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## INTRODUCTION

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

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

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

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

## ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2016

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

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

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Donations of Utilities
- 2) Code Citation: 83 Ill. Adm. Code 325
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
325.10	New Section
325.20	New Section
325.30	New Section
325.40	New Section
325.50	New Section
325.60	New Section
- 4) Statutory Authority: Implementing Section 9-227 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/9-101, 10-101]
- 5) A Complete Description of the Subjects and Issues Involved: Section 9-227 of the Public Utilities Act [220 ILCS 5/9-227] allows the Illinois Commerce Commission to consider as an operating expense for ratemaking purposes certain donations made by public utilities. The proposed rules that are the subject of this proceeding are intended to help ensure that qualifying donations are ones for which recovery from ratepayers is appropriate under the Act, and that the information provided to the Commission for its review of the prudence and reasonableness of the donations is sufficient in quality and detail, and is supported by the record of the rate case.
- 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 rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: The proposed rulemaking neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED RULES

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments should be filed, within 45 days after the date of this issue of the *Illinois Register*, in Docket No. 12-0457 with:

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

217/782-7434

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking will affect any subject jurisdictional entities that are also small businesses as defined in the Illinois Administrative Procedure Act. This rulemaking will not affect any small municipalities or not-for-profit corporations.
  - B) Reporting, bookkeeping or other procedures required for compliance:  
Bookkeeping and filing procedures
  - C) Types of professional skills necessary for compliance: Managerial and accounting skills
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: The Commission did not anticipate the need for this rulemaking at that time.

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

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED RULES

TITLE 83: PUBLIC UTILITIES  
CHAPTER I: ILLINOIS COMMERCE COMMISSION  
SUBCHAPTER b: PROVISIONS APPLICABLE TO  
MORE THAN ONE KIND OF UTILITYPART 325  
DONATIONS OF UTILITIES

Section	
325.10	Scope, Construction and Application of this Part
325.20	Definitions
325.30	Supplemental Information to be Provided Regarding Charitable Contributions
325.40	Information to be Made Available Regarding Charitable Contributions
325.50	Future Test Years Rate Filings
325.60	Disclosures Regarding Donations or Charitable Contributions Made in Compliance with the Requirements of Section 16-108.5(b-10)

AUTHORITY: Implementing Section 9-227 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/9-227 and 10-101].

SOURCE: Adopted at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 325.10 Scope, Construction and Application of this Part**

This Part establishes requirements applicable to public utilities that, pursuant to the Act, seek recovery of the costs of donations as operating expenses through rates or other charges or classifications. The information required by this Part is intended to be supplemental to information required by other provisions of law pertaining to donations by public utilities, including 83 Ill. Adm. Code 280.3070 (Schedule C-7: Charitable Contributions), and the provisions of this Part are not intended to reduce or eliminate those other requirements. The practices and procedures contained in this Part are intended to help ensure that:

- a) qualifying donations are ones for which recovery from ratepayers is appropriate under the Act; and
- b) the information provided to the Commission for its review of the prudence and reasonableness of the donations is sufficient in quality and detail and is supported by the record of the rate case.

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED RULES

**Section 325.20 Definitions**

The following terms, as used in this Part, shall have the following meanings:

"Act" means the Public Utilities Act [220 ILCS 5].

"Charitable contribution" means a donation proposed to be an operating expense pursuant to the Act or any applicable order or rule of the Commission, including, without limitation, Section 9-227 of the Act and 83 Ill. Adm. Code 285.3070 (Schedule C-7: Charitable Contributions).

"Commission" means the Illinois Commerce Commission.

"Donation" means a contribution made by a public utility to an organization or entity that purports to be engaged in promoting the public welfare or in supporting charitable, scientific, religious or educational purposes, including, without limitation, charitable contributions.

"Public utility" or "utility" has the meaning ascribed to "public utility" in Section 3-105 of the Act.

"Rate case" means any rate proceeding filed under Article IX (Rates) or Article XVI (Electric Service Customer Choice and Rate Relief Law of 1997) of the Act, or filed in connection with any other applicable recovery mechanism, including riders.

**Section 325.30 Supplemental Information to be Provided Regarding Charitable Contributions**

- a) To assist the Commission in evaluating the prudence and reasonableness of any charitable contribution, for all charitable contributions to a single entity or organization that total \$1,000 or more in the reporting year for which a utility is seeking recovery from ratepayers in a rate case, the utility must provide both the information required by 83 Ill. Adm. Code 285.3070 (Schedule C-7: Charitable Contributions) and the following supplemental information, provided that, if charitable contributions subject to this Section include amounts that the utility contributed under a program in which it matches employee contributions, the utility may report the matching contributions as a single aggregate amount separately for each recipient of matching funds:

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED RULES

- 1) Account number/description used to record each charitable contribution;
  - 2) Date and amount of each charitable contribution;
  - 3) Brief description of why the donation is reasonable in amount;
  - 4) Name of the entity or organization receiving the charitable contribution;
  - 5) Publicly stated mission of, or a link through which the stated mission may be publicly accessed, and the physical address of, the entity or organization receiving the charitable contribution;
  - 6) Indication of whether the entity or organization receiving each charitable contribution is a tax-exempt organization under State or federal law. Notwithstanding this informational requirement, the fact that an entity or organization is or is not tax exempt does not create an inference that a contribution to the entity or organization is per se reasonable or unreasonable;
  - 7) Description of the purpose of each charitable contribution, including:
    - A) whether it is for the public welfare or for charitable scientific, religious or educational purposes; and
    - B) whether the donee provides services within the public utility's service territory or within the State of Illinois;
  - 8) Amount of the charitable contribution, if any, allocated to other utility operations (e.g., gas and electric, or water and sewer) or jurisdiction (e.g., Illinois and Iowa), along with the identification of the other utility operation or jurisdiction; and
  - 9) Basis of any allocation to other utility operations and jurisdictions, if applicable.
- b) The workpapers supporting subsection (a) shall include the following:

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED RULES

- 1) Procedures used by a utility providing multiple utility services (e.g., gas and electric, or water and sewer) or serving multiple jurisdictions (e.g., Illinois and Iowa) to allocate any charitable contribution to each utility service provided or jurisdiction served; and
- 2) Sworn statements required by Section 325.60, if applicable.

**Section 325.40 Information to be Made Available Regarding Charitable Contributions**

In any rate case proceeding involving a charitable contribution, the utility seeking recovery shall make the following materials available electronically to Commission Staff upon request:

- a) Written confirmation, which may be in the form of a receipt or a letter or other written communication, from the entity or organization receiving the charitable contribution showing the name of the entity or organization that received the charitable contribution, the name of the utility that made the charitable contribution, the date the charitable contribution was made, and the amount of the charitable contribution;
- b) For all donations to a single organization or entity that are less than \$1,000 for the reporting year for which a utility is seeking recovery from ratepayers in a rate case, a spreadsheet that identifies the date, donee charity, purpose and amount of each contribution, provided that, if charitable contributions subject to this subsection include amounts that the utility contributed under a matching program under which it matches certain employee contributions, then the utility may report the matching contributions as a single aggregate amount separately for each recipient of matching funds, and the confirmation and letter prescribed in subsections (a) and (b) may not be available; and
- c) For individual donations that are \$10,000 or more for the reporting year for which a utility is seeking recovery from ratepayers in a rate case, written confirmation from the recipient entity or organization stating the intended purpose of the funds received.

**Section 325.50 Future Test Year Rate Filings**

If a utility uses a future test year in a rate case, the utility shall provide the information required by Section 325.30 for each of the three consecutive calendar years immediately preceding the test year for which actual data are available, provided, however, that for those past calendar years

## ILLINOIS COMMERCE COMMISSION

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this Section shall not be construed as imposing additional information requirements that did not exist prior to the effective date of this Part.

**Section 325.60 Disclosures Regarding Donations or Charitable Contributions Made in Compliance with the Requirements of Section 16-108.5(b-10)**

For any donation by a participating utility, as defined in Section 16-108.5(b-10) of the Act, the participating utility shall, in its formula rate filings under Section 16-108.5 of the Act, provide to Commission Staff a sworn statement that none of the donations made in compliance with the requirements of Section 16-108.5(b-10) are included in the request for rate recovery.

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: The Illinois Oil and Gas Act
- 2) Code Citation: 62 Ill. Adm. Code 240
- 3) 

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
240.10	Amendment
240.125	New Section
240.135	New Section
240.160	Amendment
240.220	Amendment
240.320	Amendment
240.370	Amendment
240.410	Amendment
240.610	Amendment
240.815	New Section
240.820	Amendment
240.1040	Amendment
240.1130	Amendment
240.1170	Amendment
240.1180	Amendment
240.1181	Repealed
240.1205	Amendment
240.1460	Amendment
240.1615	New Section
240.1710	Amendment
240.1905	Amendment
- 4) Statutory Authority: Implementing and authorized by the Illinois Oil and Gas Act [225 ILCS 725]
- 5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to implement recent amendments to the Illinois Oil and Gas Act [225 ILCS 725/1] to ensure that the Part is consistent with current Department policies, to increase protections to the People and environment of Illinois, to account for changes in industry practices and activities, and to streamline oil and gas permitting procedures to increase efficiency.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: PA 99-137, PA 99-138, PA 99-139

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- 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 rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:
- Daniel Nelson, Legal Counsel  
Department of Natural Resources  
One Natural Resources Way  
Springfield IL 62702-1271
- 217/782-1809
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2016

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

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 62: MINING

## CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

## PART 240

## THE ILLINOIS OIL AND GAS ACT

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240.20	Prevention of Waste (Repealed)
240.30	Jurisdiction (Repealed)
240.40	Enforcement of Act (Repealed)
240.50	Delegation of Authority (Repealed)
240.60	Right of Inspection (Repealed)
240.70	Right of Access (Repealed)
240.80	Sworn Statements (Repealed)
240.90	Additional Reports (Repealed)
240.100	When Rules Become Effective (Repealed)
240.110	Notice of Rules (Repealed)
240.120	Forms (Repealed)
<a href="#">240.125</a>	<a href="#">Notice</a>
240.130	Hearings – Notices (Repealed)
<a href="#">240.135</a>	<a href="#">Falsification or Misstatement of Information</a>
240.131	Unitization Hearings
240.132	Integration Hearings
240.133	Hearings to Establish Pool-Wide Drilling Units
240.140	Violations Not Requiring Formal Action
240.150	Notice of Violation
240.155	Civil Complaint
240.160	Director's Decision
240.170	Cessation Order (Repealed)
240.180	Enforcement Hearings and Enforcement Cessation Orders
240.185	Cessation of Oil Production Operations
240.186	Cessation of Conditions Creating an Imminent Danger to Public Health and Safety and the Environment
240.190	Temporary Relief Hearings
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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

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- 240.200 Applicability
- 240.210 Application for Permit to Drill, Deepen or Convert to a Production Well
- 240.220 Contents of Application
- 240.230 Authority of Person Signing Application
- 240.240 Additional Requirements for Directional Drilling
- 240.245 Additional Requirements for Horizontal Drilling
- 240.250 Issuance of Permit to Drill or Operate
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- 240.255 Conversion of a Production Well to a Water Well
- 240.260 Change of Well Location
- 240.270 Application for Approval of Enhanced Recovery Injection and Disposal Operations (Repealed)
- 240.280 Duration of Underground Injection Well Orders (Repealed)

## SUBPART C: PERMIT APPLICATION PROCEDURES FOR CLASS II UIC WELLS

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- 240.360 Area of Review
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240.640	Reporting Requirements
240.650	Confidentiality of Well Data
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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

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## NOTICE OF PROPOSED AMENDMENTS

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AUTHORITY: Implementing and authorized by the Illinois Oil and Gas Act [225 ILCS 725].

SOURCE: Adopted November 7, 1951; emergency amendment at 6 Ill. Reg. 903, effective January 15, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5542, effective April 19, 1982; codified at 8 Ill. Reg. 2475; amended at 11 Ill. Reg. 2818, effective January 27, 1987; amended at 14 Ill. Reg. 2317, effective January 25, 1990; recodified at 14 Ill. Reg. 3053; amended at 14 Ill. Reg. 13620, effective August 8, 1990; amended at 14 Ill. Reg. 20427, effective January 1, 1991; amended at 15 Ill. Reg. 2706, effective January 31, 1991; recodified at 15 Ill. Reg. 8566; recodified at 15 Ill. Reg. 11641; emergency amendment at 15 Ill. Reg. 14679, effective September 30, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 15493, effective October 10, 1991; amended at 16 Ill. Reg. 2576, effective February 3, 1992; amended at 16 Ill. Reg. 15513, effective September 29, 1992; expedited correction at 16 Ill. Reg. 18859, effective September 29, 1992; emergency amendment at 17 Ill. Reg. 1195, effective January 12, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 2217, effective February 8, 1993; amended at 17 Ill. Reg. 14097, effective August 24, 1993; amended at 17 Ill. Reg. 19923, effective November 8, 1993; amended at 18 Ill. Reg. 8061, effective May 13, 1994; emergency amendment at 18 Ill. Reg. 10380, effective June 21, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16361, effective November 18, 1994; amended at 19 Ill. Reg. 10981, effective July 14, 1995; amended at 21 Ill. Reg. 7164, effective June 3, 1997; emergency amendment at 22 Ill. Reg. 988, effective December 22, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 8422, effective April 28, 1998; amended at 22 Ill. Reg. 8845, effective April 28, 1998; amended

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at 22 Ill. Reg. 22314, effective December 14, 1998; amended at 25 Ill. Reg. 9045, effective July 9, 2001; amended at 35 Ill. Reg. 13281, effective July 26, 2011; amended at 38 Ill. Reg. 18717, effective August 29, 2014; amended at 38 Ill. Reg. 22052, effective November 14, 2014; amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

**Section 240.10 Definitions**

"Act" – means the Illinois Oil and Gas Act [225 ILCS 725].

"Annular or Casing Injection/Disposal Well" – means a well into which fluids are injected between the surface casing and the well bore, the surface casing and the production casing, and/or the production casing and the tubing, or a well into which fluids are injected which does not have production casing, tubing and packer.

"Cement" – means all petroleum industry cements meeting the requirements set forth in "Specifications for Oil Well Cements and Cement Additives", API Standard 10A, January 1974, published by the American Petroleum Institute, 1220 L Street, Northwest, Washington ~~DC, D.C.~~ 20005 (this incorporation does not include any later publications or editions), except as provided in Subpart K.

"Class II Fluids" means:

Produced water and/or other fluids brought to the surface in connection with drilling, completion, workover and plugging of oil and natural gas wells; enhanced recovery operations; or natural gas storage operations;

Produced water and/or other fluids from above, that prior to re-injection have been:

used on site for purposes integrally associated to oil and natural gas well drilling, completion, workover and plugging, oil and gas production, enhanced recovery operations or natural gas storage;

chemically treated or altered to the extent necessary to make them usable for purposes integrally related to oil and natural gas well drilling, completion, workover and plugging, oil and gas

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production, enhanced recovery operations, or natural gas storage operations;

commingled with fluid wastes resulting from fluid treatments outlined above, provided the commingled fluid wastes do not constitute a hazardous waste under the Resource Conservation and Recovery Act (42 USC 6901 et seq. (RCRA));

Fresh water from groundwater or surface water sources that is used for purposes integrally related or associated with oil and natural gas well drilling, completion, workover and plugging, oil and gas production, enhanced recovery operations or natural gas storage;

Waste fluids from gas plants (including filter backwash, precipitated sludge, iron sponge, hydrogen sulfide and scrubber liquid) that are an integral part of oil and gas production operations; and waste fluids from gas dehydration plants (including glycol-based compounds and filter backwash) that are an integral part of natural gas storage operations, unless the gas plant or gas dehydration plant wastes are classified as hazardous under RCRA.

"Class II UIC Well" – means an injection, disposal or commercial disposal well into which fluids are injected:

That are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production, and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

For enhanced recovery of oil or natural gas; and

For storage of hydrocarbons that are liquid at standard temperature and pressure.

"Commercial Disposal Well" – means a permitted Class II well for which the permittee receives deliveries of Class II fluids by tank truck and charges a fee for the specific purpose of disposal of Class II fluids.

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"Commercial Production" – means oil and/or gas has been produced and sold from a well.

"Convert" – means to change an oil, gas, Class II UIC, water supply, observation or gas storage well to another of those types of wells, requiring the issuance of a new permit.

"Department" – means *the Department of Natural Resources, ~~Office of Mines and Minerals of the State of Illinois~~*. (Section 1 of the Act)

"Directional Drilling" – means the controlled directional drilling when the bottom of the well bore is directed away from the vertical position.

"Director" – means the Director of the Department of Natural Resources or his or her designee.

"Disposal Well" – means a Class II UIC well into which fluids brought to the surface in connection with oil or natural gas production are injected into a non-productive oil or gas zone for purposes other than enhanced oil recovery.

"District Office" – means the Department's office for the district in which the well is located.

~~"Division" – means the Division of Oil and Gas within the Department of Natural Resources, Office of Mines and Minerals.~~

"Enhanced Oil Recovery" – means *any secondary or tertiary recovery method used in an effort to recover hydrocarbons from a pool by injection of fluids, gases or other substances to maintain, restore or augment natural reservoir energy, or by introducing gases, chemicals, other substances or heat or by in-situ combustion, or by any combination thereof*. (Section 1 of the Act)

"Enhanced Oil Recovery Injection Well" – means a Class II UIC well used for enhanced oil recovery.

"Flowline" – means all injection, produced water, oil or gas ~~flowlines~~flow lines located within the boundaries of a lease or unit, or gathering lines between leases to a centralized storage area, or to the point where the lines connect with a primary transportation pipeline.

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"Fresh water" – means surface and subsurface water in its natural state useful for drinking water for human consumption, domestic livestock, irrigation, industrial, municipal and recreational purposes, and that will support aquatic life and contains less than 10,000 ppm total dissolved solids.

"General Oilfield Waste" – means oily rags, chemical containers including any unused chemicals, oil filters and gaskets, used motor oil, lubricating oils, hydraulic fluids, diesel fuels, paint and solvent wastes and other similar wastes generated during drilling, completion, production and plugging activities and that are not exempt from the provisions of Subtitle C of RCRA.

