. 10663, effective July 1, 1985; emergency amendment at 9 Ill. Reg. 15043, effective September 24, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 3230, effective January 24, 1986; preemptory amendment at 10 Ill. Reg. 3325, effective January 22, 1986; emergency amendment at 10 Ill. Reg. 8904, effective May 13, 1986, for a maximum of 150 days; preemptory amendment at 10 Ill. Reg. 8928, effective May 13, 1986; emergency amendment at 10 Ill. Reg. 12090, effective June 30, 1986, for a maximum of 150 days; preemptory amendment at 10 Ill. Reg. 13675, effective July 31, 1986; preemptory amendment at 10 Ill. Reg. 14867, effective August 26, 1986; amended at 10 Ill. Reg. 15567, effective September 17, 1986; emergency amendment at 10 Ill. Reg. 17765, effective September 30, 1986, for a maximum of 150 days; preemptory amendment at 10 Ill. Reg. 19132, effective October 28, 1986; preemptory amendment at 10 Ill. Reg. 21097, effective December 9, 1986; amended at 11 Ill. Reg. 648, effective December 22, 1986; preemptory amendment at 11 Ill. Reg. 3363, effective February 3, 1987; preemptory amendment at 11 Ill. Reg. 4388, effective February 27, 1987; preemptory amendment at 11 Ill. Reg. 6291, effective March 23, 1987; amended at 11 Ill. Reg. 5901, effective March 24, 1987; emergency amendment at 11 Ill. Reg. 8787, effective April 15, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 11830, effective July 1, 1987, for a maximum of 150 days; preemptory amendment at 11 Ill. Reg. 13675, effective July 29, 1987; amended at 11 Ill. Reg. 14984, effective August 27, 1987; preemptory amendment at 11 Ill. Reg. 15273, effective September 1, 1987; preemptory amendment at 11 Ill. Reg. 17919, effective October 19, 1987; preemptory amendment at 11 Ill. Reg. 19812, effective November 19, 1987; emergency amendment at 11 Ill. Reg. 20664, effective December 4, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20778, effective December 11, 1987; preemptory amendment at 12 Ill. Reg. 3811, effective January 27, 1988; preemptory amendment at 12 Ill. Reg. 5459, effective March 3, 1988; amended at 12 Ill. Reg. 6073, effective March 21, 1988; emergency amendment at 12 Ill. Reg. 7734, effective April 15, 1988, for a maximum of 150 days; preemptory amendment at 12 Ill. Reg. 7783, effective April 14, 1988; preemptory amendment at 12 Ill. Reg. 8135, effective April 22, 1988; preemptory amendment at 12 Ill. Reg. 9745, effective May 23, 1988; emergency amendment at 12 Ill. Reg. 11778, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 12895, effective July 18, 1988, for a maximum of 150 days; preemptory amendment at 12 Ill. Reg. 13306, effective

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July 27, 1988; corrected at 12 Ill. Reg. 13359; amended at 12 Ill. Reg. 14630, effective September 6, 1988; amended at 12 Ill. Reg. 20449, effective November 28, 1988; preemptory amendment at 12 Ill. Reg. 20584, effective November 28, 1988; preemptory amendment at 13 Ill. Reg. 8080, effective May 10, 1989; amended at 13 Ill. Reg. 8849, effective May 30, 1989; preemptory amendment at 13 Ill. Reg. 8970, effective May 26, 1989; emergency amendment at 13 Ill. Reg. 10967, effective June 20, 1989, for a maximum of 150 days; emergency amendment expired November 17, 1989; amended at 13 Ill. Reg. 11451, effective June 28, 1989; emergency amendment at 13 Ill. Reg. 11854, effective July 1, 1989, for a maximum of 150 days; corrected at 13 Ill. Reg. 12647; preemptory amendment at 13 Ill. Reg. 12887, effective July 24, 1989; amended at 13 Ill. Reg. 16950, effective October 20, 1989; amended at 13 Ill. Reg. 19221, effective December 12, 1989; amended at 14 Ill. Reg. 615, effective January 2, 1990; preemptory amendment at 14 Ill. Reg. 1627, effective January 11, 1990; amended at 14 Ill. Reg. 4455, effective March 12, 1990; preemptory amendment at 14 Ill. Reg. 7652, effective May 7, 1990; amended at 14 Ill. Reg. 10002, effective June 11, 1990; emergency amendment at 14 Ill. Reg. 11330, effective June 29, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14361, effective August 24, 1990; emergency amendment at 14 Ill. Reg. 15570, effective September 11, 1990, for a maximum of 150 days; emergency amendment expired February 8, 1991; corrected at 14 Ill. Reg. 16092; preemptory amendment at 14 Ill. Reg. 17098, effective September 26, 1990; amended at 14 Ill. Reg. 17189, effective October 2, 1990; amended at 14 Ill. Reg. 17189, effective October 19, 1990; amended at 14 Ill. Reg. 18719, effective November 13, 1990; preemptory amendment at 14 Ill. Reg. 18854, effective November 13, 1990; preemptory amendment at 15 Ill. Reg. 663, effective January 7, 1991; amended at 15 Ill. Reg. 3296, effective February 14, 1991; amended at 15 Ill. Reg. 4401, effective March 11, 1991; preemptory amendment at 15 Ill. Reg. 5100, effective March 20, 1991; preemptory amendment at 15 Ill. Reg. 5465, effective April 2, 1991; emergency amendment at 15 Ill. Reg. 10485, effective July 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 11080, effective July 19, 1991; amended at 15 Ill. Reg. 13080, effective August 21, 1991; amended at 15 Ill. Reg. 14210, effective September 23, 1991; emergency amendment at 16 Ill. Reg. 711, effective December 26, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3450, effective February 20, 1992; preemptory amendment at 16 Ill. Reg. 5068, effective March 11, 1992; preemptory amendment at 16 Ill. Reg. 7056, effective April 20, 1992; emergency amendment at 16 Ill. Reg. 8239, effective May 19, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 8382, effective May 26, 1992; emergency amendment at 16 Ill. Reg. 13950, effective August 19, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14452, effective September 4, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 238, effective December 23, 1992; preemptory amendment at 17 Ill. Reg. 498, effective December 18, 1992; amended at 17 Ill. Reg. 590, effective January 4, 1993; amended at 17 Ill. Reg. 1819, effective February 2, 1993; amended at 17 Ill. Reg. 6441, effective April 8, 1993; emergency amendment at 17 Ill. Reg. 12900, effective July 22, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 13409,