"Injection Well" – means an enhanced oil recovery injection well or disposal well.

"Liquid Oilfield Waste" – means *oilfield brines, produced waters, Class II fluids, tank and pit crude oil bottom sediments, and drilling and completion fluids, to the extent those wastes are now or hereafter exempt from the provisions of Subtitle C of the Federal Resource Conservation Recovery Act of 1976.* (Section 8c of the Act)

"Liquid Oilfield Waste Hauler" – means a person holding a permit to operate a liquid oilfield waste transportation system.

"Material Misrepresentation" – means knowingly submitting any untrue, misstated, misleading or deceptive information, or a document containing that information, or with knowledge of the concealment, suppression or omission of any information, in or from an application, permit, required record, or any other document required by the Act, this Part or Department requirements, that causes the Department to act differently than it would have if it had known the undisclosed or true information.

"Office" – means the Office of Oil and Gas Resource Management within the Department of Natural Resources.

"Orphan Well" – means *a well for which:*

*no fee assessment under Section 19.7 of the Act has been paid or no other bond coverage has been provided for 2 consecutive years;*

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*no oil or gas has been produced from the well or from the lease or unit on which the well is located for 2 consecutive years; and*

*no permittee or owner can be identified or located by the Department. Orphaned wells include wells that may have been drilled for purposes other than those for which a permit is required under the Act if the well is a conduit for oil or saltwater intrusions into freshwater zones or onto the surface which may be caused by oil and gas operations. (Section 1 of the Act)*

"Owner" – means *the person who has the right to drill into and produce from any pool, and to appropriate the production either for the person or for the person and another, or others, or solely for others, excluding the mineral owner's royalty if the right to drill and produce has been granted under an oil and gas lease. An owner may also be a person granted the right to drill and operate an injection (Class II UIC) well independent of the right to drill for and produce oil or gas. When the right to drill, produce, and appropriate production is held by more than one person, then all persons holding these rights may designate the owner by a written operating agreement or similar written agreement. In the absence of such an agreement, and subject to the provisions of Sections 22.2 and 23.1 through 23.16 of the Act, the owner shall be the person designated in writing by a majority in interest of the persons holding these rights. (Section 1 of the Act)*

"Permit" – means *the Department's written authorization allowing:*

*a well or test hole to be drilled, deepened, converted and/or operated by an owner (Section 1 of the Act); or*

*a tank battery or concrete storage structure to be constructed and operated; or*

*operation of a liquid oilfield waste transportation system or engage in lease road oiling.*

"Permittee" – means *the owner holding or required to hold the permit, and who is also responsible for paying assessments in accordance with Section 19.7 of the Act and, where applicable, executing and filing the bond associated with the well as principal and who is responsible for compliance with all statutory and regulatory requirements pertaining to the well. When the right and responsibility*

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*for operating a well is vested in a receiver or trustee appointed by a court of competent jurisdiction, the permit shall be issued to the receiver or trustee.*

(Section 1 of the Act) Permittee also means the owner or person required to hold the permit for a tank battery, pit, or concrete storage structure or a permit to engage in liquid oilfield waste hauling, lease road oiling, or test well and test hole drilling.

"Person" – means *any natural person, corporation, association, partnership, governmental agency or other legal entity, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.* (Section 1 of the Act)

"PRF" – means the Department's Plugging and Restoration Fund, established under Section 6 of the Act.

"Pool" – means *a natural underground reservoir containing, in whole or in part, a natural accumulation of oil or gas, or both. Each productive zone or stratum of a general structure, which is completely separated from any other zone or stratum in the structure, is deemed a separate "pool".* (Section 1 of the Act)

"Primary Oil Recovery" – means the initial drilling of a well in the effort to recover hydrocarbons for a pool that is not currently, nor was previously, subject to enhanced oil recovery.

"Post-Primary Oil Recovery" – means the drilling of a well in an effort to recover hydrocarbons from a pool that was previously subject to primary oil recovery or to enhanced oil recovery.

"Produced Water" – means water regardless of chloride and total dissolved solids (TDS) content that is produced in conjunction with oil and/or natural gas production and natural gas storage operations.

"Production Casing" – means the string of casing placed in a well and used for the purpose of isolating the production or injection formation.

"Repressure" – means to increase the reservoir pressure by the introduction of gas, air or water or other fluid into the reservoir.

"Reservoir" – for the purpose of this Part, is interchangeable with the term "pool".

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"Rotary Drilling" – means the hydraulic process of drilling a well for oil or gas as that method is commonly used in the industry.

"Shooting" – means the exploding of nitroglycerin or other high explosives in a well for the purpose of increasing the production of oil or gas.

"Surface Waters" – means any river, stream, lake, pond or intermittent stream.

"Tank" – means a vessel into which oil or water is gathered, produced or stored.

"Tank Battery" – means one or more open or closed top tanks, of any capacity, that are located on a lease, unit or adjacent property, for the purpose of collecting, separating and/or storing crude oil and/or other liquid oilfield wastes that are generated as a result of oil and gas production operations.

"Undeveloped Limits of a Mine" – means that portion of a mine where the entries have not been driven to the boundaries of the mine property.

"Vacuum" – means pressure that is reduced below the pressure of the atmosphere.

"Water Drainage Way" – means any drainage ditch, roadside ditch, grassy waterway or any other natural or manmade surface or underground water drainage system.

"Well" – means any drill hole required to be permitted under Section 6(2) of the Act, including coal or mineral groundwater monitoring wells, structure test holes, coal test holes, and mineral test holes, and any other well required to be permitted under Sections 6 and 12 of the Act, including oil and gas production wells, water supply wells, Class II UIC injection wells, gas storage and gas storage monitoring wells, orphan wells, unpermitted leaking drill holes and plugged wells.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 240.125 Notice

- a) Whenever the Department is required by the Act or this Part to serve notice upon a permittee, the Department shall give written notice to that person, personally or by certified mail with return receipt requested, sent to the address submitted by permittee as set forth in Section 240.1710. Permittees shall sign certified mail

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returned receipts for all mail received from the Department. (Section 9.1(b) of the Act)

b) Notice by Publication

- 1) If notice sent by certified mail is returned unsigned or undelivered, and upon due inquiry, the permittee cannot be found for personal delivery, the Department shall provide written notice of a hearing or other proceeding by a single publication of the notice in a newspaper published in the county where the well or wells at issue are located. (Section 9.1(c) of the Act)
- 2) If there is no newspaper published in that county, then the publication shall be in a newspaper published in an adjoining county in this State having a circulation in the county where the well or wells are located. (Section 9.1(c) of the Act)
- 3) The Department shall, within 10 days after the publication of the newspaper notice, send a copy of the notice, by certified mail with return receipt requested, to the address submitted by the permittee as set forth in Section 240.1710. (Section 9.1(c) of the Act)
- 4) The certificate of an authorized representative of the Department that newspaper notice was published and that a copy of the newspaper notice has been sent to the permittee pursuant to subsection (b)(3) is evidence that the Department has properly provided notice to the permittee for the hearing or other proceeding. (Section 9.1(c) of the Act)
- 5) Any notice required to be provided to a permittee under the Act or this Part shall include the identification of the well or wells at issue, the date, time, place and nature of the hearing or other proceeding, and the name and contact information of the Department where additional information can be obtained. (Section 9.1(d) of the Act)

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 240.135 Falsification or Misstatement of Information**

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No person shall falsify or make a material misrepresentation on or relative to any application, permit, required record, or other document required to be submitted to the Department by the Act or this Part. (Section 8d of the Act)

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 240.160 Director's Decision**

- a) Upon receipt of a notice of violation, the Director shall conduct an investigation and may affirm, vacate or modify the notice of violation. In determining whether to take action in addition to remedial action necessary to abate a violation, the Director shall consider:
  - 1) *the person's or permittee's history of previous violations, including violations at other locations and under other permits.*
    - A) A violation shall not be counted if the notice or order is the subject of pending administrative review by the Department under Section 240.180 or if the time to request a review has not expired, and thereafter it shall be counted for only two years after the date of the Department's final administrative decision or a final judicial decision affirming the Department's decision.
    - B) No violation for which the notice or order has been vacated shall be counted;
  - 2) *the seriousness of the violation, including any irreparable harm to the environment or damage to property;*
  - 3) *the degree of culpability of the person or permittee; and*
  - 4) *the existence of any additional conditions or factors in aggravation or mitigation of the violation, including information provided by the person or permittee.*
- b) *Modification of the notice of violation may include:*
  - 1) *any different or additional remedial actions required to abate the violation, as set forth in Section 240.150(b)(2), and the time within which*

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*the violation must be abated;*

- 2) *the assessment of civil penalties not to exceed \$5,000 for each and every falsification or material misrepresentation and \$1,000 a day for each and every act of violation not subject to the separate \$5,000 penalty for falsification and material misrepresentation (Section 8a of the Act);*
  - 3) *probationary or permanent modification or conditions on the permit, which may include special monitoring or reporting requirements; and*
  - 4) *revocation of the permit. (Section 8a of the Act)*
- c) The Director shall determine whether or not to assess civil penalties based on the factors set forth in subsection (a). If a penalty is assessed by the Department, the penalty shall be computed as follows, but shall not exceed \$5,000 for each and every falsification or material misrepresentation and \$1,000 per day for each and every act of violation not subject to the \$5,000 penalty for falsification and material misrepresentation (Section 8a of the Act):
- 1) Administrative violations, including, but not limited to, the failure to file the reporting, permitting and bond transfer forms required by the Department, shall be assessed on a permittee-specific basis. The Department may assess a penalty for an administrative violation as follows:
    - A) No previous violation of the same rule: \$50.
    - B) One previous violation of the same rule: \$100.
    - C) Two previous violations of the same rule: \$150.
    - D) Three previous violations of the same rule: \$200.
    - E) Four or more previous violations of the same rule: \$500.
  - 2) Operating violations, including, but not limited to, operating a well required to be permitted under the Act without first obtaining a proper permit from the Department, operating a well required to be permitted under the Act without first obtaining the Department's transfer of

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operating authority, operating a well in violation of Department spacing requirements, pressure on the annulus, failure to maintain the well and flow line in a leak-free condition, failure to configure the wellhead for the inspection of the annulus, failure to comply with specified permit conditions, failure to report a spill, failure to maintain containment dikes, failure to maintain required performance bond in force for the wells under permit, failure to pay annual well fees or failure to notify the Department before setting surface casing, setting tubing and packer, or plugging a well, shall be assessed on a permittee-specific basis. The Department may assess a penalty for an operating violation by considering elements of [subsections](#)~~subsection~~ (c)(2)(A), (B) and (C) as follows:

- A) History of Violations:
- i) No previous violation of the same rule: \$100.
  - ii) One previous violation of the same rule: \$250.
  - iii) Two previous violations of the same rule: \$500.
  - iv) Three previous violations of the same rule: \$750.
  - v) Four previous violations of the same rule: \$1,000.
  - vi) Five or more previous violations of the same rule: \$2,500.
- B) Seriousness:
- i) If the violation had a low degree of probability to cause environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add \$100; or, if the violation had a high degree of probability to cause environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add \$250; or, if the violation caused environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add \$1,000.

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- ii) If the violation created a hazard to the safety of any person, such as the emission of hydrogen sulfide gas: add \$2,000.
- C) Permittee's Actions:
- i) If the permittee was previously notified of the violation using a routine inspection report (Form OG-22) in accordance with Section 240.140 or correspondence from the Department and failed to comply: add \$500.
  - ii) If the violation occurred as a result of the permittee's lack of reasonable care: add \$250; or, if the violation occurred as a result of the permittee's deliberate conduct, including lack of reasonable maintenance of equipment: add \$500.
- 3) Specified violations, including operating an annular or casing injection/disposal well; operating wells by a permittee for whom wells have been placed into, or funds have been expended from, the PRF; failure to provide emergency response or remediate a crude oil or produced water spill; or the improper disposal or discharge of produced fluids shall result in a penalty. The Department may assess a penalty for specified violations by considering elements of subsections (c)(3)(A), (B) and (C) as follows:
- A) History of Violations:  
One or more previous violations of the same rule in accordance with subsection (a)(1)(A): \$500 per violation.
  - B) Seriousness:
    - i) If the violation caused environmental damage to surface water, ground water or wildlife: add \$1,000.
    - ii) If the violation created a hazard to the safety of any person, such as the emission of hydrogen sulfide gas: add \$2,000.
  - C) Permittee's Action:  
If the violation occurred as a result of the permittee's lack of reasonable care: add \$500; or, if the violation occurred as a result of the permittee's deliberate conduct: add \$1000.

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- 4) Falsification and material misrepresentation violations, including but not limited to falsifying or misstating information on a permit application, spill report, annual verification report, annual Class II UIC well status report, or any other application, permit or required record, or other document required to be submitted to the Department by the Act or any rules or procedures adopted under the Act. The Department may assess a penalty for a falsification or material misrepresentation violation by considering the following elements:
- A) If the violation occurred as a result of a gross negligent misrepresentation of material fact in which the misrepresentation would impair the Department's ability to assess and evaluate the person's compliance with the Act and this Part: add \$1,000.
  - B) If the violation occurred as a result of a purposeful falsification or material misrepresentation to the Department: add \$2,500.
  - C) If the violation occurred as the result of a purposeful falsification or material misrepresentation to the Department and created a situation that resulted in a threat of or actual damage to the public's health, safety or welfare, or the threat of or actual damage to the environment: add \$5,000.
- d) *Any person who willfully or knowingly authorized, ordered, or carried out any violation cited in the Director's decision shall be subject, after notice, to the same actions, including civil penalties, which may be imposed on the person or permittee under this Section. (Section 8a of the Act)*
- e) The Director shall serve the person or permittee with his or her decision at the conclusion of the investigation. The Director's decision shall provide that the person or permittee has the right to request a hearing in accordance with Section 240.180. The Director's decision affirming, vacating or modifying the notice of violation shall be served in accordance with Section 8a of the Act.
- f) A Director's decision not appealed in accordance with Section 240.180 within 30 days after service shall become a final administrative decision of the Department, pursuant to Section 10 of the Act. The filing of a request for hearing under Section 240.180 shall not operate as a stay of the Director's decision.

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- g) The permittee may, within 30 days from the date of service of the Director's decision, submit to the Department, in writing, any mitigating factors that permittee believes to be relevant to the violation cited in the Director's decision.
- h) Upon further investigation, the Director may enter into a settlement agreement, issue an amended Director's decision, or issue a replacement Director's decision.
  - 1) A settlement agreement shall be issued to:
    - A) extend the amount of time provided to complete remedial actions necessary to abate the violations set forth in the Director's decision; or
    - B) reduce the civil penalty assessed in the Director's decision; or
    - C) allow new permits or the transfer of existing permits to be issued during the term of the settlement agreement.
  - 2) An amended Director's decision shall be issued to:
    - A) extend the amount of time provided to complete remedial action necessary to abate the violation set forth in the Director's decision; or
    - B) reduce the civil penalty assessed in the Director's decision.
  - 3) A replacement Director's decision shall be issued to correct an administrative error contained in the Director's decision or the Notice of Violation.
  - 4) The permittee shall have no right to hearing associated with the issuance of an amended or replacement Director's decision.
- i) If the Director's decision includes the assessment of a civil penalty, and the person or permittee named in the Director's decision does not request a hearing in accordance with Section 240.180 to contest the amount of the penalty, the amount assessed shall be paid to the Department in full within 30 days after service of the Director's decision.

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- j) *All civil penalties assessed and paid to the Department shall be deposited in the Underground Resources Conservation Enforcement Fund. (Section 8a of the Act)*

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: PERMIT APPLICATION PROCEDURES FOR PRODUCTION WELLS

**Section 240.220 Contents of Application**

The application for a permit to drill, deepen or convert to a production well shall include:

- a) The name of the well.
- b) The well location surveyed by an Illinois licensed land surveyor or Illinois registered professional engineer, the GPS (Global Positioning System) latitude and longitude location, and ground elevation of the well. A survey or GPS location is not required for a converted or deepened well, for a drilled out plugged hole if the original well location was surveyed, or for a well permitted under Section 240.210(d). The GPS location shall be recorded as degrees and decimal degrees recorded to 6 decimal places in the North American Datum 1983 projection and shall be accurate to within 3 feet. The reported GPS location is required to be an actual GPS field measurement and not a calculated or conversion measurement.
- c) A map showing:
  - 1) the boundaries of the leasehold or enhanced oil recovery unit;
  - 2) the exact location of the well proposed to be drilled, deepened or converted, and an outline of the proposed drilling unit;
  - 3) the location of all producing wells previously drilled on the drilling unit; and
  - 4) the location of all offset wells on adjacent drilling units.
- d) Information to show the applicant has 100% of the rights to drill and to operate a well on the lands in question. Certification, under penalty of perjury, that the

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applicant owns the right to drill for and operate a well on the lands and formations required for the proposed well, as set forth in Subpart D, pursuant to valid and existing documents or memoranda of public record. ~~The applicant shall submit copies of the recorded operative lease instruments or assignment.~~

- e) A statement as to whether the proposed well location is within the limits of any incorporated city, town, or village. If the consent of municipal authorities for the drilling of a well is required, a certified copy of the official consent must be submitted.
- f) The name and address of the drilling contractor and the type of drilling tools or equipment to be used.
- g) If the well is located over an active mine, over a temporarily abandoned mine or within the undeveloped limits of a mine, or if the coal rights are owned by someone other than the lessor under the oil and gas lease, the applicant shall submit documentation establishing compliance with Section 240.1305.
- h) If the application is for a newly drilled well located over an underground gas storage field as defined in Section 240.1805(c) or the gas storage rights are owned by someone other than the lessor under the oil and gas lease, the applicant shall submit documentation establishing compliance with Section 240.1820.
- i) The proposed depth of the well and the name of the lowest geologic formation to be tested.
- j) A statement whether the applicant has ever had a well bond forfeited by the Department, and if so when and for what well.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: PERMIT APPLICATION PROCEDURES FOR CLASS II UIC WELLS

**Section 240.320 Contents of Application**

The application for a permit to drill, deepen or convert shall include:

- a) The name of the well.