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effective July 29, 1993; emergency amendment at 17 Ill. Reg. 13789, effective August 9, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 14666, effective August 26, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19103, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 21858, effective December 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 22514, effective December 15, 1993; amended at 18 Ill. Reg. 227, effective December 17, 1993; amended at 18 Ill. Reg. 1107, effective January 18, 1994; amended at 18 Ill. Reg. 5146, effective March 21, 1994; preemptory amendment at 18 Ill. Reg. 9562, effective June 13, 1994; emergency amendment at 18 Ill. Reg. 11299, effective July 1, 1994, for a maximum of 150 days; preemptory amendment at 18 Ill. Reg. 13476, effective August 17, 1994; emergency amendment at 18 Ill. Reg. 14417, effective September 9, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16545, effective October 31, 1994; preemptory amendment at 18 Ill. Reg. 16708, effective October 28, 1994; amended at 18 Ill. Reg. 17191, effective November 21, 1994; amended at 19 Ill. Reg. 1024, effective January 24, 1995; preemptory amendment at 19 Ill. Reg. 2481, effective February 17, 1995; preemptory amendment at 19 Ill. Reg. 3073, effective February 17, 1995; amended at 19 Ill. Reg. 3456, effective March 7, 1995; preemptory amendment at 19 Ill. Reg. 5145, effective March 14, 1995; amended at 19 Ill. Reg. 6452, effective May 2, 1995; preemptory amendment at 19 Ill. Reg. 6688, effective May 1, 1995; amended at 19 Ill. Reg. 7841, effective June 1, 1995; amended at 19 Ill. Reg. 8156, effective June 12, 1995; amended at 19 Ill. Reg. 9096, effective June 27, 1995; emergency amendment at 19 Ill. Reg. 11954, effective August 1, 1995, for a maximum of 150 days; preemptory amendment at 19 Ill. Reg. 13979, effective September 19, 1995; preemptory amendment at 19 Ill. Reg. 15103, effective October 12, 1995; amended at 19 Ill. Reg. 16160, effective November 28, 1995; amended at 20 Ill. Reg. 308, effective December 22, 1995; emergency amendment at 20 Ill. Reg. 4060, effective February 27, 1996, for a maximum of 150 days; preemptory amendment at 20 Ill. Reg. 6334, effective April 22, 1996; preemptory amendment at 20 Ill. Reg. 7434, effective May 14, 1996; amended at 20 Ill. Reg. 8301, effective June 11, 1996; amended at 20 Ill. Reg. 8657, effective June 20, 1996; amended at 20 Ill. Reg. 9006, effective June 26, 1996; amended at 20 Ill. Reg. 9925, effective July 10, 1996; emergency amendment at 20 Ill. Reg. 10213, effective July 15, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 10841, effective August 5, 1996; preemptory amendment at 20 Ill. Reg. 13408, effective September 24, 1996; amended at 20 Ill. Reg. 15018, effective November 7, 1996; preemptory amendment at 20 Ill. Reg. 15092, effective November 7, 1996; emergency amendment at 21 Ill. Reg. 1023, effective January 6, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 1629, effective January 22, 1997; amended at 21 Ill. Reg. 5144, effective April 15, 1997; amended at 21 Ill. Reg. 6444, effective May 15, 1997; amended at 21 Ill. Reg. 7118, effective June 3, 1997; emergency amendment at 21 Ill. Reg. 10061, effective July 21, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 12859, effective September 8, 1997, for a maximum of 150 days; preemptory amendment at 21 Ill. Reg. 14267, effective October 14, 1997; preemptory amendment at 21 Ill. Reg. 14589, effective October 15, 1997; preemptory amendment at 21 Ill.

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Reg. 15030, effective November 10, 1997; amended at 21 Ill. Reg. 16344, effective December 9, 1997; preemptory amendment at 21 Ill. Reg. 16465, effective December 4, 1997; preemptory amendment at 21 Ill. Reg. 17167, effective December 9, 1997; preemptory amendment at 22 Ill. Reg. 1593, effective December 22, 1997; amended at 22 Ill. Reg. 2580, effective January 14, 1998; preemptory amendment at 22 Ill. Reg. 4326, effective February 13, 1998; preemptory amendment at 22 Ill. Reg. 5108, effective February 26, 1998; preemptory amendment at 22 Ill. Reg. 5749, effective March 3, 1998; amended at 22 Ill. Reg. 6204, effective March 12, 1998; preemptory amendment at 22 Ill. Reg. 7053, effective April 1, 1998; preemptory amendment at 22 Ill. Reg. 7320, effective April 10, 1998; preemptory amendment at 22 Ill. Reg. 7692, effective April 20, 1998; emergency amendment at 22 Ill. Reg. 12607, effective July 2, 1998, for a maximum of 150 days; preemptory amendment at 22 Ill. Reg. 15489, effective August 7, 1998; amended at 22 Ill. Reg. 16158, effective August 31, 1998; preemptory amendment at 22 Ill. Reg. 19105, effective September 30, 1998; preemptory amendment at 22 Ill. Reg. 19943, effective October 27, 1998; preemptory amendment at 22 Ill. Reg. 20406, effective November 5, 1998; amended at 22 Ill. Reg. 20581, effective November 16, 1998; amended at 23 Ill. Reg. 664, effective January 1, 1999; preemptory amendment at 23 Ill. Reg. 730, effective December 29, 1998; emergency amendment at 23 Ill. Reg. 6533, effective May 10, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 7065, effective June 3, 1999; emergency amendment at 23 Ill. Reg. 8169, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 11020, effective August 26, 1999; amended at 23 Ill. Reg. 12429, effective September 21, 1999; preemptory amendment at 23 Ill. Reg. 12493, effective September 23, 1999; amended at 23 Ill. Reg. 12604, effective September 24, 1999; amended at 23 Ill. Reg. 13053, effective September 27, 1999; preemptory amendment at 23 Ill. Reg. 13132, effective October 1, 1999; amended at 23 Ill. Reg. 13570, effective October 26, 1999; amended at 23 Ill. Reg. 14020, effective November 15, 1999; amended at 24 Ill. Reg. 1025, effective January 7, 2000; preemptory amendment at 24 Ill. Reg. 3399, effective February 3, 2000; amended at 24 Ill. Reg. 3537, effective February 18, 2000; amended at 24 Ill. Reg. 6874, effective April 21, 2000; amended at 24 Ill. Reg. 7956, effective May 23, 2000; emergency amendment at 24 Ill. Reg. 10328, effective July 1, 2000, for a maximum of 150 days; emergency expired November 27, 2000; preemptory amendment at 24 Ill. Reg. 10767, effective July 3, 2000; amended at 24 Ill. Reg. 13384, effective August 17, 2000; preemptory amendment at 24 Ill. Reg. 14460, effective September 14, 2000; preemptory amendment at 24 Ill. Reg. 16700, effective October 30, 2000; preemptory amendment at 24 Ill. Reg. 17600, effective November 16, 2000; amended at 24 Ill. Reg. 18058, effective December 4, 2000; preemptory amendment at 24 Ill. Reg. 18444, effective December 1, 2000; amended at 25 Ill. Reg. 811, effective January 4, 2001; amended at 25 Ill. Reg. 2389, effective January 22, 2001; amended at 25 Ill. Reg. 4552, effective March 14, 2001; preemptory amendment at 25 Ill. Reg. 5067, effective March 21, 2001; amended at 25 Ill. Reg. 5618, effective April 4, 2001; amended at 25 Ill. Reg. 6655, effective May 11, 2001; amended at 25 Ill. Reg. 7151, effective May 25, 2001; preemptory amendment at 25 Ill. Reg. 8009, effective June

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14, 2001; emergency amendment at 25 Ill. Reg. 9336, effective July 3, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 9846, effective July 23, 2001; amended at 25 Ill. Reg. 12087, effective September 6, 2001; amended at 25 Ill. Reg. 15560, effective November 20, 2001; peremptory amendment at 25 Ill. Reg. 15671, effective November 15, 2001; amended at 25 Ill. Reg. 15974, effective November 28, 2001; emergency amendment at 26 Ill. Reg. 223, effective December 21, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 1143, effective January 17, 2002; amended at 26 Ill. Reg. 4127, effective March 5, 2002; peremptory amendment at 26 Ill. Reg. 4963, effective March 15, 2002; amended at 26 Ill. Reg. 6235, effective April 16, 2002; emergency amendment at 26 Ill. Reg. 7314, effective April 29, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 10425, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 10952, effective July 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13934, effective September 10, 2002; amended at 26 Ill. Reg. 14965, effective October 7, 2002; emergency amendment at 26 Ill. Reg. 16583, effective October 24, 2002, for a maximum of 150 days; emergency expired March 22, 2003; peremptory amendment at 26 Ill. Reg. 17280, effective November 18, 2002; amended at 26 Ill. Reg. 17374, effective November 25, 2002; amended at 26 Ill. Reg. 17987, effective December 9, 2002; amended at 27 Ill. Reg. 3261, effective February 11, 2003; expedited correction at 28 Ill. Reg. 6151, effective February 11, 2003; amended at 27 Ill. Reg. 8855, effective May 15, 2003; amended at 27 Ill. Reg. 9114, effective May 27, 2003; emergency amendment at 27 Ill. Reg. 10442, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; peremptory amendment at 27 Ill. Reg. 17433, effective November 7, 2003; amended at 27 Ill. Reg. 18560, effective December 1, 2003; peremptory amendment at 28 Ill. Reg. 1441, effective January 9, 2004; amended at 28 Ill. Reg. 2684, effective January 22, 2004; amended at 28 Ill. Reg. 6879, effective April 30, 2004; peremptory amendment at 28 Ill. Reg. 7323, effective May 10, 2004; amended at 28 Ill. Reg. 8842, effective June 11, 2004; peremptory amendment at 28 Ill. Reg. 9717, effective June 28, 2004; amended at 28 Ill. Reg. 12585, effective August 27, 2004; peremptory amendment at 28 Ill. Reg. 13011, effective September 8, 2004; peremptory amendment at 28 Ill. Reg. 13247, effective September 20, 2004; peremptory amendment at 28 Ill. Reg. 13656, effective September 27, 2004; emergency amendment at 28 Ill. Reg. 14174, effective October 15, 2004, for a maximum of 150 days; emergency expired March 13, 2005; peremptory amendment at 28 Ill. Reg. 14689, effective October 22, 2004; peremptory amendment at 28 Ill. Reg. 15336, effective November 15, 2004; peremptory amendment at 28 Ill. Reg. 16513, effective December 9, 2004; peremptory amendment at 29 Ill. Reg. 726, effective December 15, 2004; amended at 29 Ill. Reg. 1166, effective January 7, 2005; peremptory amendment at 29 Ill. Reg. 1385, effective January 4, 2005; peremptory amendment at 29 Ill. Reg. 1559, effective January 11, 2005; peremptory amendment at 29 Ill. Reg. 2050, effective January 19, 2005; peremptory amendment at 29 Ill. Reg. 4125, effective February 23, 2005; amended at 29 Ill. Reg. 5375, effective April 4, 2005; peremptory amendment at 29 Ill. Reg. 6105, effective April 14, 2005; peremptory amendment at 29 Ill. Reg. 7217, effective May 6, 2005; peremptory amendment at 29 Ill. Reg. 7840, effective