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- b) The well location surveyed by an Illinois licensed land surveyor or Illinois registered professional engineer, the GPS (Global Positioning System) latitude and longitude location and ground elevation of the well. A survey or GPS location is not required for a converted or deepened well, for a drilled out plugged hole if the original well location was surveyed, or for a well permitted under Section 240.310(f). The GPS location shall be recorded as degrees and decimal degrees recorded to 6 decimal places in the North American Datum 1983 projection and shall be accurate to within 3 feet. The reported GPS location is required to be an actual GPS field measurement and not a calculated or conversion measurement.
- c) A map showing:
- 1) the boundaries of the leasehold or enhanced oil recovery unit, if applicable;
  - 2) the names of all permittees of producing leaseholds within  $\frac{1}{4}$  mile of the proposed Class II UIC Well;
  - 3) the location of the well proposed to be drilled, deepened or converted;
  - 4) the location of all wells penetrating the proposed injection interval within the  $\frac{1}{4}$  mile area of review as defined in Section 240.360.
- d) If the well is not located within the boundaries of a leasehold or enhanced oil recovery unit, the applicant shall certify under penalty of perjury that the applicant owns the right to drill for and operate a well on the lands and formations required for the proposed well, as set forth in Subpart D, pursuant to valid and existing documents or memoranda of public record. ~~submit copies of the recorded operative lease instruments or assignment showing the applicant has 100% of the rights to drill and to operate the well.~~
- e) A statement as to whether the proposed well location is within the limits of any incorporated city, town, or village. If the consent of municipal authorities for the drilling of a well is required, a certified copy of the official consent must be submitted.
- f) The name and address of the drilling contractor and the type of drilling tools or equipment to be used.

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- g) If the well is located over an active mine, over a temporarily abandoned mine or within the undeveloped limits of a mine, or if the coal rights are owned by someone other than the lessor under the oil and gas lease, the applicant shall submit documentation establishing compliance with Section 240.1305.
- h) If the application is for a newly drilled well located over an underground gas storage field as defined in Section 240.1805(c) or the gas storage rights are owned by someone other than the lessor under the oil and gas lease, the applicant shall submit documentation establishing compliance with Section 240.1820.
- i) The proposed well construction and operating parameters in accordance with Section 240.340.
- j) Evidence of notification required under Section 240.370.
- k) Information regarding groundwater and potable water supplies in accordance with Section 240.350.
- l) Cementing, casing and plugging records for all wells penetrating the injection interval within the  $\frac{1}{4}$  mile area of review in accordance with Section 240.360.
- m) A statement whether the applicant has ever had a well bond forfeited to the Department and, if so, when and for what well.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 240.370 Public Notice**

- a) Contents of Notice and Publication  
Public notice shall be given no earlier than 30 days prior to the filing of the application. A notice that an application for a permit to drill, deepen or convert to a Class II UIC well has been or will be filed with the Department shall be published by the applicant in a newspaper of general circulation and published in the county in which the proposed injection well is to be located. The applicant shall submit the original of the Certificate of Publication to the Department prior to approval of the application.
  - 1) The notice shall include:

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- A) the name and address of the applicant;
  - B) the date the application will be filed;
  - C) the legal description of the location of the proposed injection well;
  - D) the geologic name and depth of the injection intervals;
  - E) the proposed maximum injection pressure and maximum injection rate;
  - F) the address and telephone number for the [Office of Oil and Gas Resource Management](#) ~~Division~~ of the Department; and
  - G) a statement that the public has 15 days from the date the application is filed, as stated in the public notice, to comment on the application and that comments must be made in writing to the Department.
- 2) If the notice does not contain all of the information listed in subsection (a)(1) or, if the application is not received on or before the date designated in subsection (a)(1)(B), the applicant shall be required to ~~republish~~  
~~publish~~ the notice.
- b) **Notice Within the Area of Review**  
A copy of the published notice, or a letter containing the same information as in the notice, shall be mailed by certified mail, return receipt requested to the owner of the surface of the land on which the proposed injection well is to be located, and to each permittee of a producing leasehold, and the owner or manager of all mines, including the mined-out area and undeveloped limits of all mines, located within ¼ mile of the proposed Class II UIC well. Evidence of mailing shall be submitted to the Department prior to approval of the application. The returned certified mail receipt card, or a copy of the card, shall serve as evidence of mailing.
- c) **Objections**  
If a written objection to the application is filed within 15 days after the filing of the application, the Department shall consider the objection in determining

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whether the permit should be issued. If the objection raises a factual or legal question regarding the sufficiency of the application in meeting the requirements for a permit, the permit objection shall be set for a public hearing. A hearing shall be set only after all other requirements for issuance of the permit have been fulfilled.

## d) Public Hearing

- 1) Any public hearing held pursuant to subsection (c) shall be an informal hearing conducted by the Department solely for the purpose of resolving the factual or legal question raised by the objection.
- 2) Notice of the hearing shall be sent by the Department to the applicant and to the objector by mailing the notice by United States mail, postage prepaid, addressed to their last known home addresses.
- 3) A certified court reporter shall record the hearing at the Department's expense.
- 4) A Hearing Officer designated by the Director shall conduct the hearing. The Hearing Officer shall allow all parties to the hearing to present evidence in any form, including by oral testimony or documentary evidence, unless the Hearing Officer determines the evidence is irrelevant, immaterial, unduly repetitious, or of such a nature that reasonably prudent members of the public or people knowledgeable in the oil and gas field would not rely upon it in the conduct of their affairs.
- 5) The Hearing Officer shall have the power to continue the hearing or to leave the record open for a certain period of time in order to obtain or receive further relevant evidence.
- 6) Within 10 days after the closing of the record or the receipt of the transcript of the hearing, whichever comes later, the Department shall render a decision on the objection.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: SPACING OF WELLS

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**Section 240.410 Drilling Units**

## a) Oil Wells

1) The Department shall not issue a permit for the drilling or deepening of a well for the production of oil within the State of Illinois unless the proposed well location and spacing conform to the following drilling units:

- A1) 10 acres of surface area lying within the quarter-quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of oil from a reservoir other than limestone/dolomite, the top of which lies less than 4,000 feet beneath the surface; the location of the well shall not be less than 330 feet from the nearest external boundary lines of the drilling unit, nor less than 660 feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or
- B2) 20 acres of surface area lying within the east-west or north-south one-half of a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of oil from a limestone/dolomite reservoir, the top of which lies less than ~~5,000~~4,000 feet beneath the surface of the top of the Trenton Formation, whichever depth is greater; the location of the well shall not be less than 330 feet from the nearest external boundary lines of the drilling unit, nor less than 660 feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or
- C3) 40 acres of surface area lying within a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of oil from a reservoir, the top of which lies at or below ~~5,000~~4,000 feet beneath the surface or the top of the Trenton Formation, whichever depth is greater; the location of the well shall be not less than 330

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feet from the nearest external boundary lines of the drilling unit, nor less than ~~660~~900 feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir.

- 2) A permittee shall not be obligated to drill any further wells pursuant to provisions in a lease existing prior to the effective date of this Section. Any obligation shall be determined, to the extent relevant and applicable, by regulations in effect as of the date of the lease.

b) Gas Wells

The Department shall not issue a permit for the drilling or deepening of a well for the production of gas within the State of Illinois unless the proposed well location and spacing conform to the following drilling units:

- 1) 10 acres of surface area lying within the quarter-quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of gas from a reservoir other than limestone/dolomite, the top of which lies less than 2,000 feet beneath the surface; the location of the well shall not be less than 330 feet from the nearest external boundary lines of the drilling unit, nor less than 660 feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or
- 2) 20 acres of surface area lying within the east-west or north-south one-half of a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of gas from a limestone/dolomite reservoir, the top of which lies less than 2,000 feet beneath the surface; the location of the well shall not be less than 330 feet from the nearest external boundary lines of the drilling unit, nor less than 660 feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or
- 3) 40 acres of surface area lying within a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells

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drilled or deepened for the production of gas from a reservoir, the top of which lies between 2,000 feet below the surface and 5,000 feet or the top of the Trenton Formation, whichever depth is greater; the location of the well shall not be less than 330 feet from the nearest external boundary lines of the drilling unit nor less than ~~660900~~ feet from the nearest location of a producing well or well being drilled or for which a permit has previously been issued but not yet drilled for a well to the same individual reservoir.

- 4) Establishment of Drilling Units for Deep Gas
  - A) In the case of wells drilled or deepened for the production of gas from a reservoir lying below 5,000 feet or the top of the Trenton formation, whichever depth is greater, no permit shall be issued for an exploratory well unless the proposed spacing and well location provide for a minimum of 160 acres of surface area lying within a quarter section of land (as established by the official United States Public Land Survey) with the well location not less than 660 feet from the nearest external boundary line of the drilling unit.
  - B) After completion of the exploratory well or wells, but prior to commencement of production activities, application shall be made to the Department for the adoption of rules establishing spacing and well location requirements for the reservoir or reservoirs completed. The application shall identify the lands underlying the reservoir or reservoirs for which spacing and well location rules are requested, and shall include any geological, engineering or economic data, studies or reports upon which the requested spacing and well location rules are based.
  - C) Within 20 days after receipt of the application, the Department shall submit proposed spacing and well location rules for the reservoir or reservoirs in accordance with Section 5-40 of the Illinois Administrative Procedure Act, which shall include notice of a public hearing to be commenced no later than 20 days after publication of the notice of proposed rulemaking in the Illinois Register. In addition to the notice requirements of the Illinois Administrative Procedure Act, the applicant shall give notice of public hearing, at least 10 days prior to the date of the hearing, to

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all permittees of record and leaseholders whose wells or leases are within  $\frac{1}{4}$  mile of the area described in the proposed rules by first class mail, postage pre-paid, and by publication in a newspaper of general circulation in each county in which any portion of the area described in proposed rules is located.

- D) The public hearing shall be conducted in accordance with the provisions of Section 240.370(d)(4) and (d)(5). The Department shall fully consider the record from the public hearing and any other public comment received during the first notice period and, prior to commencement of the second notice period, shall make such changes to the proposed rules as may be necessary to prevent waste, protect correlative rights and prevent the unnecessary drilling of wells.
- c) **Coalbed Gas Wells**  
The Department shall not issue a permit for the drilling or deepening of a well for the production of coalbed gas from unmined seams of coal unless the proposed well location and spacing conform to drilling unit requirements of 10 acres of surface area lying within a quarter-quarter-quarter section of land (as established by the official United States Public Land Survey); the location of the well shall be not less than 330 feet from the nearest external boundary lines of the drilling unit.
- d) **Coal Mine Gas Wells**  
A well drilled into a mine void or a pillar within the mined out area for the production of gas from an abandoned coal mine is exempt from the spacing requirements of this Subpart.
- e) **Other Wells**  
Class II UIC wells, coal, mineral and structure test holes, observation wells, water supply wells used in relation to oil or gas production, and gas storage wells are exempt from the requirements of this Section.
- f) All new well locations shall not be less than 200 feet from the nearest occupied dwelling existing at the time the permit application is filed with the Department, unless the permittee obtains a written agreement with the surface owner upon which the dwelling is located specifically allowing for a closer well location.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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SUBPART F: WELL CONSTRUCTION, OPERATING, AND REPORTING  
REQUIREMENTS FOR PRODUCTION WELLS**Section 240.610 Construction Requirements for Production Wells**

- a) Surface Casing Requirements for Wells Drilled After May 13, 1994
  - 1) Steel surface casing or fiberglass casing meeting API standards (Fiberglass Casing and Tubing; 15AR, May 1987, published by the American Petroleum Institute, 1220 L Street NW, Washington DC 20005-4070; no later editions or amendments included) shall be set to a depth of at least 100 feet, or 50 feet below the base of the fresh water, whichever is deeper, unless an alternative surface casing procedure is used as outlined in subsection (b).
  - 2) Surface casing or alternative surface casing shall be set in the presence of a representative of the Department and the permittee shall give at least 24 hours notice to the appropriate District Office prior to setting the surface casing. The District Office may approve the setting of surface casing without a Department representative being present. If the District Office approves the setting of surface casing without a Department representative being present, the permittee is required to submit cement and casing records verifying the setting of surface casing. If cement and casing records are required, the permittee shall provide the records to the District Office within 24 hours after completion of the work.
  - 3) Surface casing shall be cemented in place by circulating cement behind the surface casing from the setting depth of the casing to the surface.
  - 4) The cement shall be allowed to set in place until it has developed sufficient strength to allow drilling to resume, but no less than 4 hours.
- b) Alternative Surface Casing Procedures
  - 1) Prior to the commencement of drilling, the permittee shall notify the District Office for the county where the well will be located of the permittee's intent to use an alternative surface casing procedure.

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- 2) Notice shall be given on a form prescribed by the Department and received in the District Office at least 24 hours prior to the commencement of drilling.
- 3) The following alternative surface casing procedures may be used unless the well is located over a coal mined out area or a gas storage field:
  - A) If the unconsolidated material is less than 25 feet thick, no surface casing is required but a cement basket shall be set 50 feet below the base of the fresh water and the production casing shall be either cemented to surface from total depth or cemented from the cement basket to surface.
  - B) If the unconsolidated material is greater than 25 feet thick, surface casing is required to be set and cemented, in accordance with subsection (a), to the top of the bedrock, and the production casing shall be either cemented to surface from total depth or cemented from the cement basket (placed 50 feet below the base of the fresh water) to surface.
  - C) For wells in which the total depth is less than 500 feet below the base of the fresh water, no surface casing or cement basket is required, but the production casing shall be cemented from total depth to surface.
- 4) For wells located over a coal mined out area ~~or a gas storage field~~:
  - A) ~~at least 100 feet of~~ surface casing and cement shall be set to a minimum of 40 feet or to the top of the bedrock, whichever is deeper, before drilling to the depth of the mined out area ~~or~~ into the mined out area ~~or to the depth of the gas storage zone~~; and
  - B) a cement basket shall be set 50 feet below the base of the fresh water and the production casing shall be cemented from the basket to the surface or, if required under Section 240.1360, a mine string shall be set in accordance with Section 240.1360(b).
- 5) For wells located over a gas storage field:

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- A) at least 100 feet of surface casing and cement shall be set before drilling to the depth of gas storage zone; and
- B) a cement basket shall be set 50 feet below the base of the fresh water and the production casing shall be cemented from the basket to the surface or, if required under Section 240.1360, a mine string shall be set in accordance with Section 240.1360(b).
- c) **Production Casing Requirements for Wells Drilled After May 13, 1994**  
Production casing shall be set and cemented in place by circulating cement behind the production casing from the setting depth of the casing to a minimum of 250 feet above the shallowest producing interval. The casing shall be set no higher than 50 feet above the top of the uppermost producing interval in an open hole completion.
- d) **Production Casing Requirements for Wells Drilled Prior to May 13, 1994**
- 1) For all existing wells without production casing:
- A) If surface casing was previously set, production casing shall be set and cemented a minimum of 250 feet in accordance with subsection (c).
- B) If surface casing was not previously set, production casing shall be set and cemented to surface.
- 2) Wells drilled prior to May 13, 1994 that contain drive pipe without cement behind the drive pipe will require no further cementing work.
- e) **Tubing and Packer in Flowing Wells**  
All wells flowing as a result of an enhanced oil recovery project shall be produced through tubing and packer. The packer shall be set within 200 feet of the top of the producing interval and within the cemented portion of the production casing. The permittee shall contact the District Office in which the well is located at least 24 hours prior to the initial setting or any resetting of the packer to enable an inspector to be present when the packer is set.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## SUBPART H: LEASE OPERATING REQUIREMENTS

**Section 240.815 Permanent Well Site Equipment Setback**

No permanent well site equipment installed on a new well permitted after the effective date of this rule, including flares, shall be located less than 200 feet from the nearest occupied dwelling existing at the time the initial permit application for that well is filed with the Department, unless the permittee obtains a written agreement with the surface owner of the land upon which the dwelling is located, specifically allowing for a closer well site equipment location.

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 240.820 Flowlines**

- a) All flowlines used in the production of oil and/or natural gas, constructed after November 8, 1993, shall be buried at least 36 inches below the ground surface. The flowline may be exempt from these burial requirements upon Department approval if:
  - 1) the flowline is made of steel; and
  - 2) Either:
    - A) the topographical features, land uses or ground conditions prevent the efficient burial of flowlines; or
    - B) the terms of the oil and gas lease prohibit the burial of flowlines.
- b) All flowlines that cross and are not buried under natural drainage features such as creeks, streams, rivers or intermitted streams or ravines shall be constructed in such fashion as to bridge the drainage feature to protect the flowlines from damage due to lack of adequate support, resulting in potential discharge.
- c) The Department shall have the authority to take enforcement action (pursuant to Sections 240.140 through 240.170 of this Part) to require active flowlines existing on the effective date of this rule to be replaced, buried or constructed in accordance with subsection (b) of this Section or to require visible inactive or abandoned flowlines to be removed and the open ends sealed if the Department finds, based on field observation, that the flowlines constitute a hazard to public

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safety or can reasonably be expected to cause damage to the environment through leaks and spills.

- d) No flowline conveying produced water shall have an outlet valve for the discharge of produced water between the place or well of origin and the authorized storage or disposal point.
- e) All flowlines shall be maintained in a leak-free condition.
- fe) Any spill from a flowline leak shall be cleaned up in accordance with Sections 240.890 and 240.895.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART J: VACUUM

**Section 240.1040 Notice and Hearing**

- a) On or before the date of filing a Vacuum Permit application with the Department, the applicant shall notify, by certified mail, return receipt requested, all permittees whose wells or leases are within a ¼ mile radius of the well. The applicant shall post a general notice, by publication in a newspaper of general circulation in the county where the well is located.
- b) The notice shall contain:
  - 1) ~~name~~Name and depths of the formations on which vacuum will be applied;
  - 2) the exact location of the well or wells to be affected by the use of ~~the~~such vacuum;
  - 3) the address and telephone number of the Office of Oil and Gas Resource Management~~Division~~ of the Department; and
  - 4) a statement that the public has 15 days, from the date postmarked on the notice, to comment on the application and that comments must be made in writing to the Department.

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- c) **Objections**  
If a written objection to the application is filed within 15 days after the date postmarked on the notice, the Department shall consider the objection in determining whether the permit should be issued. If the objection raises a factual or legal question regarding the sufficiency of the application in meeting the requirements for a permit or presents data indicating correlative rights may not be protected, the permit objection shall be set for a public hearing. A hearing shall be set only after all other requirements for issuance of the permit have been fulfilled.
- d) **Public Hearing**
- 1) Any public hearing held pursuant to subsection (c) shall be conducted by the Department solely for the purpose of resolving the factual, legal or correlative rights questions raised by the objection;
  - 2) Notice of the hearing shall be sent by the Department to the applicant and to the objector by mailing the notice by United States mail, postage prepaid, addressed to their last known home address;
  - 3) A certified court reporter shall record the hearing at the Department's expense;
  - 4) A Hearing Officer designated by the Director shall conduct the hearing. The Hearing Officer shall allow all parties to the hearing to present evidence in any form, including by oral testimony or documentary evidence, unless the Hearing Officer determined the evidence is irrelevant, immaterial, unduly repetitious, or of such nature that reasonably prudent members of the public or people knowledgeable in the oil and gas field would not rely upon it in the conduct of their affairs;
  - 5) The Hearing Officer shall have the power to continue the hearing or to leave the record open for a certain period of time in order to obtain or receive further relevant evidence;
  - 6) After receipt of the transcript of the hearing, the Department shall render a decision on the objection.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## SUBPART K: PLUGGING OF WELLS

**Section 240.1130 Plugging and Temporary Abandonment of Inactive Production Wells**

- a) Any idle production well on an active lease or unit that has not had commercial production during the last 24 consecutive months shall be deemed abandoned, in accordance with Section 240.1600(c), and plugged in accordance with Section 240.1140 unless the well has been approved for Temporary Abandonment status in accordance with subsection (c).
- b) Any idle production well on an inactive lease or unit, if the lease or unit has not had commercial production during the last 24 consecutive months, shall be deemed abandoned and not eligible for Temporary Abandonment status, pending a hearing held in accordance with Section 240.1610.
- c) The permittee shall apply for Temporary Abandonment status by making written application on forms provided by the Department. The Department may place the well on Temporary Abandonment status and issue a Temporary Abandonment permit, if the well meets the following conditions (which shall be continuing requirements):
  - 1) The well:
    - A) shall have proper bond in effect in accordance with the Act, if applicable; and
    - B) cannot be the subject of any final administrative decision for abandonment.
  - 2) The well shall have an intact leak free wellhead, or be capped with a valve, and configured to monitor casing or annular pressure.
  - 3) If the well is a permitted gas well and the well has a sustained gas pressure at the surface, the requirements of subsections (c)(5) and (6) do not apply.
  - 4) The wellhead shall be above ground level.
  - 5) The fluid level is no higher than 100 feet below the base of the fresh water

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as evidenced by an annual fluid level test conducted by the permittee, after notice to and under the supervision of the Department, using acoustical or wire line measuring methods. If the Department authorizes the permittee to conduct an annual fluid level test without the presence of a well inspector, the permittee shall report the annual fluid level test on a form prescribed by the Department. The fluid level test shall be conducted annually unless the permittee elects to satisfy the requirements of subsection (c)(6)(A) or (B).

- 6) If the fluid level, as tested, is higher than 100 feet below the base of the fresh water, the permittee, in the presence of a Department representative, shall:
  - A) set a cast iron plug within 200 feet above the perforated or open hole interval in the cemented portion of the production casing, but no less than 100 feet below the base of the fresh water, remove any fluid to a level at least 100 feet below the base of the freshwater zone, and monitor the fluid level annually in accordance with subsection (c)(5); or
  - B) set a cast iron plug within 200 feet above the perforated or open hole interval in the cemented portion of the production casing, but no less than 100 feet below the base of the fresh water, and pressure test the casing by maintaining a pressure of 300 PSIG (which may vary no more than 5%) for a period of 30 minutes.
- d) If a Temporary Abandonment request is denied, the permittee shall, within 90 days, plug the well or correct the deficiency that caused the denial and secure an approved Temporary Abandonment permit.
- e) Temporary Abandonment status for production wells shall not be terminated until the well has been inspected by ~~an Office~~ ~~Division~~ well inspector and a Temporary Abandonment termination request is approved by the Department. Temporary Abandonment termination requests shall be on a form prescribed by the Department.
- f) Temporary Abandonment status will be granted every 2 years provided the wells remain in compliance with subsection (c) and the lease or unit on which the wells are located remains active.

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(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 240.1170 Plugging Fluid Waste Disposal and Well Site Restoration**

Within ~~six~~(6) months after a well is plugged:

- a) The free liquid fraction of the plugging fluid waste, consisting of produced water and crude oil, shall be removed from the pit and disposed of in a Class II Injection well (or in above ground tanks or containers pending disposal) prior to restoration. The remaining plugging fluid wastes shall be disposed of by on-site burial.
- b) All plugging pits shall be filled and leveled in a manner that allows the site to be returned to original use with no subsidence or leakage of fluids, and where applicable, with sufficient compaction to support farm machinery.
- c) All drilling and production equipment, rock or concrete bases, machinery, and equipment debris shall be removed from the site.
- d) Casing shall be cut off at least ~~four~~(4) feet below the surface of the ground, and a steel plate welded on the casing or a mushroomed cap of cement approximately one ~~(1)~~ foot in thickness shall be placed over the casing so that the top of the cap is at least ~~three~~(3) feet below ground level.
- e) Any drilling rat holes shall be filled with cement to no lower than ~~four~~(4) feet and no higher than ~~three~~(3) feet below ground level.
- f) The well site and all excavations, holes and pits shall be filled and the surface leveled.
- g) Upon written request of the permittee, the Department may approve extensions of time, not to exceed a date 12 months after the plugging of the well, to complete the work required by subsections (a) through (f). All extension requests must be received by the Department no less than 10 calendar days prior to the expiration of the initial 6 month period or any extensions of that time period. When determining whether to grant an extension, and in determining the length of any extensions, the Department will consider factors including, but not limited to:

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- 1) the permittee's diligence in completing the work since the well was plugged;
- 2) weather conditions;
- 3) amount and type of work completed;
- 4) amount and type of work still remaining to be completed;
- 5) number of wells and facilities involved in the work;
- 6) written consent to extension from surface owner;
- 7) availability of equipment and/or services; and
- 8) conditions beyond the permittee's control.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 240.1180 Lease Restoration**

- a) Within ~~six~~ (6) months after the last well on a lease has been plugged, all excavations and pits shall be filled and leveled and all pits and concrete storage structures shall be restored in accordance with Subpart H to original grade. Subject to an existing right of way, tank batteries and other production equipment, rock and concrete pads, general oilfield waste and equipment oil field debris, flowlines injection and flow lines at or above the surface, and electric power lines and poles extending on or above the surface, shall be removed. Containment dikes shall be removed if constructed with other than soil and leveled ~~to original grade~~.
- b) Upon written request of the permittee, the Department may approve extensions of time, not to exceed a date 12 months after the plugging of the well, to complete the work required to bring the lease into compliance with this Section. All extension requests must be received by the Department no less than 10 calendar days prior to the expiration of the initial 6 month period of any extensions. When determining whether to grant an extension and in determining the length of an extension, the Department will consider factors including, but not limited to:

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- 1) the permittee's diligence in completing the work since the well was plugged;
- 2) weather conditions;
- 3) amount and type of work completed;
- 4) amount and type of work still remaining to be completed;
- 5) number of wells and facilities involved in the work;
- 6) written consent to extension from surface owner;
- 7) availability of equipment and/or services; and
- 8) conditions beyond the permittee's control.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 240.1181 Lease Restoration Requirements (Repealed)**

~~Within six (6) months after the last well on a lease has been plugged, all excavations shall be filled and leveled and all pits and concrete storage structures shall be restored in accordance with Subpart H of this Part. Subject to an existing right of way, tank batteries and other production equipment, rock and concrete pads, general oilfield waste and equipment debris, flowlines at or above the surface, and electric power lines and poles extending on or above the surface, shall be removed. Containment dikes shall be removed if constructed with other than soil and leveled.~~

(Source: Repealed at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART L: REQUIREMENTS FOR OTHER TYPES OF TEST WELLS**Section 240.1205 Application for Permit to Drill a Test Well or Drill Hole**

- a) No person shall drill a test well or hole covered by this Subpart without a permit from the Department.
- b) An application for a permit to drill a coal test hole, mineral test hole, structure test hole, or coal or mineral groundwater monitoring well shall:

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- 1) Be made on forms prescribed by the Department.
- 2) Be executed under penalties of perjury, and accompanied by the ~~nonrefundable~~~~non-refundable~~ fee of \$~~300~~~~100~~ per section, or part of a section thereof, as delineated by the United States Public Land Survey, ~~not to exceed \$5000 for any permittee in any calendar year.~~
- 3) Contain a statement indicating whether the well or drill hole is located over an underground gas storage field as defined in Section 240.1805(c) ~~of this Part~~ or the gas storage rights are owned by someone other than the lessor under the oil and gas lease; the applicant shall submit documentation establishing compliance with Section 240.1820 ~~of this Part~~.
- 4) Be accompanied by the bond required under Subpart O.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART N: ISSUANCE OR TRANSFER OF PERMIT TO OPERATE

**Section 240.1460 Conditions for and Effect of Issuance or Transfer of Permit to Operate**

- a) No permit shall be issued to or transferred to a new permittee or proposed new permittee when:
  - 1) *the applicant has falsified or otherwise misstated any information on or relative to the permit application;*
  - 2) *the applicant has failed to abate a violation of the Act specified in a final administrative decision of the Department;*
  - 3) *an officer, director, agent, power of attorney, or partner in the applicant, or person with an interest in the applicant exceeding 5%, was an officer, director, partner, or person with an interest exceeding 5% in another entity that failed to abate a violation of the Act specified in a final administrative decision of the Department;*
  - 4) *the applicant was or is an officer, director, agent, power of attorney, partner, or person with an interest exceeding 5% in another entity that has*

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*failed to abate a violation of the Act specified in a final administrative decision of the Department (Section 8a of the Act);*

- 5) funds have been expended and remain outstanding from the Plugging and Restoration Fund to plug wells, under Subpart P ~~of this Part~~, for which the applicant was a previous permittee, or the applicant was or is an officer, director, agent, power of attorney, partner, or person with an interest exceeding 5% in a permittee for which funds were expended; or an officer, director, agent, power of attorney, or partner in the applicant, or person with an interest in the applicant exceeding 5%, was or is an officer, director, agent, power of attorney, partner or person with an interest exceeding 5% in a permittee for which funds were expended; or
  - 6) the new permittee is delinquent in the payment of Annual Well Fees; or the applicant was or is an officer, director, agent, power of attorney, partner, or person with an interest exceeding 5%, in another permittee who is delinquent in payment of Annual Well Fees; or an officer, director, agent, power of attorney, or partner in the applicant, or person with an interest in the applicant exceeding 5%, was or is an officer, director, agent, power of attorney, partner or person with an interest exceeding 5% in a permittee who is delinquent in payment of Annual Well Fees.
- b) The entity or person to whom the permit is transferred or issued shall be called the permittee and shall be responsible for all regulatory requirements relative to the well.
  - c) When the requirements of this Subpart have been satisfied, and subject to subsections (d) and (e), the Department shall render permit transfer decisions based upon the manner in which the new permittee or proposed new permittee came into possession of the wells sought to be transferred. Specifically:
    - 1) The new permittee or proposed new permittee requesting the transfer is the mineral owner. If the new permittee or proposed new permittee owns the mineral rights to the tract of land on which production or injection wells subject to a prior lease are located and came into possession of the right to operate the wells by virtue of a voluntary release or involuntary termination of lease rights by court order, this new permittee shall become responsible for all regulatory requirements relative to:

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- A) only those production wells identified in the transfer request;
- B) all wells in existence within the prior lease if the new permittee or proposed new permittee seeks to operate any of the injection wells located within this leasehold, convert any production well to an injection well or drill a new injection well; and
- C) all pits, concrete storage structures, tank batteries and other surface production facilities in existence within the lease boundaries.
- 2) The new permittee or proposed new permittee requesting the transfer is a new base lessee. If the new permittee or proposed new permittee came into possession of the right to operate wells by virtue of a new base lease, the new permittee or proposed new permittee shall provide documentation indicating the termination of the original lease and shall become responsible for all regulatory requirements relative to only the wells identified within the new base lease document, except that:
- A) if the new base lease conveys the right to produce from all formations, and the new base lessee or its assignee permits or operates any injection well located within the tract of land being leased, converts any production well to an injection well or drills a new injection well within this area, the new base lessee or its assignee shall become responsible for all regulatory requirements relative to all wells that penetrate the injection well formation, concrete storage structures, pits and tank batteries in existence, all as may be located within ¼ mile of the injection well and within the lease boundaries. If the operation of the injection well directly causes any other wells, flowlines or other well site equipment located within the lease boundary to leak any fluids into fresh water or to the surface, the new base lessee or its assignee shall be responsible for all regulatory requirements relative to those wells, flowlines or other well site equipment. Nothing in this subsection (c)(2)(A) precludes this new base lessee or its assignee from voluntarily taking responsibility for all regulatory requirements relative to any additional wells, concrete storage structures, pits and tank batteries located greater than ¼ mile away from the injection well and within the lease boundaries~~within that tract of land~~; or

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- B) if the new base lease conveys the right to produce from specified formations only ~~or is for wells currently in PRF~~, and ~~the new base lease specifies or~~ the new base lessee or its assignee permits or operates any injection well located within the formations specified in the new base lease, converts any production well to an injection well or drills a new injection well to the specified formations, ~~the~~this new base lessee or its assignee shall become responsible for all regulatory requirements relative to all wells that penetrate the injection well formation, concrete storage structures, pits and tank batteries in existence relative to the specified formations, all as may be located within ¼ mile of the injection well and within the lease boundaries. If the operation of the injection well directly causes any other wells, flowlines or other well site equipment located within the lease boundary and the specified formations to leak any fluids into fresh water or to the surface, the new base lessee or its assignee shall be responsible for all regulatory requirements relative to those wells, flowlines or other well site equipment. Nothing in this subsection (c)(2)(B) precludes this new base lessee or its assignee from voluntarily taking responsibility for all regulatory requirements relative to any additional wells, concrete storage structures, pits and tank batteries located greater than ¼ mile away from the injection well and within the lease boundaries drilled to and completed in the same formation as the injection well, and all concrete storage structures, pits and tank batteries in existence relative to that formation.
- 3) A new permittee or proposed permittee requesting the transfer is an assignee if the new permittee or proposed new permittee came into possession of the right to operate wells by virtue of a lease assignment or appointment, by a court of competent jurisdiction, as trustee or receiver, in accordance with Section 240.1410(a)(4). This new permittee or proposed new permittee shall become responsible for all regulatory requirements relative to all wells, concrete storage structures, pits and tank batteries in existence within the lease hold being assigned.
- d) If any well, or any lease or other unit associated with the well, is in violation of the Act or this Part at the time of the transfer to the new permittee or proposed new permittee, the new permittee or proposed new permittee shall be notified of

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the violations and the amount of time allotted by the Department for abatement.

- e) The current permittee (Seller) is not liable for any violation of the Act caused by the actions of the new permittee (Buyer) during the permit transfer process, after notice is given to the Department by the current permittee of the pending transfer. However, if the transfer is denied by the Department, the current permittee assumes all responsibility for the violations of the Act caused by the new permittee. Nothing in this subsection (e) shall affect the contractual rights and obligations of the Seller and Buyer.
- f) The transfer of a permit pursuant to this Subpart shall not affect the rights of the Department or any obligation or duty of the current permittee arising under the Act and this Part. Any cause of action accruing or any action or proceeding had or commenced, whether administrative, civil or criminal, may be instituted or continued without regard to the transfer of the permit in accordance with this Subpart.
- g) A current permittee, new permittee or proposed new permittee may request a hearing in accordance with Section 240.1490 to challenge the Department's permit transfer decision.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART P: WELL PLUGGING AND RESTORATION PROGRAM

**Section 240.1615 Lease Validation Petitions**

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

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

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

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

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

- b) Petition  
A proposed permittee seeking a permit to operate, drill, deepen, transfer, amend or convert to a well subject to this Part that is located on lands subject to a prior oil and gas lease or leases under which the current permittee was previously granted a permit by the Department may submit a petition requesting the Department to determine whether the new oil and gas leases submitted by the proposed permittee in support of the permit application are operative on the basis that the prior oil and gas leases covering the same lands has terminated due to nondevelopment or nonproduction.
- c) Contents of the petition shall include:
- 1) the name and address of the proposed permittee;
  - 2) the proposed permittee's reason for requesting a determination from the Department;
  - 3) a copy of prior oil and gas leases at issue;
  - 4) a copy of new oil and gas leases at issue; and
  - 5) a copy of an affidavit of nondevelopment or nonproduction signed by the mineral owners or other knowledgeable individuals familiar with the history of development and production of oil or gas as to the lands (Section 6.2 of the Act) covered by the prior oil and gas leases, and properly recorded in the county where the lands subject to the new oil and gas leases are located.
- d) Execution and Filing

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- 1) The petition to validate the new oil and gas leases in accordance with this Section shall be sent to the Department offices located in Springfield, Illinois.
  - 2) Every petition shall be signed by the proposed permittee or his or her representative and the proposed permittee's address shall be stated on the petition. The signature of the proposed permittee or his or her representative constitutes a certificate by him or her that he or she has read the petition and that, to the best of his or her knowledge, information and belief, there is good ground to support the petition. The petition shall be accompanied by a nonrefundable application fee in the amount of \$1,000 (Section 6.2 of the Act).
  - 3) If the Department finds the petition deficient relative to the requirements of subsection (b) or (c), the petition shall not be accepted and the Department shall return the petition to the proposed permittee with a statement of the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. The proposed permittee shall have 60 days to remedy the deficiencies and resubmit the petition to the Department. If the proposed permittee does not respond to the Department within 60 days, the petition shall be dismissed.
- e) Review of Petition; Rebuttable Presumption
- 1) Within 14 days after receipt of the petition, the Department shall review the petition and determine if it creates a rebuttable presumption that the prior oil and gas leases have terminated due to nondevelopment or nonproduction and are of no further force and effect and that the new oil and gas leases are operative and effective.
  - 2) To create a rebuttable presumption, affidavits of nondevelopment or nonproduction from knowledgeable individuals familiar with the history of development and production of oil or gas from those lands, together with other evidence provided to or available from the Department, shall reasonably indicate that there has been no development or production of oil and gas on the lands described in the prior oil and gas leases for at least 24 consecutive months subsequent to the expiration of the primary

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*term or any extension of the primary term as set forth in the leases.*  
(Section 6.2 of the Act)

- 3) Upon a determination of a rebuttable presumption that the prior oil and gas leases are terminated, the Department shall notify the proposed permittee of the finding and send notice to the current permittee as set forth in subsection (g).
  - 4) If the Department previously denied a petition based on prior oil and gas leases that are later subject to a court order or judgment declaring that the prior oil and gas leases are terminated, the proposed permittee shall submit the judgment to the Department. Upon receipt and review of the court order or judgment, the Department will issue a final order declaring the prior oil and gas leases terminated as set forth in subsection (q).
- g) Service of Determination on Current Permittee  
Upon the Department's determination of a rebuttable presumption that the prior oil and gas leases have terminated due to nonproduction or nondevelopment and are of no further force and effect and that the new oil and gas leases are operative and effective, the Department shall serve the current permittee notice of the determination according to the notice rules set forth in Section 240.125. The current permittee shall have 30 days from the receipt of notice to request a hearing to rebut the presumption that the prior oil and gas leases have terminated.  
(Section 6.2 of the Act)
- h) Default for Failure to Request Hearing  
Failure by the current permittee to request a hearing within 30 days after receipt of the notice of the Department's determination, as set forth in subsection (g), will result in default and issuance of a final order by the Department finding that the prior oil and gas leases have terminated and that the new oil and gas leases are operative and effective as set forth in subsection (q).
- i) Scheduling and Notice of Hearing  
Following a timely request for hearing by the current permittee, the Department will schedule a hearing at which the current permittee can rebut the presumption that the prior oil and gas leases have terminated. Notice of the hearing shall be served on the current permittee and the proposed permittee by the Department according to the notice rules (Section 240.125) at least 14 days prior to the hearing.