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May 10, 2005; amended at 29 Ill. Reg. 8110, effective May 23, 2005; preemptory amendment at 29 Ill. Reg. 8214, effective May 23, 2005; preemptory amendment at 29 Ill. Reg. 8418, effective June 1, 2005; amended at 29 Ill. Reg. 9319, effective July 1, 2005; preemptory amendment at 29 Ill. Reg. 12076, effective July 15, 2005; preemptory amendment at 29 Ill. Reg. 13265, effective August 11, 2005; amended at 29 Ill. Reg. 13540, effective August 22, 2005; preemptory amendment at 29 Ill. Reg. 14098, effective September 2, 2005; amended at 29 Ill. Reg. 14166, effective September 9, 2005; amended at 29 Ill. Reg. 19551, effective November 21, 2005; emergency amendment at 29 Ill. Reg. 20554, effective December 2, 2005, for a maximum of 150 days; preemptory amendment at 29 Ill. Reg. 20693, effective December 12, 2005; preemptory amendment at 30 Ill. Reg. 623, effective December 28, 2005; preemptory amendment at 30 Ill. Reg. 1382, effective January 13, 2006; amended at 30 Ill. Reg. 2289, effective February 6, 2006; preemptory amendment at 30 Ill. Reg. 4157, effective February 22, 2006; preemptory amendment at 30 Ill. Reg. 5687, effective March 7, 2006; preemptory amendment at 30 Ill. Reg. 6409, effective March 30, 2006; amended at 30 Ill. Reg. 7857, effective April 17, 2006; amended at 30 Ill. Reg. 9438, effective May 15, 2006; preemptory amendment at 30 Ill. Reg. 10153, effective May 18, 2006; preemptory amendment at 30 Ill. Reg. 10508, effective June 1, 2006; amended at 30 Ill. Reg. 11336, effective July 1, 2006; emergency amendment at 30 Ill. Reg. 12340, effective July 1, 2006, for a maximum of 150 days; preemptory amendment at 30 Ill. Reg. 12418, effective July 1, 2006; amended at 30 Ill. Reg. 12761, effective July 17, 2006; preemptory amendment at 30 Ill. Reg. 13547, effective August 1, 2006; preemptory amendment at 30 Ill. Reg. 15059, effective September 5, 2006; preemptory amendment at 30 Ill. Reg. 16439, effective September 27, 2006; emergency amendment at 30 Ill. Reg. 16626, effective October 3, 2006, for a maximum of 150 days; preemptory amendment at 30 Ill. Reg. 17603, effective October 20, 2006; amended at 30 Ill. Reg. 18610, effective November 20, 2006; preemptory amendment at 30 Ill. Reg. 18823, effective November 21, 2006; preemptory amendment at 31 Ill. Reg. 230, effective December 20, 2006; emergency amendment at 31 Ill. Reg. 1483, effective January 1, 2007, for a maximum of 150 days; preemptory amendment at 31 Ill. Reg. 2485, effective January 17, 2007; preemptory amendment at 31 Ill. Reg. 4445, effective February 28, 2007; amended at 31 Ill. Reg. 4982, effective March 15, 2007; preemptory amendment at 31 Ill. Reg. 7338, effective May 3, 2007; amended at 31 Ill. Reg. 8901, effective July 1, 2007; emergency amendment at 31 Ill. Reg. 10056, effective July 1, 2007, for a maximum of 150 days; preemptory amendment at 31 Ill. Reg. 10496, effective July 6, 2007; preemptory amendment at 31 Ill. Reg. 12335, effective August 9, 2007; emergency amendment at 31 Ill. Reg. 12608, effective August 16, 2007, for a maximum of 150 days; emergency amendment at 31 Ill. Reg. 13220, effective August 30, 2007, for a maximum of 150 days; preemptory amendment at 31 Ill. Reg. 13357, effective August 29, 2007; amended at 31 Ill. Reg. 13981, effective September 21, 2007; preemptory amendment at 31 Ill. Reg. 14331, effective October 1, 2007; amended at 31 Ill. Reg. 16094, effective November 20, 2007; amended at 31 Ill. Reg. 16792, effective December 13, 2007; preemptory amendment at 32 Ill. Reg. 598, effective December 27, 2007; amended at