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j) Pre-Hearing Conferences

Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:

- 1) Simplify the factual and legal issues presented by the hearing request;
- 2) Receive stipulations and admissions of fact and of the contents and authenticity of documents;
- 3) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and
- 4) Discuss and resolve other matters that may tend to expedite the disposition of the hearing request and to assure a just conclusion.

k) Hearing1) Conduct of Hearing

Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order, and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the power to:

- A) Administer oaths and affirmations;
- B) Receive relevant evidence;
- C) Regulate the course of the hearing and the conduct of the parties and their counsel;
- D) Consider and rule upon procedural requests;
- E) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;

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- F) Require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.
- 2) Hearing Location  
All hearings under this Subpart shall be conducted in the Department's offices located in Springfield, Illinois. However, the Department may conduct a hearing under this Subpart at a site located closer than Springfield, Illinois to the production and injection/disposal well identified in the Notice of Hearing if facilities are available and satisfactory to the Department.
- 3) Appearances  
Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person will be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in Circuit Court.
- 4) Right to Counsel
- A) All participants in the hearing shall have the right to be represented by counsel.
- B) An attorney appearing in a representative capacity in any proceeding under this Subpart shall file a written notice of appearance identifying his or her name, address and telephone number and identifying the party represented.
- 5) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.
- 6) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.

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- 7) When applicable, the following shall be addressed prior to receiving evidence:
- A) The proposed permittee may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.
  - B) Ruling may be made on any pending motions.
  - C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.

1) Evidence

- 1) Admissibility  
A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence received by the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.
- 2) Official Notice  
Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.
- 3) Order of Proof  
The proposed permittee shall open the proof. Other parties of record shall be heard immediately following the proposed permittee. The Hearing Officer or Department representatives may examine any witnesses. In all

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cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.

4) Briefs

The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.

m) Testimony

Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.

n) Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing.

o) Default After Hearing Requested

If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may proceed to make its decision in the absence of that party. If the failure to appear at the pre-hearing conference or hearing is due to an emergency situation beyond the party's control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing date, the pre-hearing conference or hearing will be continue or postponed pursuant to subsection (n). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the party's control.

p) Hearing Officer Order

If the Hearing Officer finds that the affidavits and other evidence provided at the hearing or available to the Department reasonably indicate that there has been no development or production of oil and gas on the lands described in the prior oil and gas leases for at least 24 consecutive months subsequent to the expiration of

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the primary term or any extension of the primary term as set forth in the prior oil and gas leases, the Hearing Officer shall find that the rebuttable presumption was not overcome and that the prior oil and gas leases have terminated and are of no further force and effect and that the new oil and gas leases are operative and effective.

q) Order – Final Administrative Decision

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

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- 4) *Department determinations under this Section shall not have res judicata or collateral estoppel effect in any judicial proceedings. (Section 6.2 of the Act)*

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART Q: ANNUAL WELL FEES

**Section 240.1710 Annual Permittee Reporting**

- a) Permittees are required to submit, on a form prescribed by the Department, an annual verification of address and status. The address submitted under this Section will be used by the Department to provide notice of any hearings or other proceedings under the Act or this Part.
- b) The form shall contain the permittee's:
- 1) current address;
  - 2) verification of well ownership;
  - 3) type of business entity and supporting documentation;
  - 4) FEIN, or Social Security Number if an individual; and
  - 5) names and addresses of principals, officers or owners.
- c) Forms shall accompany the Annual Well Fee payment and shall be submitted by September 1 of each year.
- d) Authority of Person Signing Forms
- 1) If the permittee is a sole proprietor, the form shall be signed by the individual. If the permittee is a partnership, the form shall be signed by a general partner. If the permittee is a corporation, the form shall be signed by an officer of the corporation.
  - 2) In lieu of the signature of the permittee, the form may be signed by a

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person having a power of attorney to sign for the permittee, provided a certified copy of the power of attorney is on file with the Department or accompanies the form.

- e) If a permittee did not submit an annual verification of address and status form during the most recent annual fee payment period, a reporting form is required at the time of all well permit and transfer requests.
- f) Permittees shall submit to the Department any address changes within 30 days after the effective date of the change in address, on a form prescribed by the Department. Permittee shall ensure that any mail sent to the previous address is forwarded to the new address between the effective date of the change of address and the Department's notification of the change.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART S: REQUIREMENTS FOR SERVICE WELLS

**Section 240.1905 Application for Permit to Drill or Convert to Other Types of Wells or Drill Holes**

- a) No person shall drill or convert a well or drill a service well~~test hole~~ covered by this Subpart without a permit from the Department.
- b) Application for a permit to drill or convert a service well shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury, and accompanied by the nonrefundable~~non-refundable~~ fee of \$300 and the bond required under Subpart O.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Tobacco Products Tax Act of 1995
- 2) Code Citation: 86 Ill. Adm. Code 660
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
660.5	Amendment
660.10	Amendment
660.15	Amendment
660.16	New Section
660.18	New Section
660.20	Amendment
660.24	New Section
660.25	Amendment
660.26	New Section
660.27	New Section
660.28	New Section
660.29	New Section
660.30	Amendment
660.35	Amendment
660.40	New Section
660.45	New Section
660.50	New Section
660.55	New Section
- 4) Statutory Authority: 35 ILCS 143; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: 86 Ill. Adm. Code 660 Tobacco Products Tax Act is being amended in response to changes made to the Tobacco Products Tax Act of 1995 (Act) by PA 97-688, PA 98-273 and PA 98-1055 and to incorporate some existing statutory provisions. Section 660.5 is amended to add a definition of "moist snuff" and reflect the change in the manner moist snuff is taxed -- from a percentage basis to a weight-based approach -- made by PA 97-688. The Section is also amended to reflect the increase in the rate of the tax on other tobacco products from 18% of the wholesale price to 36%. Section 660.05 is also amended to reflect changes enacted by PA 98-273; beginning July 1, 2013, little cigars in packages containing 20 or 25 little cigars are taxed in the same manner and at the same rate as cigarettes. Section 660.10 is amended to add definitions for "contraband cigarettes", "little cigars", "stamps", "stamping distributor" and several existing statutory definitions. Section 660.15 is amended to reflect that the existing licensing section applies only to

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distributors and reflects changes made by PA 98-271 regarding little cigars. A new Section 660.16 reflects the changes enacted by PA 98-1055 that require retailers of tobacco products to obtain retailer's licenses. A new Section 660.18 incorporates changes made by PA 98-273. Beginning July 1, 2013, stamping distributors are required to affix tax stamps on packages of little cigars containing 20 or 25 little cigars in the same manner as cigarettes. Section 660.18 explains the process of acquiring tax stamps and affixing them to packages of little cigars. Section 660.20 is amended to modify the requirements for returns filed by distributors in response to the changes in the method and manner of taxing moist snuff and little cigars. Also, effective January 1, 2016, returns, schedules, documents and data required to be filed by the Act with the Department must be filed electronically in the format required by the Department. A new Section 660.24 explains the recordkeeping requirement for retailers of tobacco products. Section 660.25 is amended to require distributors to place their Tobacco Products License number on invoices unless a waiver from the Department is obtained by a distributor. A new Section 660.26 contains new requirements for invoices issued by distributors for little cigars. A new Section 660.27 explains the restrictions on the sale and possession of little cigars by manufacturers. A new Section 660.28 explains the restrictions on the purchase and possession of little cigars and other tobacco products by retailers. A new Section 660.29 explains the restrictions on the purchase, sale and possession of little cigars by wholesalers. Section 660.30 is amended to reflect changes to the conditions for making exempt sales as a result of the changes made in the manner of taxing packages of little cigars containing 20 or 25 little cigars. Section 660.35 is amended to incorporate the claims sections contained in the Retailers' Occupation Tax Act. A new Section 660.40 addresses credits for stamps that are damaged, unused, destroyed or affixed to packages of little cigars returned to the manufacturer. A new Section 660.45 addresses the revocation, cancellation and suspension of distributor and retailer licenses. A new Section 660.50 includes statutory penalties, interest and procedures. A new Section 660.55 identifies the sections of the Retailer's Occupation Tax Act incorporated by reference into the Tobacco Products Tax Act.

- 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

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- 10) Are there any other 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) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: 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:
- Richard S. Wolters  
Associate Counsel  
Legal Services Office  
Illinois Department of Revenue  
101 West Jefferson  
Springfield IL 62794
- 217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Beginning January 1, 2016, all retailers that sell tobacco products at retail must obtain a retailer's license from the Department to sell tobacco products.
- B) Reporting, bookkeeping or other procedures required for compliance: Retailers are required to file an application for a license with the Department for each location at which the retailers sell tobacco products. The annual fee for each location is \$75. Retailers are required to maintain books and records for their purchases and sales of tobacco products. As a result of the changes in the manner of taxing moist snuff and little cigars, distributors will be required to provide additional information on their monthly returns. Distributors whose annual tax liability is \$20,000 or more for the preceding calendar year are required to make tax payments by electronic funds transfer.
- C) Types of professional skills necessary for compliance: Accounting and bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2015

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

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TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUEPART 660  
TOBACCO PRODUCTS TAX ACT OF 1995

Section	
660.5	Nature and Rate of Tobacco Products Tax
660.10	General Definitions
660.15	<a href="#">Distributor Licenses</a>
<a href="#">660.16</a>	<a href="#">Retailer Licenses</a>
<a href="#">660.18</a>	<a href="#">Stamping Distributors; Purchasing Tax Stamps; Affixing Tax Stamps to Packages of Little Cigars</a>
660.20	Returns
<a href="#">660.24</a>	<a href="#">Books and Records – Retailers</a>
660.25	Books and Records – <a href="#">Distributors</a>
<a href="#">660.26</a>	<a href="#">Invoices Relating to Packages of Little Cigars</a>
<a href="#">660.27</a>	<a href="#">Manufacturers – Sale of Little Cigars</a>
<a href="#">660.28</a>	<a href="#">Retailers – Purchase and Possession of Tobacco Products</a>
<a href="#">660.29</a>	<a href="#">Wholesalers – Possession of Little Cigars</a>
660.30	Exempt Sales
660.35	Claims for Credit
<a href="#">660.40</a>	<a href="#">Credit for Stamps that Are Damaged, Unused, Destroyed or Affixed to Packages of Little Cigars Returned to the Manufacturer</a>
<a href="#">660.45</a>	<a href="#">License Actions: Revocations, Cancellations and Suspensions</a>
<a href="#">660.50</a>	<a href="#">Penalties, Interest and Procedures</a>
<a href="#">660.55</a>	<a href="#">Incorporation by Reference</a>

AUTHORITY: Implementing the Tobacco Products Tax Act of 1995 [35 ILCS 143] and authorized by Section 2505-795 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-795].

SOURCE: Adopted at 20 Ill. Reg. 10174, effective July 16, 1996; amended at 26 Ill. Reg. 13310, effective August 23, 2002; amended at 34 Ill. Reg. 12972, effective August 19, 2010; amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 660.5 Nature and Rate of Tobacco Products Tax**

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The Tobacco Products Tax Act imposes a tax on any person in business as a distributor of tobacco products. The tax is based on the wholesale price of tobacco products sold or otherwise disposed of to distributors located in Illinois, except moist snuff sold or otherwise disposed of on or after January 1, 2013 and little cigars sold or otherwise disposed of on or after July 1, 2013. Beginning January 1, 2013, under the Act, moist snuff is taxed by the ounce and all fractional parts of an ounce. Beginning July 1, 2013, little cigars are taxed under the Act at the same rate as cigarettes. Little cigars in packages of 20 or 25 little cigars sold by stamping distributors must have a tax stamp affixed. Stamping distributors must purchase tax stamps from the Department in same manner as licensed cigarette distributors purchase tax stamps that are affixed to packages of cigarettes. The same tax stamps are affixed to packages of little cigars and cigarettes containing 20 or 25 little cigars or cigarettes. Taxes on packages of little cigars containing other than 20 or 25 little cigars are reported on a return to be filed no later than the 15<sup>th</sup> of the month and paid on or before the date the return is due.

- a) Except as otherwise provided in this Section with respect to moist snuff and little cigars, theThe Tobacco Products Tax is imposed upon the last distributor, as defined in Section 660.10, who sells tobacco products to a retailer or consumer located in Illinois at the rate of 18% of the wholesale price of tobacco products sold or otherwise disposed of in this State prior to July 1, 2012 and 36% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State beginning on July 1, 2012. Beginning on January 1, 2013, the tax on moist snuff shall be imposed at a rate of \$0.30 per ounce, and a proportionate tax at the like rate on all fractional parts of an ounce, sold or otherwise disposed of to retailers or consumers located in this State, provided that the rate of tax imposed on moist snuff after any future rate increases may not exceed 15% of the tax imposed upon a package of 20 cigarettes pursuant to the Cigarette Tax Act. Beginning July 1, 2013, the tax on little cigars shall be imposed at the same rate, and the proceeds shall be distributed in the same manner as the tax imposed on cigarettes under the Cigarette Tax Act. [35 ILCS 143/10-10] Beginning July 1, 2013, the tax on little cigars is 99 mills per little cigar sold or otherwise disposed of.
- b) *The tax is in addition to all other occupation or privilege taxes imposed by the State of Illinois, by any political subdivision thereof, or by any municipal corporation [35 ILCS 14/10-10(a)].* ~~(Section 10-10 of the Act)~~
- c) A retailer is required to register as a distributor, file returns and pay the Tobacco Products Tax imposed by the Act on all sales of tobacco products on which the tax has not been paid unless the sales are exempt under Section 660.30. (See Sections

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660.15, 660.20 and 660.30.) Retailers that are not stamping distributors shall purchase stamped packages of little cigars containing 20 or 25 little cigars for resale only from stamping distributors, distributors, or wholesalers. Retailers who are not stamping distributors may not purchase or possess unstamped packages of little cigars containing 20 or 25 little cigars. Retailers who are not stamping distributors may not purchase or possess packages of little cigars containing other than 20 or 25 little cigars, unless the retailer receives an invoice from a stamping distributor, distributor, or wholesaler stating the tax on the packages has been or will be paid. [35 ILCS 143/10-27] (See Section 660.28.)

- d) The Tobacco Products Tax is paid on the wholesale price of tobacco products, except on moist snuff and little cigars. The wholesale price is the established list price for which a manufacturer sells tobacco products to a distributor, or the established list price for which a wholesaler or distributor sells tobacco products to the last distributor ~~sells tobacco products to a retailer or consumer located in Illinois,~~ before the allowance of any discounts, trade allowances, rebates or other reductions. Surcharges added by manufacturers or distributors are considered part of the wholesale price subject to tax.
- 1) The wholesale price for purposes of imposing the Tobacco Products Tax on the last distributor is the invoice price at which tobacco products are sold by a wholesaler or distributor to the last distributor before the allowance of any discounts, trade allowances, rebates or other reductions. Surcharges added by distributors are considered part of the wholesale price subject to tax.
  - 2) The wholesale price for purposes of imposing the tax on a retailer who receives or purchases tobacco products on which the tax has not been paid or will not be paid by a licensed distributor is the invoice price paid by the retailer to an unlicensed distributor or other supplier of tobacco products before the allowance of any discounts, trade allowances, rebates or other reductions. Surcharges added by manufacturers, distributors or other suppliers are considered part of the wholesale price subject to tax.
- e) Whenever any sales invoice issued by a supplier to a retailer for tobacco products sold to the retailer does not comply with the requirements of Section 660.25(d), ~~and~~ (e) and (g), a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and this Section has not been paid on the tobacco products listed on the sales invoice. A retailer that is unable to rebut this

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presumption is in violation of both the Act and this Part and is subject to the penalties provided in Section 10-50 of the Act.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.10 General Definitions**

"Act" means the Tobacco Products Tax Act of 1995 [\[35 ILCS 143\]](#).