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32 Ill. Reg. 1082, effective January 11, 2008; preemptory amendment at 32 Ill. Reg. 3095, effective February 13, 2008; preemptory amendment at 32 Ill. Reg. 6097, effective March 25, 2008; preemptory amendment at 32 Ill. Reg. 7154, effective April 17, 2008; expedited correction at 32 Ill. Reg. 9747, effective April 17, 2008; preemptory amendment at 32 Ill. Reg. 9360, effective June 13, 2008; amended at 32 Ill. Reg. 9881, effective July 1, 2008; preemptory amendment at 32 Ill. Reg. 12065, effective July 9, 2008; preemptory amendment at 32 Ill. Reg. 13861, effective August 8, 2008; preemptory amendment at 32 Ill. Reg. 16591, effective September 24, 2008; preemptory amendment at 32 Ill. Reg. 16872, effective October 3, 2008; preemptory amendment at 32 Ill. Reg. 18324, effective November 14, 2008; preemptory amendment at 33 Ill. Reg. 98, effective December 19, 2008; amended at 33 Ill. Reg. 2148, effective January 26, 2009; preemptory amendment at 33 Ill. Reg. 3530, effective February 6, 2009; preemptory amendment at 33 Ill. Reg. 4202, effective February 26, 2009; preemptory amendment at 33 Ill. Reg. 5501, effective March 25, 2009; preemptory amendment at 33 Ill. Reg. 6354, effective April 15, 2009; preemptory amendment at 33 Ill. Reg. 6724, effective May 1, 2009; preemptory amendment at 33 Ill. Reg. 9138, effective June 12, 2009; emergency amendment at 33 Ill. Reg. 9432, effective July 1, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 10211, effective July 1, 2009; preemptory amendment at 33 Ill. Reg. 10823, effective July 2, 2009; preemptory amendment at 33 Ill. Reg. 11082, effective July 10, 2009; preemptory amendment at 33 Ill. Reg. 11698, effective July 23, 2009; preemptory amendment at 33 Ill. Reg. 11895, effective July 31, 2009; preemptory amendment at 33 Ill. Reg. 12872, effective September 3, 2009; amended at 33 Ill. Reg. 14944, effective October 26, 2009; preemptory amendment at 33 Ill. Reg. 16598, effective November 13, 2009; preemptory amendment at 34 Ill. Reg. 305, effective December 18, 2009; emergency amendment at 34 Ill. Reg. 957, effective January 1, 2010, for a maximum of 150 days; preemptory amendment at 34 Ill. Reg. 1425, effective January 5, 2010; preemptory amendment at 34 Ill. Reg. 3684, effective March 5, 2010; preemptory amendment at 34 Ill. Reg. 5776, effective April 2, 2010; preemptory amendment at 34 Ill. Reg. 6214, effective April 16, 2010; amended at 34 Ill. Reg. 6583, effective April 30, 2010; preemptory amendment at 34 Ill. Reg. 7528, effective May 14, 2010; amended at 34 Ill. Reg. 7645, effective May 24, 2010; preemptory amendment at 34 Ill. Reg. 7947, effective May 26, 2010; preemptory amendment at 34 Ill. Reg. 8633, effective June 18, 2010; amended at 34 Ill. Reg. 9759, effective July 1, 2010; preemptory amendment at 34 Ill. Reg. 10536, effective July 9, 2010; preemptory amendment at 34 Ill. Reg. 11864, effective July 30, 2010; emergency amendment at 34 Ill. Reg. 12240, effective August 9, 2010, for a maximum of 150 days; preemptory amendment at 34 Ill. Reg. 13204, effective August 26, 2010; preemptory amendment at 34 Ill. Reg. 13657, effective September 8, 2010; preemptory amendment at 34 Ill. Reg. 15897, effective September 30, 2010; preemptory amendment at 34 Ill. Reg. 18912, effective November 15, 2010; preemptory amendment at 34 Ill. Reg. 19582, effective December 3, 2010; amended at 35 Ill. Reg. 765, effective December 30, 2010; emergency amendment at 35 Ill. Reg. 1092, effective January 1, 2011, for a maximum of 150 days; preemptory amendment at 35 Ill. Reg.

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2465, effective January 19, 2011; preemptory amendment at 35 Ill. Reg. 3577, effective February 10, 2011; emergency amendment at 35 Ill. Reg. 4412, effective February 23, 2011, for a maximum of 150 days; preemptory amendment at 35 Ill. Reg. 4803, effective March 11, 2011; emergency amendment at 35 Ill. Reg. 5633, effective March 15, 2011, for a maximum of 150 days; preemptory amendment at 35 Ill. Reg. 5677, effective March 18, 2011; amended at 35 Ill. Reg. 8419, effective May 23, 2011; amended at 35 Ill. Reg. 11245, effective June 28, 2011; emergency amendment at 35 Ill. Reg. 11657, effective July 1, 2011, for a maximum of 150 days; emergency expired November 27, 2011; preemptory amendment at 35 Ill. Reg. 12119, effective June 29, 2011; preemptory amendment at 35 Ill. Reg. 13966, effective July 29, 2011; preemptory amendment at 35 Ill. Reg. 15178, effective August 29, 2011; emergency amendment at 35 Ill. Reg. 15605, effective September 16, 2011, for a maximum of 150 days; preemptory amendment at 35 Ill. Reg. 15640, effective September 15, 2011; preemptory amendment at 35 Ill. Reg. 19707, effective November 23, 2011; amended at 35 Ill. Reg. 20144, effective December 6, 2011; amended at 36 Ill. Reg. 153, effective December 22, 2011; preemptory amendment at 36 Ill. Reg. 564, effective December 29, 2011; preemptory amendment at 36 Ill. Reg. 3957, effective February 24, 2012; preemptory amendment at 36 Ill. Reg. 4158, effective March 5, 2012; preemptory amendment at 36 Ill. Reg. 4437, effective March 9, 2012; amended at 36 Ill. Reg. 4707, effective March 19, 2012; amended at 36 Ill. Reg. 8460, effective May 24, 2012; preemptory amendment at 36 Ill. Reg. 10518, effective June 27, 2012; emergency amendment at 36 Ill. Reg. 11222, effective July 1, 2012, for a maximum of 150 days; preemptory amendment at 36 Ill. Reg. 13680, effective August 15, 2012; preemptory amendment at 36 Ill. Reg. 13973, effective August 22, 2012; preemptory amendment at 36 Ill. Reg. 15498, effective October 16, 2012; amended at 36 Ill. Reg. 16213, effective November 1, 2012; preemptory amendment at 36 Ill. Reg. 17138, effective November 20, 2012; preemptory amendment at 37 Ill. Reg. 3408, effective March 7, 2013; amended at 37 Ill. Reg. 4750, effective April 1, 2013; preemptory amendment at 37 Ill. Reg. 5925, effective April 18, 2013; preemptory amendment at 37 Ill. Reg. 9563, effective June 19, 2013; amended at 37 Ill. Reg. 9939, effective July 1, 2013; emergency amendment at 37 Ill. Reg. 11395, effective July 1, 2013, for a maximum of 150 days; preemptory amendment at 37 Ill. Reg. 11524, effective July 3, 2013; preemptory amendment at 37 Ill. Reg. 12588, effective July 19, 2013; preemptory amendment at 37 Ill. Reg. 13762, effective August 8, 2013; preemptory amendment at 37 Ill. Reg. 14219, effective August 23, 2013; amended at 37 Ill. Reg. 16925, effective October 8, 2013; preemptory amendment at 37 Ill. Reg. 17164, effective October 18, 2013; preemptory amendment at 37 Ill. Reg. 20410, effective December 6, 2013; preemptory amendment at 38 Ill. Reg. 2974, effective January 9, 2014; amended at 38 Ill. Reg. 5250, effective February 4, 2014; preemptory amendment at 38 Ill. Reg. 6725, effective March 6, 2014.