*"Business" means any trade, occupation, activity, or enterprise engaged in, at any location whatsoever, for the purpose of selling tobacco products. [35 ILCS 143/10-5]*

*"Contraband little cigar" means:*

*packages of little cigars containing 20 or 25 little cigars that do not bear a required tax stamp under the Act;*

*packages of little cigars containing 20 or 25 little cigars that bear a fraudulent, imitation, or counterfeit tax stamp;*

*packages of little cigars containing 20 or 25 little cigars that are improperly tax stamped, including packages of little cigars that bear only a tax stamp of another state or taxing jurisdiction; or*

*packages of little cigars containing other than 20 or 25 little cigars in the possession of a distributor, retailer or wholesaler, unless the distributor, retailer, or wholesaler possesses, or produces within the time frame provided in Section 10-27 or 10-28 of the Act, an invoice from a stamping distributor, distributor, or wholesaler showing that the tax on the packages has been or will be paid. [35 ILCS 143/10-5]*

*"Department" means the Illinois Department of Revenue. [35 ILCS 143/10-5]*

*"Distributor" means any of the following:*

*Any manufacturer or wholesaler in this State engaged in the business of selling tobacco products who sells, exchanges, or distributes tobacco products to retailers or consumers in this State.*

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*Any manufacturer or wholesaler engaged in the business of selling tobacco products from without this State who sells, exchanges, distributes, ships, or transports tobacco products to retailers or consumers located in this State, so long as that manufacturer or wholesaler has or maintains within this State, directly or by subsidiary, an office, sales house, or other place of business, or any agent or other representative operating within this State under the authority of the person or subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily.*

*Any retailer who receives tobacco products on which the tax has not been or will not be paid by another distributor. ~~(Section 10-5 of the Act)~~*

*Distributor does not include any person, wherever resident or located, who makes, manufactures, or fabricates tobacco products as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility. [\[35 ILCS 143/10-5\]](#)~~(Section 10-5 of the Act)~~ A Correctional Industries program is a program that employs committed persons confined in institutions and facilities of the Illinois Department of Corrections to make, manufacture, or fabricate tobacco products for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.*

*"Little cigar" means and includes any roll, made wholly or in part of tobacco, where such roll has an integrated cellulose acetate filter and weighs less than 4 pounds per thousand and the wrapper or cover of which is made in whole or in part of tobacco. [\[35 ILCS 143/10-5\]](#)*

*"Manufacturer" means any person, wherever resident or located, who manufactures and sells tobacco products, except a person who makes, manufactures, or fabricates tobacco products as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility. [\[35 ILCS 143/10-5\]](#) ~~(Section 10-5 of the Act)~~*

*"Moist snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked, including tobacco products referred to as "snuff", but does*

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not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity. [35 ILCS 143/10-5]

"Person" means any natural individual, firm, partnership, association, joint stock company, joint venture, limited liability company, or public or private corporation, however formed, or a receiver, executor, administrator, trustee, conservator, or other representative appointed by order of any court. [35 ILCS 143/10-5]

"Place of business" means and includes any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine. [35 ILCS 143/10-5]

"Retailer" means any person in this State engaged in the business of selling tobacco products to consumers in this State, regardless of quantity or number of sales. [35 ILCS 143/10-5]-~~(Section 10-5 of the Act)~~

"Sale" means any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration and includes all sales made by persons. [35 ILCS 143/10-5]-~~(Section 10-5 of the Act)~~

"Secondary distributor" means any person engaged in the business of selling cigarettes who purchases stamped original packages of cigarettes from a licensed distributor under the Cigarette Tax Act or the Cigarette Use Tax Act, sells 75% or more of those cigarettes to retailers for resale, and maintains an established business where a substantial stock of cigarettes is available to retailers for resale. [35 ILCS 130/1]

"Stamp" or "stamps" mean the indicia required to be affixed on a package of little cigars that evidence payment of the tax on packages of little cigars containing 20 or 25 little cigars under Section 10-10 of the Act. These stamps shall be the same stamps used for cigarettes under the Cigarette Tax Act. [35 ILCS 143/10-5]

"Stamping distributor" means a distributor licensed under the Act and also licensed as a distributor under the Cigarette Tax Act or Cigarette Use Tax Act. [35 ILCS 143/10-5]

"Tobacco products" means any cigars, including little cigars; cheroots; stogies;

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*periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes as defined by Section 1 of the Cigarette Tax Act or tobacco purchased for the manufacture of cigarettes by cigarette distributors and manufacturers defined in the Cigarette Tax Act and persons who make, manufacture, or fabricate cigarettes as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility. [35 ILCS 143/10-5] ~~(Section 10-5 of the Act)~~*

*"Wholesale price" means the established list price for which a manufacturer sells tobacco products to a distributor, before the allowance of any discount, trade allowance, rebate, or other reduction. In the absence of such an established list price, the manufacturer's invoice price at which the manufacturer sells the tobacco product to unaffiliated distributors, before any discounts, trade allowances, rebates, or other reductions, shall be presumed to be the wholesale price. [35 ILCS 143/10-5] ~~(Section 10-5 of the Act)~~ The wholesale price of tobacco products is the established list price at the time of purchase, by the distributor who remits tax to the Department, of such tobacco products. Surcharges added by manufacturers or distributors are considered part of the wholesale price subject to tax.*

*"Wholesaler" means any person, wherever resident or located, who is engaged solely in making sales of tobacco products to others for resale or sales that are otherwise exempt from tax. "Wholesaler", when used in the Act, does not include a person licensed as a distributor under Section 10-20 of the Act unless expressly stated in the Act. [35 ILCS 143/10-5]*

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.15 Distributor Licenses**

- a) *It shall be unlawful for any person to engage in business as a distributor of tobacco products within the meaning of the Act without first having obtained a license to do so from the Department. (Section 10-20 of the Act) Application for a distributor's license shall be made to the Department in a form furnished and*

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prescribed by the Department and shall be accompanied by a joint and several bond in an amount fixed by the Department. Each licensed place of business shall be covered by a separate license. Subject to the limitations regarding little cigars imposed on retailers contained in this subsection (a) and Section 660.28, a~~A~~ retailer who receives or purchases tobacco products on which the tax has not been paid or will not be paid by another distributor is required to register with the Department and obtain a license, file returns and pay the Tobacco Products Tax. Whenever any sales invoice issued by a supplier to a retailer for tobacco products sold to the retailer does not comply with the requirements of Section 660.25(d), ~~and (e) and (g)~~, a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and Section 660.5 has not been paid on the tobacco products listed on the sales invoice.

- 1) Subject to the limitations regarding little cigars imposed on retailers contained in this subsection (a) and Section 660.28, a~~A~~ retailer who receives or purchases tobacco products from an out-of-state distributor that is not registered with the Department must obtain a license.
  - 2) Subject to the limitations regarding little cigars imposed on retailers contained in this subsection (a) and Section 660.28, a~~A~~ retailer who receives or purchases tobacco products from a supplier, whether within or without the State, that is not registered with the Department must obtain a license.
- b) The Department may, in its discretion, upon application, issue licenses authorizing the payment of the tax imposed by the Act on tobacco products, excluding little cigars, by any distributor or manufacturer not otherwise subject to the tax imposed under the Act who, to the satisfaction of the Department, furnishes adequate security to ensure payment of the tax.
- c) Wholesalers that are not registered and licensed as distributors with the Department but claim to only sell tobacco products, excluding little cigars, in such a way that their sales are not taxable under this Act (e.g., resale or to exempt purchasers) are advised to apply to the Department for a resale number so that those wholesalers are able to provide distributors with Certificates of Resale when purchasing the tobacco products, excluding little cigars, that will be resold. Those wholesalers need not file returns with the Department. (See Section 660.30, Exempt Sales.)

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- d) The bonding requirement in Section 10-20 of the Act does not apply to an applicant for a distributor's license who is already bonded under the Cigarette Tax Act or the Cigarette Use Tax Act. Licenses issued by the Department under the Act shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled, or suspended as provided in the Act. [35 ILCS 143/10-20]
- e) No license shall be issued to any person who is in default to the State of Illinois for moneys due under the Act or any other tax Act administered by the Department. [35 ILCS 143/10-20]

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.16 Retailer Licenses**

- a) Beginning on January 1, 2016, no person may engage in business as a retailer of tobacco products in this State without first having obtained a license from the Department. Application for license shall be made to the Department, by electronic means, in a form prescribed by the Department. Each applicant for a license under this Section shall furnish to the Department, in an electronic format established by the Department, the following information:
- 1) the name and address of the applicant;
  - 2) the address of the location at which the applicant proposes to engage in business as a retailer of tobacco products in this State;
  - 3) such other additional information as the Department may lawfully require by its rules and regulations.
- b) The annual license fee payable to the Department for each retailer's license shall be \$75. Each applicant for license shall pay the fee to the Department at the time of submitting its application for license to the Department. The applicant for a license under this Section shall electronically file and pay the fee.
- c) A separate annual license fee shall be paid for each place of business at which a person who is required to procure a retailer's license under Section 4g of the Cigarette Tax Act proposes to engage in business as a retailer in Illinois under the Act.

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- d) The following are ineligible to receive a retailer's license under the Act:
- 1) a person who has been convicted of a felony under any federal or State law for smuggling cigarettes or tobacco products or tobacco tax evasion, if the Department, after investigation and a hearing if requested by the applicant, determines that person has not been sufficiently rehabilitated to warrant the public trust; and
  - 2) a corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of that corporation, would not be eligible to receive a license under the Cigarette Tax Act for any reason.
- e) The Department, upon receipt of an application and license fee, in proper form, from a person who is eligible to receive a retailer's license under the Cigarette Tax Act, will issue to the applicant a license in the form prescribed by the Department. That license shall permit the applicant to whom it is issued to engage in business as a retailer under the Cigarette Tax Act at the place shown in his or her application. All licenses issued by the Department under this Section shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled or suspended as provided in the Cigarette Tax Act. No license issued under this Section is transferable or assignable. The license shall be conspicuously displayed in the place of business conducted by the licensee in Illinois under the license. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the Department. The Department shall not issue a license to a retailer unless the retailer is also validly registered under the Retailers' Occupation Tax Act [35 ILCS 130/4g]. A retailer, as defined under the Act, need not obtain an additional license under the Act, but shall be deemed to be sufficiently licensed by virtue of his being properly licensed as a retailer under Section 4g of the Cigarette Tax Act. [35 ILCS 143/10-21]
- f) Any person aggrieved by any decision of the Department under Section 10-20 of the Act may, within 30 days after notice of the decision, protest and request a hearing. Upon receiving a 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 the Act and

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*then issue its final administrative decision in the matter to that person. In the absence of a protest and request for a hearing within 30 days, the Department's decision shall become final without any further determination being made or notice given. [35 ILCS 143/10-21]*

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.18 Stamping Distributors; Purchasing Tax Stamps; Affixing Tax Stamps to Packages of Little Cigars**

Only a stamping distributor may purchase and affix stamps to packages of little cigars containing 20 or 25 little cigars.

- a) Stamping distributors of packages of little cigars containing 20 or 25 little cigars sold or otherwise disposed of in this State shall remit the tax by purchasing tax stamps from the Department and affixing them to packages of little cigars in the same manner as stamps are purchased and affixed to cigarettes under the Cigarette Tax Act, unless the stamping distributor sells or otherwise disposes of those packages of little cigars to another stamping distributor. Only persons meeting the definition of "stamping distributor" contained in Section 660.10 may affix stamps to packages of little cigars containing 20 or 25 little cigars. Stamping distributors may not sell or dispose of little cigars at retail to consumers or users at locations where stamping distributors affix stamps to packages of little cigars containing 20 or 25 little cigars. [35 ILCS 143/10-10(b)]
- b) Whenever a stamping distributor brings or causes to be brought into this State from without this State, or purchases from without or within this State, any packages of little cigars containing 20 or 25 little cigars upon which there are no tax stamps affixed as required by the Act, for purposes of resale or disposal in this State to a person not a stamping distributor, then the stamping distributor shall pay the tax to the Department and add the amount of the tax to the price of the packages sold by the stamping distributor. Payment of the tax shall be evidenced by a stamp or stamps affixed to each package of little cigars containing 20 or 25 little cigars. [35 ILCS 143/10-10(c)]
- c) Tax stamps for packages of little cigars are the same stamps used for packages of cigarettes under the Cigarette Tax Act. [35 ILCS 143/10-5]

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- d) Stamping distributors paying the tax to the Department on packages of little cigars containing 20 or 25 little cigars sold to other distributors, wholesalers or retailers shall add the amount of the tax to the price of the packages of little cigars containing 20 or 25 little cigars sold by the stamping distributors. [35 ILCS 143/10-10(c)]
- e) The Department may refuse to sell tax stamps to any person who does not comply with the provisions of the Act.
- f) The Department, or any person authorized by the Department, will sell tax stamps only to stamping distributors, subject to discounts as explained in subsection (g). The discount shall be allowed at the time of purchase of the stamps. Payment for the stamps must be made by means of electronic funds transfer.
- g) A stamping distributor may include the amount of the tax paid for stamps affixed to packages of little cigars under the Act when calculating the discount to which the stamping distributor may be entitled for tax paid for stamps affixed to packages of cigarettes under the Cigarette Tax Act. (See 86 Ill. Adm. Code 440.90.)
- h) Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.
- i) Sales and transfers of Illinois tax stamps by one stamping distributor to another stamping distributor are not permitted unless authorization is given in writing by the Department to make the sale or transfer.
- j) Packages of little cigars sold by stamping distributors to other stamping distributors must not be accompanied by loose stamps.
- k) When, at the time of terminating his or her business as a stamping distributor in this State, a stamping distributor has on hand unaffixed Illinois tax stamps, he or she may transfer or sell those unaffixed stamps to some other stamping distributor, provided that, prior to the sale or transfer, the stamping distributor shall request and receive from the Department, in writing, authority to sell or transfer the stamps. At the time of requesting authority to sell and transfer stamps to some other stamping distributor, the stamping distributor making the request must submit the name and address of the stamping distributor to whom he or she

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intends to sell the stamps, together with the exact number of stamps in each series to be sold or transferred.

- 1) When stamps have become mutilated or otherwise unfit for use, stamping distributors shall file a claim with the Department. (See Section 660.40.)

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.20 Returns**

- a) *Every distributor of tobacco products shall, on or before the 15<sup>th</sup> day of each calendar month, file a return with the Department covering the preceding calendar month disclosing the following (Section 10-20 of the Act):*
- 1) The wholesale price for tobacco products, excluding little cigars and moist snuff, manufactured and then sold or otherwise disposed of.
  - 2) The wholesale price for tobacco products, excluding little cigars and moist snuff, purchased and then sold or otherwise disposed of.
  - 3) The total cost of all tobacco products, excluding little cigars and moist snuff, sold or otherwise disposed of.
  - 4) Deductions authorized by law on tobacco products, excluding little cigars and moist snuff.
  - 5) Tobacco products tax base, excluding little cigars and moist snuff.
  - 6) Total tax based on percentage of wholesale price on tobacco products, excluding little cigars and moist snuff.
  - 7) Total quantity in ounces and fractional ounces of moist snuff purchased and then sold or otherwise disposed of.
  - 8) Deductions authorized by law on moist snuff.
  - 9) Total tax on moist snuff.
  - 10) In addition to the items listed in subsections (a)(1) through (9):

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- A) The quantity of little cigars purchased and sold or otherwise disposed of.
  - B) The quantity of packages of little cigars containing 20 or 25 little cigars.
  - C) Deductions authorized by law on little cigars.
  - D) Total tax on little cigars.
- b) The~~Such~~ return shall be filed in the format and manner upon forms furnished and prescribed by the Department. Payment of the tax in the amount disclosed by the return shall accompany the return. Effective October 1, 2002 through September 30, 2010, taxpayers whose annual liability is \$200,000 or more for the preceding calendar year are required to make payments of tax by Electronic Funds Transfer as provided in 86 Ill. Adm. Code 750. Beginning October 1, 2010, taxpayers whose annual liability is \$20,000 or more for the preceding calendar year are required to make payments of tax by Electronic Funds Transfer as provided in 86 Ill. Adm. Code 750. For purposes of this subsection, the term "annual tax liability" means, for a taxpayer that incurs a tax liability under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, or any other State or local occupation or use tax law that is administered by the Department (which includes the Act), the sum of the taxpayer's liabilities under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, and all other State and local occupation and use tax laws administered by the Department for the immediately preceding calendar year. [20 ILCS 2505/2505-210(c)]
- c) Tobacco products "otherwise disposed of" include samples of tobacco products. Transfers of tobacco products between divisions of a corporation that have separate Illinois Business Tax numbers are required to be reported as sales under "otherwise disposed of."
- d) Effective January 1, 2016, returns, schedules, documents and data required to be filed by the Act with the Department must be filed electronically in the format required by the Department. Distributors who do not have access to the Internet may petition the Department for a waiver of this requirement.

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(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.24 Books and Records – Retailers**

- a) Through December 31, 2015, every retailer shall keep complete and accurate records of tobacco products held and purchased, and tobacco products sold or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale. Books, records, papers, and documents that are required by the Act to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period. [35 ILCS 143/10-36]
- b) Beginning January 1, 2016, every retailer, as defined in Section 10-5 of the Act, shall keep complete and accurate records of tobacco products held, purchased, sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, returns and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. Those records need not be maintained on the licensed premises, but must be maintained in the State of Illinois; however, if access is available electronically, the records may be maintained out of state. However, all original invoices or copies thereof covering purchases of tobacco products must be retained on the licensed premises for a period of 90 days after the purchase, unless the Department has granted a waiver in response to a written request in cases in which records are kept at a central business location within the State of Illinois or in cases in which records that are available electronically are maintained out of state. [35 ILCS 143/10-35(b)] The Department will grant a written waiver when the following requirements are met by the retailer:
- 1) The retailer submits a letter to the Department containing:
    - A) the retailer's license number and FEIN;
    - B) the address or addresses of the licensed premises where records are currently maintained;

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- C) the address of the out-of-state location where the retailer intends to maintain the records;
- D) an explanation of the process and system that will enable the Department or its duly authorized employees to electronically access the records from the licensed premises on demand; and
- E) an acknowledgement by the retailer that the Department, upon 30 days written notice, may revoke the waiver of the retailer for one or more licensed premises if the retailer:
- i) fails to provide electronic access in accordance with the requirements of the written waiver;
  - ii) transfers or sells the licensed premises to another person; or
  - iii) changes the process or system for providing access to the records electronically.
- 2) The Department is given access electronically to accurate records of tobacco products held, purchased, sold or otherwise disposed of; invoices; bills of lading; sales records; and copies of bills of sale, returns and other pertinent papers and documents relating to the purchase, sale or disposition of tobacco products kept at the licensed premises in the normal course of business at the time of the request.
- 3) The Department has tested the process and system from the licensed premises and verified that the Department and its duly authorized employees have access electronically to the required records from the licensed premises on demand.
- c) *Books, records, papers, and documents that are required by the Act to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period. [5 ILCS 143/10-35(c)]*

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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**Section 660.25 Books and Records – Distributors**

- a) Every distributor of tobacco products who is required to procure a license under the Act, including retailers who are required to procure a distributor's license under Section 660.15, shall keep within Illinois, at his or her licensed address, complete and accurate records of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold or otherwise disposed of, and shall preserve and keep within Illinois at his or her licensed address all of the following:
- 1) Invoices.
  - 2) Bills of lading.
  - 3) Sales records.
  - 4) Copies of bills of sale.
  - 5) The wholesale price for tobacco products sold or otherwise disposed of.
  - 6) An inventory of tobacco products prepared as of December 31 of each year or as of the last day of the distributor's fiscal year if he or she files federal income tax returns on the basis of a fiscal year.
  - 7) Other pertinent papers and documents relating to the manufacture, purchase, sale, or disposition of tobacco products.
  - 8) Certificates of Resale and Certificates of Exemption.
- b) All books and records and other papers and documents that are required by the Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.
- c) Such books, records, papers, and documents shall be preserved for the period during which the Department is authorized to issue Notices of Tax Liability, which is generally for a maximum of 3½ years.

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- d) Every sales invoice issued by a licensed distributor for tobacco products shall contain the distributor's Tobacco Products License number. Beginning January 1, 2016, every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's Tobacco Products License number unless the distributor has been granted a waiver by the Department in response to a written request in cases in which the distributor sells little cigars or other tobacco products only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor, the licensed retailer obtains little cigars or other tobacco products only from the distributor requesting the waiver, and the distributor affixes the tax stamps to the original packages of little cigars or has or will pay the tax on the other tobacco products sold to the licensed retailer. The distributor shall file a written request with the Department, and, if the Department determines that the distributor meets the conditions for a waiver, the Department shall grant the waiver. [35 ILCS 143/10-35(a)] Every sales invoice for packages of little cigars containing other than 20 or 25 little cigars issued by a stamping distributor to a person who is not a stamping distributor shall contain, in addition to the stamping distributor's Tobacco Products License number, the stamping distributor's Cigarette Tax Distributor's License number or Cigarette Use Tax Distributor's License number. (See Section 660.26 for additional rules regarding invoices for little cigars.)
- e) Every sales invoice issued by a licensed distributor shall state whether:
- 1) the tax imposed by the Act has been or will be paid in full; or
  - 2) the sale is exempt in whole or in part under Section 660.30 and the specific subsections under which the exemption is claimed.
    - A) If the sale is exempt in part, the invoice additionally shall state:
      - i) the amount of tax actually paid or what will be paid; or
      - ii) the percentage of tax actually paid based on the amount of the invoice before the allowance of any discount, trade allowance, rebate or other reduction, and including any added surcharges.

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- B) The distributor making an exempt sale of tobacco products shall document the exemption by obtaining a certification required by Section 660.30(g).
- f) Whenever any sales invoice issued by a supplier to a retailer for tobacco products sold to the retailer does not comply with the requirements of subsections (d) and (e), a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and Section 660.5 has not been paid on the tobacco products listed on the sales invoice. A retailer that is unable to rebut this presumption is in violation of both the Act and this Part and is subject to the penalties provided in Section 10-50 of the Act.
- g) Beginning January 1, 2016, every licensed distributor of tobacco products in this State is required to show proof of the tax having been paid as required by the Act by displaying its Tobacco Products License number on every sales invoice issued to a retailer in this State. [35 ILCS 143/10-37]
- h) Every distributor who purchases tobacco products for shipment into Illinois from a point outside Illinois shall procure invoices in duplicate covering each shipment and shall, if the Department so requires, furnish one copy of each invoice to the Department at the time of filing the return required by the Act. [35 ILCS 143/10-40]

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.26 Invoices Relating to Packages of Little Cigars**

- a) Every sales invoice for packages of little cigars containing other than 20 or 25 little cigars issued by a stamping distributor to a person who is not a stamping distributor shall contain both the stamping distributor's Tobacco Products License number and Cigarette Tax Distributor's License number or Cigarette Use Tax Distributor's License number and shall state that the tax imposed by the Act has been or will be paid or that the sale is exempt in whole or in part, stating the exemption claimed. [35 ILCS 143/10-29]
- b) Any stamping distributor, distributor or wholesaler who knowingly falsely states on the invoice that the tax imposed by the Act has been or will be paid, or any officer or employee of a corporation, member or employee of a partnership, or manager, member or employee of a limited liability company that is a stamping

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distributor, distributor, or wholesaler, who, as such officer, employee, manager, or member, knowingly causes to be issued an invoice on behalf of such entity, that the person knowingly falsely states that the tax imposed by the Act has been or will be paid, is guilty of a Class 4 felony. [35 ILCS 143/10-29(b)]

- c) Whenever any sales invoice issued by a stamping distributor, distributor or wholesaler for the sale of packages of little cigars containing other than 20 or 25 little cigars does not comply with Section 10-28(b) of the Act or Section 10-29(a) of the Act by indicating that the tax has been or will be paid or that the sale is exempt in whole or in part, a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act has not been paid on the little cigars listed on the sales invoice. A person who is not a stamping distributor and is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in the Act. [35 ILCS 143/10-29(c)]

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.27 Manufacturers – Sale of Little Cigars**

Manufacturers that are not stamping distributors may not sell little cigars to consumers in this State or to distributors, wholesalers or retailers, unless the distributors, wholesalers or retailers are stamping distributors. Manufacturers that are not stamping distributors may sell little cigars only to stamping distributors. Manufacturers that are not stamping distributors are prohibited from delivering little cigars to locations where sales of little cigars to consumers or users take place. [35 ILCS 143/10-26]

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.28 Retailers – Purchase and Possession of Tobacco Products**

The Act provides that any retailer who receives tobacco products on which the tax has not been or will not be paid by another distributor is considered a distributor and must obtain a distributor's license, file returns and pay the tax on those tobacco products. Effective July 1, 2013, the Act imposes new restrictions on retailers, i.e., a retailer may no longer purchase little cigars on which the tax has not been or will not be paid by a stamping distributor, regardless of whether the retailer possesses a distributor license under the Act. Beginning January 1, 2016, retailers licensed under Section 660.16 must obtain all tobacco products for sale only from stamping distributors, licensed distributors or wholesalers.

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- a) Packages of Little Cigars Containing 20 or 25 Little Cigars
- 1) Retailers are prohibited from possessing unstamped packages of little cigars containing 20 or 25 little cigars at locations where retailers make sales of little cigars to consumers or users. Retailers that are also stamping distributors are prohibited from possessing unstamped little cigars at locations where those retailers make sales of packages of little cigars containing 20 or 25 little cigars to consumers or users. [35 ILCS 143/10-27(a)]
  - 2) Retailers that are not stamping distributors shall purchase stamped packages of little cigars containing 20 or 25 little cigars for resale only from stamping distributors, distributors, or wholesalers. Retailers who are not stamping distributors may not purchase or possess unstamped packages of little cigars containing 20 or 25 little cigars. [35 ILCS 143/10-27(a)]
- b) Packages of Little Cigars Containing Other Than 20 or 25 Little Cigars  
For purchases of packages of little cigars containing other than 20 or 25 little cigars, retailers who are not stamping distributors may not purchase or possess such packages of little cigars, unless the retailer receives an invoice from a stamping distributor, distributor, or wholesaler stating the tax on the packages has been or will be paid. Retailers shall retain the invoices for inspection by the Department. If a retailer maintaining multiple retail locations notifies the Department in writing that it maintains its invoices at a centralized business location, the Department shall have the authority to inspect invoices at the centralized business location at all times during the usual business hours of the day and the Department may grant the retailer 3 business days to produce the invoices at the retail location at which the request was made. [35 ILCS 143/10-27(b)]
- c) Notwithstanding anything to the contrary in the Act or this Part, a retailer unknowingly possessing contraband little cigars obtained from a stamping distributor, distributor, or wholesaler or other person engaged in the business of selling tobacco products or knowingly possessing contraband little cigars obtained from a stamping distributor is not subject to penalties for that purchase or possession if the retailer, within 48 hours after discovering that the little cigars are contraband little cigars, excluding Saturdays, Sundays, and holidays: notifies the Department and the person from whom the little cigars were obtained, orally

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and in writing, that he or she possesses contraband little cigars; places the contraband little cigars in one or more containers and seals those containers; and places on the containers the following or similar language: "Contraband Little Cigars. Not For Sale." All contraband little cigars in the possession of a retailer remain subject to forfeiture under the provisions of the Act. [35 ILCS 143/10-27(c)]

- d) No retailer shall possess tobacco products without either a proper invoice indicating that the tobacco products tax was paid by a distributor for the tobacco products in the retailer's possession or other proof that the tax was paid by the retailer if it has purchased tobacco products on which tax has not been paid as required by the Act. [35 ILCS 143/10-37]
- e) Beginning January 1, 2016, a person who possesses a retailer's license under Section 660.16 shall obtain tobacco products for sale only from a licensed distributor or licensed secondary distributor. [35 ILCS 143/10-22]

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.29 Wholesalers – Possession of Little Cigars**

- a) Packages of Little Cigars Containing 20 or 25 Little Cigars  
Wholesalers are prohibited from possessing unstamped packages of little cigars containing 20 or 25 little cigars unless the wholesalers are stamping distributors. [35 ILCS 143/10-28(a)]
- b) Packages of Little Cigars Containing Other Than 20 or 25 Little Cigars
- 1) For purchases of packages of little cigars containing other than 20 or 25 little cigars, wholesalers who are not stamping distributors may not purchase or possess such packages of little cigars, unless the wholesalers receive an invoice from a stamping distributor, distributor, or wholesaler stating the tax on the packages has been or will be paid. Wholesalers shall retain those invoices for inspection by the Department. [35 ILCS 143/10-28(b)]
- 2) Every sales invoice for packages of little cigars containing other than 20 or 25 little cigars issued by a wholesaler to a person who is not a stamping distributor shall state that the tax imposed by the Act has been

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*or will be paid. If a wholesaler maintaining multiple wholesale locations notifies the Department in writing that it maintains its invoices at a centralized business location, the Department shall have the authority to inspect invoices at the centralized business location at all times during the usual business hours of the day and the Department may grant the wholesaler 3 business days to produce the invoices at the wholesale location at which the request was made. [35 ILCS 143/10-28(b)]*

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.30 Exempt Sales**

- a) Sales of tobacco products, excluding little cigars, by distributors or wholesalers who will not sell the product to a retailer or consumer are exempt from the tax imposed by the Act. For example, sales by a distributor to another distributor as sales for resale are exempt from the tax imposed by the Act. Sales of tobacco products to retailers or consumers are not exempt sales (unless the retailer is a registered distributor; see subsection (f)).
- b) *The tax is not imposed upon any activity in the business as a distributor in interstate commerce or otherwise, to the extent to which that activity may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State.* (Section 10-10 of the Act) Sales of tobacco products, excluding little cigars, delivered by a distributor to persons located outside of Illinois are exempt from the tax imposed by the Act.
- c) Sales of tobacco products, excluding little cigars, to retailers who will deliver the tobacco products outside of Illinois are exempt.
- d) The tax imposed by the Act shall not apply to sales or other disposition of tobacco products to the United States Government or any entity of the United States government. For instance, sales of tobacco products to U.S. Veterans' Hospitals and U.S. Military personnel through officially recognized agencies physically located at military bases are exempt from the tax imposed by the Act.
- e) The tax imposed by the Act shall not apply to sales of tobacco products to penal institutions for use in a Correctional Industries program that makes, manufactures, or fabricates tobacco products for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

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However, sales of tobacco products to a penal institution that will sell tobacco products through its commissary are taxable.

- f) Under certain circumstances, a blanket Certificate of Resale may be provided by a purchaser to a distributor. These circumstances include the following:
- 1) Retailers who purchase tobacco products, excluding little cigars, for delivery outside of Illinois are exempt under subsection (c). However, when the retailer may deliver tobacco products, excluding little cigars, outside of Illinois but may deliver some within Illinois and when it is impracticable, at the time of purchasing the tobacco products, for the retailer to determine in which way he or she will dispose of the tobacco products, the retailer may certify to the distributor that he or she is buying all of the tobacco products, excluding little cigars, for resale and provide a blanket Certificate of Resale to the distributor. A retailer may provide such a certificate only if he or she is registered as a distributor under the Act and agrees to assume responsibility for reporting and remitting tax on his or her taxable Illinois sales (e.g., sales to consumers or retailers).
  - 2) Often times, a distributor registered under the Act will also sell tobacco products to consumers. This distributor may similarly find it impracticable, at the time of purchasing the tobacco products, to determine in which way he or she will dispose of the tobacco products. Consequently, except for little cigars, the distributor may provide the selling distributor with a blanket Certificate of Resale and assume responsibility for reporting and remitting tax on his or her taxable sales to consumers.
- g) A distributor making an exempt sale of tobacco products shall document this exemption by obtaining a certification of exemption or resale from the purchaser containing the distributor's name and address, the purchaser's name and address, the date of purchase, the purchaser's signature, the purchaser's tobacco products tax license number, if applicable, and a statement that the purchaser is purchasing for one of the purposes or activities identified in subsections (a) through (e) or is assuming responsibility for reporting and remitting tax as provided for under subsection (f).
- h) *A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A*

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retailer who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-27(a)] A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State on which the tax has been or will be paid by another stamping distributor or was paid by the retailer may file a claim for credit for those sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-27(b)]

- i) A wholesaler must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A wholesaler who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for those sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-28(a)] A wholesaler must be a stamping distributor to make tax exempt sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State. A wholesaler who is a stamping distributor making sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State on which the tax has been or will be paid by another stamping distributor or was paid by the wholesaler may file a claim for credit for those sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-28(b)]

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.35 Claims for Credit**

- a) If it appears, after ~~a~~ claim ~~is therefor~~ filed with the Department, that an amount of tax or penalty has been paid that was not due under the Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person has died or become incompetent, to his legal representative, as such.
- b) If it is determined that the Department should issue a credit or refund under the Act, the Department will first apply the amount thereof against any amount of tax

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or penalty due under the Act from the person entitled to such credit or refund. For this purpose, if proceedings are pending to determine whether any tax or penalty is due under the Act from such person, the Department may withhold issuance of the credit or refund pending the final disposition of such proceedings and may apply such credit or refund against any amount found to be due to the Department under the Act as a result of such proceedings. The balance, if any, of the credit or refund shall be issued to the person entitled thereto.

- c) If no tax or penalty is due and no proceeding is pending to determine whether such taxpayer is indebted to the Department for tax or penalty, the credit memorandum or refund shall be issued to the claimant; or (in the case of a credit memorandum) the credit memorandum may be assigned and set over by the lawful holder thereof, subject to reasonable rules of the Department, to any other person who is subject to the Act, and the amount thereof shall be applied by the Department against any tax or penalty due or to become due under the Act from such assignee.
- d) As to any claim filed ~~under this Section hereunder~~ with the Department on and after each January 1 and July 1, no amount of tax or penalty erroneously paid (either in total or partial liquidation of a tax or penalty under the Act) more than 3 years prior to ~~that~~ such January 1 ~~or~~ and July 1, respectively, shall be credited or refunded.
- e) In case the Department determines that the claimant is entitled to a refund, ~~the~~ such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department will make ~~these~~ such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum). The two most likely situations where this would be the case are the situation in which the claimant has discontinued business and the situation in which the claimant will have a small volume of liability to the Department in the foreseeable future, but receives such a large credit memorandum that it might take the claimant a long time to liquidate the memorandum by using it to pay current taxes. In these instances, the claimant probably would have to sell the credit memorandum at a loss in order to realize anything from it within any reasonable period of time.

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- f) All of the provisions of Sections 6, 6a, and 6b of the Retailers' Occupation Tax Act regarding credit memoranda, claims and refunds that are not inconsistent with the Act, apply to distributors of tobacco products to the same extent as if those provisions were included in the Act. References in the incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean distributors when used in the Act. References in the incorporated Sections to sales of tangible personal property mean sales of tobacco products when used in the Act. [35 ILCS 143/10-45]

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.40 Credit for Stamps that Are Damaged, Unused, Destroyed or Affixed to Packages of Little Cigars Returned to the Manufacturer**

- a) When a stamping distributor wishes to receive credit for stamps that have been affixed to packages of little cigars, the stamping distributor shall file a claim on a form prescribed by the Department.
- b) If the Department sends one or more of its representatives to witness the destruction of the stamps, the Department may charge the stamping distributor as it deems necessary and reasonable because of that expense to the Department.
- c) If a greater number of stamps in a certain series of stamps is destroyed than is included in the claim for credit, the excess number of stamps destroyed in that series of stamps will not be credited. If a lesser number of stamps in a certain series of stamps is destroyed than is included in the claim for credit, the actual number of stamps destroyed in that series will be credited. If stamps are destroyed in a certain series of stamps not listed in the claim for credit, credit for stamps in that series will not be made.
- d) Claims for credit for tax stamps will be approved only when the claim indicates that the packages of little cigars involved are unsalable and are to be shipped by the claimant in interstate commerce, by a common carrier or through the United States mails, to a designated consignee outside Illinois, or when the claim indicates that the packages of little cigars involved are unsalable and are to be destroyed by the claimant, when the claim indicates that the packages of little cigars involved have been improperly stamped (e.g., over-stamped, under-stamped) or when the claimant returns unused or damaged stamps.