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Section 310.APPENDIX A Negotiated Rates of Pay**Section 310.TABLE A RC-104 (Conservation Police Supervisors, Illinois Fraternal Order of Police Labor Council)**

<u>Title</u>	<u>Title Code</u>	<u>Bargaining Unit</u>	<u>Pay Plan Code</u>
Conservation Police Sergeant	09347	RC-104	Q
Conservation Police Lieutenant	09339	RC-104	Q
Senior Public Service Administrator, Option 7 (captain function) Department of Natural Resources	40070	RC-104	Q

NOTE: In-Hire Rate – Effective February 14, 2014, a new employee shall be hired at 33% of the differential between a Conservation Police Officer II and the employee's new rank at the appropriate longevity level. Upon successful completion of 18 month of service, the employee shall be paid 66% of the rank differential between a Conservation Police Officer II and the employee's new rank at the appropriate longevity level. Upon successful completion of 36 month of service, the employee shall be paid 100% of the rank differential between a Conservation Police Officer II and the employee's new rank at the appropriate longevity level.

Longevity Bonus – Employees shall receive longevity bonus at the beginning of the 9, 10, 12.5, 14, 15, 17.5, 20, 21, 22.5 and 25 years of service.

Option Clarification – The positions allocated to the Senior Public Service Administrator title that are assigned to the negotiated RC-104 rates have the Option 7. See the definition of option in Section 310.50.

Supervisory Enhancement – Effective January 1, 2014, Conservation Police Sergeants with 15 or more years of service receive to their rate of pay a onetime adjustment increase, which is 7.9% above the rate of pay of the Conservation Police Officer II with the same years of service. The Agreement's Appendix A – Wages chart calculation assumes that the Conservation Police Officer II title receives the same general increase as the Conservation Police Sergeants. Effective January 1, 2014, Conservation Police Lieutenants' rate of pay shall reflect an amount 3.9% greater than Sergeants with the same steps or years of service.

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<u>Title</u>	<u>STEPS</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
<u>Conservation Police Sergeant</u>	<u>5380</u>	<u>5656</u>	<u>5928</u>	<u>6205</u>	<u>6493</u>	<u>6797</u>	<u>6797</u>
<u>Conservation Police Lieutenant</u>	<u>5540</u>	<u>5823</u>	<u>6103</u>	<u>6389</u>	<u>6684</u>	<u>6998</u>	<u>6998</u>
<u>Senior Public Service</u> <u>Administrator, Option 7</u> <u>(captain function) Department</u> <u>of Natural Resources</u>	<u>5817</u>	<u>6115</u>	<u>6410</u>	<u>6707</u>	<u>7018</u>	<u>7346</u>	<u>7346</u>

Longevity Bonus Rates

<u>Title</u>	<u>9</u> <u>Yrs</u>	<u>10</u> <u>Yrs</u>	<u>12.5</u> <u>Yrs</u>	<u>14</u> <u>Yrs</u>	<u>15</u> <u>Yrs</u>	<u>17.5</u> <u>Yrs</u>	<u>20</u> <u>Yrs</u>	<u>21</u> <u>Yrs</u>	<u>22.5</u> <u>Yrs</u>	<u>25</u> <u>Yrs</u>
<u>Conservation Police</u> <u>Sergeant</u>	<u>7113</u>	<u>7523</u>	<u>7709</u>	<u>7709</u>	<u>8072</u>	<u>8450</u>	<u>8860</u>	<u>8942</u>	<u>9362</u>	<u>9805</u>
<u>Conservation Police</u> <u>Lieutenant</u>	<u>7322</u>	<u>7746</u>	<u>7933</u>	<u>7933</u>	<u>8309</u>	<u>8699</u>	<u>9117</u>	<u>9205</u>	<u>9637</u>	<u>10092</u>
<u>Senior Public Service</u> <u>Administrator,</u> <u>Option 7 (captain</u> <u>function)</u> <u>Department of</u> <u>Natural Resources</u>	<u>7687</u>	<u>8133</u>	<u>8330</u>	<u>8330</u>	<u>8724</u>	<u>9133</u>	<u>9575</u>	<u>9664</u>	<u>10119</u>	<u>10598</u>

Effective July 1, 2013

<u>Title</u>	<u>STEPS</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
<u>Conservation Police Sergeant</u>	<u>5488</u>	<u>5769</u>	<u>6047</u>	<u>6329</u>	<u>6623</u>	<u>6933</u>	<u>6933</u>
<u>Conservation Police Lieutenant</u>	<u>5651</u>	<u>5939</u>	<u>6225</u>	<u>6517</u>	<u>6818</u>	<u>7138</u>	<u>7138</u>
<u>Senior Public Service</u> <u>Administrator, Option 7</u> <u>(captain function) Department</u> <u>of Natural Resources</u>	<u>5933</u>	<u>6237</u>	<u>6538</u>	<u>6841</u>	<u>7158</u>	<u>7493</u>	<u>7493</u>

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Longevity Bonus Rates

<u>Title</u>	<u>9</u> <u>Yrs</u>	<u>10</u> <u>Yrs</u>	<u>12.5</u> <u>Yrs</u>	<u>14</u> <u>Yrs</u>	<u>15</u> <u>Yrs</u>	<u>17.5</u> <u>Yrs</u>	<u>20</u> <u>Yrs</u>	<u>21</u> <u>Yrs</u>	<u>22.5</u> <u>Yrs</u>	<u>25</u> <u>Yrs</u>
<u>Conservation Police</u> <u>Sergeant</u>	<u>7255</u>	<u>7673</u>	<u>7863</u>	<u>7863</u>	<u>8233</u>	<u>8619</u>	<u>9037</u>	<u>3121</u>	<u>9549</u>	<u>10001</u>
<u>Conservation Police</u> <u>Lieutenant</u>	<u>7468</u>	<u>7901</u>	<u>8092</u>	<u>8092</u>	<u>8475</u>	<u>8873</u>	<u>9299</u>	<u>9389</u>	<u>9830</u>	<u>10294</u>
<u>Senior Public Service</u> <u>Administrator,</u> <u>Option 7 (captain</u> <u>function)</u> <u>Department of</u> <u>Natural Resources</u>	<u>7841</u>	<u>8296</u>	<u>8497</u>	<u>8497</u>	<u>8898</u>	<u>9316</u>	<u>9767</u>	<u>9857</u>	<u>10321</u>	<u>10810</u>

Effective January 1, 2014

<u>Title</u>	<u>STEPS</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
<u>Conservation Police Sergeant</u>	<u>5488</u>	<u>5769</u>	<u>6047</u>	<u>6329</u>	<u>6623</u>	<u>6933</u>	<u>7094</u>
<u>Conservation Police Lieutenant</u>	<u>5702</u>	<u>5994</u>	<u>6283</u>	<u>6576</u>	<u>6881</u>	<u>7203</u>	<u>7371</u>

Longevity Bonus Rates

<u>Title</u>	<u>9</u> <u>Yrs</u>	<u>10</u> <u>Yrs</u>	<u>12.5</u> <u>Yrs</u>	<u>14</u> <u>Yrs</u>	<u>15</u> <u>Yrs</u>	<u>17.5</u> <u>Yrs</u>	<u>20</u> <u>Yrs</u>	<u>21</u> <u>Yrs</u>	<u>22.5</u> <u>Yrs</u>	<u>25</u> <u>Yrs</u>
<u>Conservation Police</u> <u>Sergeant</u>	<u>7255</u>	<u>7673</u>	<u>7863</u>	<u>8098</u>	<u>8333</u>	<u>8719</u>	<u>9134</u>	<u>9221</u>	<u>9648</u>	<u>10096</u>
<u>Conservation Police</u> <u>Lieutenant</u>	<u>7538</u>	<u>7972</u>	<u>8170</u>	<u>8414</u>	<u>8658</u>	<u>9059</u>	<u>9490</u>	<u>9581</u>	<u>10024</u>	<u>10490</u>

Effective July 1, 2014

<u>Title</u>	<u>STEPS</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>

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<u>Conservation Police Sergeant</u>	<u>5598</u>	<u>5884</u>	<u>6168</u>	<u>6456</u>	<u>6755</u>	<u>7072</u>	<u>7236</u>
<u>Conservation Police Lieutenant</u>	<u>5816</u>	<u>6114</u>	<u>6409</u>	<u>6708</u>	<u>7019</u>	<u>7347</u>	<u>7518</u>

Longevity Bonus Rates

<u>Title</u>	<u>9 Yrs</u>	<u>10 Yrs</u>	<u>12.5 Yrs</u>	<u>14 Yrs</u>	<u>15 Yrs</u>	<u>17.5 Yrs</u>	<u>20 Yrs</u>	<u>21 Yrs</u>	<u>22.5 Yrs</u>	<u>25 Yrs</u>
<u>Conservation Police Sergeant</u>	<u>7400</u>	<u>7826</u>	<u>8020</u>	<u>8260</u>	<u>8500</u>	<u>8893</u>	<u>9317</u>	<u>9405</u>	<u>9841</u>	<u>10298</u>
<u>Conservation Police Lieutenant</u>	<u>7689</u>	<u>8131</u>	<u>8333</u>	<u>8582</u>	<u>8831</u>	<u>9240</u>	<u>9680</u>	<u>9773</u>	<u>10224</u>	<u>10700</u>

Effective July 1, 2011

<u>Title</u>	<u>STEPS</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
<u>Conservation Police Sergeant</u>	<u>5260</u>	<u>5531</u>	<u>5798</u>	<u>6067</u>	<u>6350</u>	<u>6646</u>	<u>6646</u>
<u>Conservation Police Lieutenant</u>	<u>5417</u>	<u>5694</u>	<u>5968</u>	<u>6247</u>	<u>6536</u>	<u>6842</u>	<u>6842</u>
<u>Senior Public Service Administrator, Option 7 (captain function) Department of Natural Resources</u>	<u>5688</u>	<u>5980</u>	<u>6268</u>	<u>6559</u>	<u>6862</u>	<u>7183</u>	<u>7183</u>

Longevity Bonus Rates

<u>Title</u>	<u>9 Yrs</u>	<u>10 Yrs</u>	<u>12.5 Yrs</u>	<u>14 Yrs</u>	<u>15 Yrs</u>	<u>17.5 Yrs</u>	<u>20 Yrs</u>	<u>21 Yrs</u>	<u>22.5 Yrs</u>	<u>25 Yrs</u>
<u>Conservation Police Sergeant</u>	<u>6956</u>	<u>7357</u>	<u>7539</u>	<u>7539</u>	<u>7893</u>	<u>8263</u>	<u>8664</u>	<u>8745</u>	<u>9155</u>	<u>9587</u>
<u>Conservation Police Lieutenant</u>	<u>7160</u>	<u>7574</u>	<u>7758</u>	<u>7758</u>	<u>8125</u>	<u>8507</u>	<u>8916</u>	<u>9000</u>	<u>9423</u>	<u>9869</u>
<u>Senior Public Service Administrator, Option 7 (captain function) Department of Natural Resources</u>	<u>7517</u>	<u>7954</u>	<u>8146</u>	<u>8146</u>	<u>8531</u>	<u>8931</u>	<u>9363</u>	<u>9450</u>	<u>9895</u>	<u>10363</u>

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Resources

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Title	STEPS						
	1	2	3	4	5	6	7
Conservation Police Sergeant	5353	5628	5899	6174	6461	6763	6763
Conservation Police Lieutenant	5512	5794	6073	6357	6651	6963	6963
Senior Public Service Administrator, Option 7 (captain function) Department of Natural Resources	5788	6085	6378	6674	6983	7309	7309

Longevity Bonus Rates

Title	9 Yrs	10 Yrs	12.5 Yrs	14 Yrs	15 Yrs	17.5 Yrs	20 Yrs	21 Yrs	22.5 Yrs	25 Yrs
Conservation Police Sergeant	7078	7486	7671	7671	8032	8408	8816	8898	9315	9756
Conservation Police Lieutenant	7286	7707	7894	7894	8268	8656	9072	9159	9589	10042
Senior Public Service Administrator, Option 7 (captain function) Department of Natural Resources	7649	8093	8289	8289	8681	9088	9527	9616	10069	10545

Effective June 30, 2012

Title	STEPS						
	1	2	3	4	5	6	7

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Conservation Police Sergeant	5380	5656	5928	6205	6493	6797	6797
Conservation Police Lieutenant	5540	5823	6103	6389	6684	6998	6998
Senior Public Service Administrator, Option 7 (captain function) Department of Natural Resources	5817	6115	6410	6707	7018	7346	7346

Longevity Bonus Rates

Title	9-Yrs	10-Yrs	12.5-Yrs	14-Yrs	15-Yrs	17.5-Yrs	20-Yrs	21-Yrs	22.5-Yrs	25-Yrs
Conservation Police Sergeant	7113	7523	7709	7709	8072	8450	8860	8942	9362	9805
Conservation Police Lieutenant	7322	7746	7933	7933	8309	8699	9117	9205	9637	10092
Senior Public Service Administrator, Option 7 (captain function) Department of Natural Resources	7687	8133	8330	8330	8724	9133	9575	9664	10119	10598

(Source: Amended at 38 Ill. Reg. 6725, effective March 6, 2014)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF RECODIFICATION

1) Heading of the Part: Revocation Procedures For Conservation Offenses

2) Code Citation: 17 Ill. Adm. Code 2530

3) Date of Index Department Review:

4) Subparts and Headings Being Recodified:

Subparts	Headings
SUBPART C	HEARINGS OF CONTESTED CASES
SUBPART D	INTERSTATE WILDLIFE VIOLATOR COMPACT
SUBPART E	REINSTATEMENT OF PRIVILEGES
SUBAPRT F	STATUTORILY MANDATED SUSPENSIONS

5) Outline of the Subparts and Headings of the Part As Recodified:

Subparts	Headings
SUBPART C	DEPARTMENT INITIATED COMPLAINT
SUBPART D	HEARINGS OF CONTESTED CASES
SUBPART E	INTERSTATE WILDLIFE VIOLATOR COMPACT
SUBPART F	REINSTATEMENT OF PRIVILEGES
SUBPART G	STATUTORILY MANDATED SUSPENSIONS

6) Conversion Table of Present and Recodified Subparts:

Present Subpart	Recodified Subpart
SUBPART C	SUBPART D
SUBPART D	SUBPART E
SUBPART E	SUBPART F
SUBPART F	SUBPART G

DEPARTMENT OF REVENUE

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Parts:
Home Rule County Retailers' Occupation Tax
Home Rule Municipal Retailers' Occupation Tax
Regional Transportation Authority Retailers' Occupation Tax
Metro East Mass Transit District Retailers' Occupation Tax
Metro-East Park and Recreation District Retailers' Occupation Tax
County Water Commission Retailers' Occupation Tax
Special County Retailers' Occupation Tax for Public Safety
Salem Civic Center Retailers' Occupation Tax
Non-Home Rule Municipal Retailers' Occupation Tax
County Motor Fuel Tax

- 2) Code Citation:
86 Ill. Adm. Code 220
86 Ill. Adm. Code 270
86 Ill. Adm. Code 320
86 Ill. Adm. Code 370
86 Ill. Adm. Code 395
86 Ill. Adm. Code 630
86 Ill. Adm. Code 670
86 Ill. Adm. Code 690
86 Ill. Adm. Code 693
86 Ill. Adm. Code 695

- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
220.115	Withdrawal
270.115	Withdrawal
320.115	Withdrawal
370.115	Withdrawal
395.115	Withdrawal
630.120	Withdrawal
670.115	Withdrawal
690.115	Withdrawal
693.115	Withdrawal
695.115	Withdrawal

- 4) Date Notice of Proposed Rules Published in the Illinois Register:
38 Ill. Reg. 3502; February 7, 2014
38 Ill. Reg. 3504; February 7, 2014

DEPARTMENT OF REVENUE

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

38 Ill. Reg. 3506; February 7, 2014
38 Ill. Reg. 3508; February 7, 2014
38 Ill. Reg. 3510; February 7, 2014
38 Ill. Reg. 3512; February 7, 2014
38 Ill. Reg. 3514; February 7, 2014
38 Ill. Reg. 3516; February 7, 2014
38 Ill. Reg. 3518; February 7, 2014
38 Ill. Reg. 3520; February 7, 2014

- 5) Reason for Withdrawal: The Department is withdrawing its proposed amendments to 86 Ill. Adm. Code 220.115, 270.115, 320.115, 370.115, 395.115, 630.120, 670.115, 690.115, 693.115 and 695.115 due to an inadvertent error in the First Notice for these proposed rules. That notice indicated that the proposed amendments were identical to the emergency rules filed for these Sections. The text of the proposed amendments submitted, however, was not identical to the emergency rules, since the Department proposed the removal of a section entitled, "Long Term or Blanket Contracts." Because only the text of the emergency rules was published as a result of this inadvertent error, the proposed removal was not apparent to those reading the *Illinois Register*. The Department wishes to withdraw its proposed rulemakings and submit new proposed amendments containing this change, thus providing ample notice and opportunity for public comment. Emergency rules currently in effect for these Sections will remain unchanged.

SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON PROPOSED RULES

- a) Heading of the Parts: Issuance of Licenses; Commercial Driver Training Schools and Online Only Adult Driver Education Course Provider Certification
- b) Code Citations: 92 Ill. Adm. Code 1030; 1060 and 1066
- c) Register Citation to Notice of Proposed Rules: 38 Ill. Reg. 5163; February 21, 2014; 38 Ill. Reg. 5214; February 21, 2014 and 38 Ill. Reg. 5228; February 21, 2014
- d) Date, Time and Location of Public Hearing:

Monday, March 31, 2014
9:00 a.m.
Illinois State Library
Room 403
300 S. Second Street
Springfield IL 62701
- e) Other Pertinent Information: The proposed rule implements PA 98-167 (HB 772), Adult Driver Education. Additional information on the hearing can be found at http://www.cyberdriveillinois.com/services/open_meetings_act/home.html

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 38, Issue 12 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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