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- e) It is mandatory upon a stamping distributor to destroy (in the presence of a Department representative or representatives if the Department so requires) Illinois stamps that are affixed to packages of little cigars in connection with a claim to the Department for credit of stamps, if the stamping distributor has improperly stamped packages of little cigars by affixing Illinois tax stamps in an amount that is insufficient to evidence full payment of the tax.
- f) Claims for credit of tax stamps affixed to packages of little cigars will not be approved unless the stamping distributor filing the claim has title to the packages of little cigars covered by the claim and is carrying Illinois tax-stamped little cigars in his or her inventories.
- g) If a claim discloses that, subsequent to the destruction of the stamps, the unstamped packages of little cigars are to be shipped in interstate commerce to a designated out-of-state consignee, credit for the stamps will not be made unless and until the stamping distributor submits to the Department, to support his or her claim, an affidavit from the manufacturer that receives and destroys the stamps. If an affidavit cannot be obtained, a waybill, freight bill or bill of lading, issued by a common carrier, or an insurance receipt or registry receipt issued by the U.S. Postal Service (USPS), or a USPS receipt Form 3817, proving that the packages of little cigars have actually been shipped by the stamping distributor in interstate commerce, by common carrier or through the United States mails, to the out-of-state consignee designated in the claim, will be accepted.
- h) Subsequent to the destruction of tax stamps affixed to packages of little cigars, credit for the stamps will not be made if a review of pertinent returns filed by the stamping distributor reveals that the tax stamps scheduled in the claim have not been included in the stamping distributor's inventories.
- i) In connection with any claim for credit of Illinois tax stamps, in addition to the types of proof specified, the Department reserves the right to require additional proof in support of any claim as may appear to be necessary.
- j) If the Department approves a claim for credit for tax stamps, the Department (subject to the same limitations as those provided for in Section 660.35) may issue an assignable credit memorandum or refund to the stamping distributor or the stamping distributor's legal representative. Under no circumstances will a claim

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for credit be approved in an amount that exceeds the amount paid by the stamping distributor for the stamps that are the subject of the claim.

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.45 License Actions: Revocations, Cancellations and Suspensions**

- a) The Department has the power, after notice and an opportunity for a hearing, to revoke a license issued by the Department if the holder of the license fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the Act or any other tax or fee Act administered by the Department. [20 ILCS 2505/2505-380(a)]
- b) The Department may refuse to issue a license if a person who is named as the owner, a partner, a corporate officer, or, in the case of a limited liability company, a manager or member, of the applicant on the application for the license, is or has been named as the owner, a partner, a corporate officer, or in the case of a limited liability company, a manager or member, on the application for the certificate of registration, permit, or license of a person that is in default for moneys due under the Act or any other tax or fee Act administered by the Department. For purposes of this Section only, in determining whether a person is in default for moneys due, the Department shall include only amounts established as a final liability within the 20 years prior to the date of the Department's notice of refusal to issue the certificate of registration, permit, or license. For purposes of this Section, "person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court. [20 ILCS 2505/2505-380( b)]
- c) The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any distributor and, beginning January 1, 2016, any retailer who violates any of the provisions of the Act. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is base. [35 ILCS 143/10-25(a)]
- d) Upon a determination that a distributor has violated Section 15(e) of the Tobacco Product Manufacturers' Escrow Enforcement Act of 2003 or any regulation adopted pursuant thereto, the Department may revoke or suspend the license of

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any distributor in the manner provided by Section 10-25 of the Tobacco Products Tax Act of 1995. [30 ILCS 167/30(a)]

- e) The Department may, by application to any circuit court, obtain an injunction restraining any person who engages in business as a distributor of tobacco products without a license (either because his or her license has been revoked, canceled, or suspended or because of a failure to obtain a license in the first instance) from engaging in that business until that person, as if that person were a new applicant for a license, complies with all of the conditions, restrictions, and requirements of Section 10-20 of the Act and qualifies for and obtains a license. Refusal or neglect to obey the order of the court may result in punishment for contempt. [35 ILCS 143/10-25(d)]
- f) Beginning January 1, 2016, failure to comply with the provisions of Section 660.26(c) may be grounds for revocation of a distributor's or retailer's license in accordance with Section 10-25 of the Act or Section 6 of the Cigarette Tax Act. [35 ILCS 143/10-37]
- g) Retailers; Violations of Minimum-Age Tobacco Laws Training Programs Beginning January 1, 2016:
- 1) If the retailer has a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a) of that Act. For the purposes of this Section, any violation of Section 2(a) of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act occurring at the retailer's licensed location, during a 24-month period, shall be counted as a violation against the retailer.
  - 2) If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a second violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a-5) of that Act.
  - 3) If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 7 days

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## NOTICE OF PROPOSED AMENDMENTS

the license of that retailer for a third violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a-5) of that Act.

- 4) If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 30 days the license of a retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a-5) of that Act.
- 5) A training program that facilitates compliance with minimum-age tobacco laws must include at least the following elements:
- A) it must explain that only individuals displaying valid identification demonstrating that they are 18 years of age or older shall be eligible to purchase cigarettes or tobacco products; and
- B) it must explain where a clerk can check identification for a date of birth.
- 6) The training may be conducted electronically. Each retailer that has a training program shall require each employee who completes the training program to sign a form attesting that the employee has received and completed tobacco training. The form shall be kept in the employee's file and may be used to provide proof of training. [35 ILCS 143/10-25(c)]

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 660.50 Penalties, Interest and Procedures**

- a) The provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Act apply to the enforcement of the Act. See Section 3-1A of the Uniform Penalty and Interest Act.
- b) When the amount due is under \$300, any distributor who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who signs a fraudulent return filed on behalf

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of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 4 felony.

- c) When the amount due is under \$300, any person who accepts money that is due to the Department under the Act from a taxpayer for the purpose of acting as the taxpayer's agent to make the payment to the Department, but who fails to remit the payment to the Department when due, is guilty of a Class 4 felony.
- d) When the amount due is \$300 or more, any distributor who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 3 felony.
- e) When the amount due is \$300 or more, any person engaged in the business of distributing tobacco products to retailers and consumers located in this State who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or accepts money that is due to the Department under the Act from a taxpayer for the purpose of acting as the taxpayer's agent to make payment to the Department but fails to remit that payment to the Department when due is guilty of a Class 3 felony.
- f) Any person who violates any provision of Section 10-20 of the Act and, beginning January 1, 2016, Sections 10-21 and 10-22 of the Act, fails to keep books and records as required under the Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of the Act, is guilty of a Class 4 felony. A person commits a separate offense on each day that he or she engages in business in violation of Section 10-20 of the Act and, beginning January 1, 2016, Section 10-21 or 10-22 of the Act.
- g) Any taxpayer or agent of a taxpayer who, with the intent to defraud, purports to make a payment due to the Department by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012.

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- h) Beginning January 1, 2016, any person who violates any provision of Sections 10-20, 10-21 and 10-22 of the Act, fails to keep books and records as required under the Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of the Act, is guilty of a business offense and may be fined up to \$5,000. A person commits a separate offense on each day that he or she engages in business in violation of Sections 10-20, 10-21 and 10-22 of the Act.
- i) Beginning January 1, 2016, when the amount due is under \$300, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.
- j) Beginning January 1, 2016, when the amount due is \$300 or more, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 4 felony.
- k) A prosecution for a violation described in subsections (b) through (j) may be commenced within 3 years after the commission of the act constituting the violation. [35 ILCS 143/10-50]
- l) Beginning January 1, 2016, any person who knowingly acts as a retailer of tobacco products in this State without first having obtained a license to do so in compliance with Section 10-21 of the Act or a license in compliance with Section 4g of the Cigarette Tax Act shall be guilty of a Class A misdemeanor for the first offense and a Class 4 felony for a second or subsequent offense. Each day the person operates as a retailer without a license constitutes a separate offense. [35 ILCS 143/10-53]

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- m) Beginning January 1, 2016, the Department may impose a civil penalty on distributors and retailers not to exceed \$1,000 for each violation of Section 10-37 of the Act. [35 ILCS 143/10-37]
- n) Any person whose principal place of business is in the State and who is charged with a violation under Section 10-50 of the Act shall be tried in the county where his or her principal place of business is located unless he or she asserts a right to be tried in another venue. If the taxpayer does not have his or her principal place of business in this State, however, the hearing must be held in Sangamon County unless the taxpayer asserts a right to be tried in another venue. [35 ILCS 143/10-50]
- o) 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 and then issue its final administrative decision in the matter to that person. 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.
- p) Except as provided by the Constitution of the United States, the Constitution of the State of Illinois, or any statutes of this State, including, but not limited to, the State Officers and Employees Money Disposition Act, the Tax Tribunal established pursuant to the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010] shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under the Tobacco Products Tax Act of 1995 or the Uniform Penalty and Interest Act. Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, Notices of Claim Denial, and Notices of Penalty Liability when the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000, exclusive of penalties and interest. In notices solely asserting either an interest or penalty assessment, or both, the Tax Tribunal shall have jurisdiction over cases in which the combined total of all penalties or interest assessed exceeds \$15,000. [35 ILCS 1010/1-45]

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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**Section 660.55 Incorporation by Reference**

- a) All of the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 6, 6a, 6b, 6c, 8, 9, 10, 11, 11a, and 12 of the Retailers' Occupation Tax Act, and all applicable provisions of the Uniform Penalty and Interest Act that are not inconsistent with the Act, apply to distributors of tobacco products to the same extent as if those provisions were included in the Act. References in the incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean distributors when used in the Act. References in the incorporated Sections to sales of tangible personal property mean sales of tobacco products when used in the Act. [35 ILCS 143/10-45]
- b) All of the provisions of Sections 7, 8, 8a, 16, 18a, 18b, 18c, 22, 23, 24, 26, 27, and 28a of the Cigarette Tax Act that are not inconsistent with the Act shall apply, as far as practicable, to the subject matter of the Act to the same extent as if those provisions were included in the Act. References in the incorporated Sections to sales of cigarettes mean sales of little cigars in packages of 20 or 25 little cigars. [35 ILCS 143/10-45]

(Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Grant Program for Medical Assistants in Training
- 2) Code Citation: 23 Ill. Adm. Code 2742
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
2742.10	New Section
2742.20	New Section
2742.30	New Section
2742.40	New Section
- 4) Statutory Authority: Implementing and authorized by Section 65.90 of the Higher Education Student Assistance Act [110 ILCS 947/65.90]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed rules govern the administration of the Grant Program for Medical Assistants in Training. Proposed rules for the program set forth the applicant eligibility requirements, program procedures and institutional procedures for an Illinois resident enrolled or accepted for a medical assistant program at an Illinois public community college that will lead to certification to work as a medical assistant. The Commission shall, each year, beginning with the 2016-2017 academic year through the 2020-2021 academic year, receive and consider applications for grant assistance under this Section. Grants are limited based on funding levels appropriated by the Illinois General Assembly.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: PA 99-359, effective August 13, 2015
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? Yes
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## NOTICE OF PROPOSED RULES

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments in writing within 45 days after publication to:

Lynn Hynes  
Agency Rules Coordinator  
Illinois Student Assistance Commission  
1755 Lake Cook Road  
Deerfield IL 60015

lynn.hynes@isac.illinois.gov  
847/948-8500, ext. 18032  
fax: 847/831-8299

- 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: January 2016

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

## ILLINOIS STUDENT ASSISTANCE COMMISSION

## NOTICE OF PROPOSED RULES

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSIONPART 2742  
GRANT PROGRAM FOR MEDICAL ASSISTANTS IN TRAINING

## Section

2742.10	Summary and Purpose
2742.20	Applicant Eligibility
2742.30	Program Procedures
2742.40	Institutional Procedures

**AUTHORITY:** Implementing and authorized by Section 65.90 of the Higher Education Student Assistance Act [110 ILCS 947/65.90].

**SOURCE:** Adopted at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 2742.10 Summary and Purpose**

- a) The Grant Program for Medical Assistants in Training provides grant assistance to an individual enrolled in a medical assistant program at an Illinois public community college that will lead to certification to work as a medical assistant. The Commission shall, each year, beginning with the 2016-2017 academic year through the 2020-2021 academic year, receive and consider applications for grant assistance under this Section. Grants are limited based on funding levels appropriated by the Illinois General Assembly.
- b) This Part establishes rules that govern the Grant Program for Medical Assistants in Training. Additional rules and definitions are contained in General Provisions (23 Ill. Adm. Code 2700).

**Section 2742.20 Applicant Eligibility**

A qualified applicant shall be:

- a) a United States citizen or eligible noncitizen;
- b) a resident of Illinois;

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- c) enrolled at an Illinois public community college;
- d) enrolled or accepted for enrollment on at least a half-time basis in a medical assistant program leading to certification to work as a medical assistant;
- e) able to demonstrate financial need, as determined by ISAC; and
- f) making satisfactory academic progress as determined by the institution.

**Section 2742.30 Program Procedures**

- a) All applicants must file an application annually for the Grant Program for Medical Assistants in Training.
  - 1) Applications are available at ISAC's web site and ISAC's Springfield, Deerfield and Chicago offices.
  - 2) All applicants must complete and file the form the US. Department of Education (ED) designates as an application for federal student financial aid for the purpose of determining the Expected Family Contribution (EFC) that is used as a selection criterion for this award. (See Section 483 of the Higher Education Act of 1965, as amended (20 USC 1070a).)
  - 3) ISAC shall select the recipients from among those who have submitted a complete application prior to the priority consideration date, as set by ISAC.
  - 4) If the application is incomplete, ISAC will notify the applicant, who will have an opportunity to furnish the missing information. The application will only be considered for processing as of the date the application is complete and received at ISAC's Deerfield office.
  - 5) A qualified applicant must also submit any forms required for the receipt of the grant.
- b) Benefits are limited to tuition and fees for 2 semesters in an academic year, except that no recipient may receive more than \$5,000 in a single academic year.

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- c) Each qualified applicant who is selected to receive a grant shall be notified. Applicants not receiving the grant will be notified as well.
- d) The total number of grants awarded in a given fiscal year is contingent upon available funding. ISAC shall select the recipients from among qualified applicants who filed timely applications based on a combination of the following criteria:
  - 1) Expected Family Contribution (EFC), from the lowest to the highest.
  - 2) Recipients of assistance under this Part during the previous academic year may receive first priority consideration provided the recipient continues to meet the eligibility requirements.
- e) If all other criteria are equal, priority consideration will be given to the qualified applicant who submitted his or her completed application on the earliest date.

**Section 2742.40 Institutional Procedures**

- a) The institution shall certify the applicant's award amount within the time frame requested by ISAC, which shall be no sooner than 30 days unless a more rapid response is necessary to expend appropriated funds prior to the end of the academic year.
- b) Institutional Packaging of Assistance
  - 1) If the recipient receives other assistance targeted specifically for tuition and fees, the combined assistance shall not exceed the total tuition and fee expenses incurred by the student; if it does, the institution shall reduce one of the awards accordingly;
  - 2) Notwithstanding the provisions of other ISAC-administered programs, the total amount of a student's gift assistance may not exceed the student's cost of attendance for that institution. Any excess gift assistance is considered an overaward, and the institution is required to notify ISAC to reduce this grant and/or other gift assistance to prevent the overaward; and
  - 3) If the recipient is eligible for assistance under MAP, the recipient might not be eligible for a full MAP grant because the grant for Medical

## ILLINOIS STUDENT ASSISTANCE COMMISSION

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Assistants in Training must be factored into the financial aid package prior to receiving MAP gift assistance. The institution, however, may request a MAP grant to finance tuition and mandatory fee expenses not paid by this program.

- c) Institutional Processing of Payments
  - 1) Within the 30 days starting with the date of receiving payment, the institution shall credit the award toward the recipient's tuition and fee charges for the appropriate term.
  - 2) Institutions are required to reconcile payments, both payment data and actual funds, received through the Grant Program for Medical Assistants in Training and, as applicable, submit all necessary corrections to student records on a timely basis.
  - 3) Within 30 days after the end of an academic term during which the Grant Program for Medical Assistants in Training funds are credited to recipient's tuition and eligible fee charges, institutions must reconcile data received from ISAC as a result of payment claim processing against the eligibility status throughout that term for each student for whom payment claims were made. In reconciling the data with student eligibility, an institution must determine whether:
    - A) The amount of the claim applied to a student's tuition and eligible fee charges exceeded the amount that the student was eligible to receive for any reason, including as a result of billing errors or retroactive withdrawals;
    - B) The amount of the claim applied to a student's tuition and eligible fee charges was less than the amount that the student was eligible to receive for any reason, including as a result of billing errors or retroactive withdrawals; or
    - C) The amount of the claim applied to a student's tuition and eligible fee charges equaled the amount that the student was eligible to receive.

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- 4) Any institution that determines that the amount of a claim applied to a student's tuition and fee charges either exceeded the amount that the student was eligible to receive or was less than that amount must submit an accounting of all adjustments made to ISAC within 30 days following the end of the applicable term.
- 5) For any claims determined to exceed the amount that the student was eligible to receive, the amount in excess paid for the claims shall be remitted to ISAC within 45 days after the end of the applicable term unless the payment is received after the end of the applicable term. If the payment of claims is made after the end of the applicable term, the institution shall have 60 days following receipt of the payment to complete reconciliation and remit any funds due to ISAC.
- 6) Award payments made in the name of one recipient cannot be applied to another recipient at the same institution. A refund of the payment must be submitted to ISAC and a supplemental request must be made and processed for the proper recipient.
- 7) If the institution does not submit refunds as required, ISAC will deduct outstanding refunds from subsequent payments to the institution.
- 8) To provide sufficient time for processing and vouchering through the State Comptroller's Office, all payment requests except for summer term must be received by ISAC no later than July 1. Summer term payment requests must be received no later than July 31.

## STATE BOARD OF EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Early Childhood Teacher Preparation Assistance Grant
- 2) Code Citation: 23 Ill. Adm. Code 70
- 3) 

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
70.10	Amendment
70.20	Amendment
70.30	Amendment
70.40	Amendment
70.50	Amendment
70.60	Amendment
70.70	Amendment
70.80	Amendment
- 4) Statutory Authority: 105 ILCS 5/1C-5
- 5) Effective Date of Rule: January 13, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated 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*: 39 Ill. Reg. 12265; September 4, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: None
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were requested, and no agreement letter was issued.
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any other rulemakings pending on this Part? No

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- 15) Summary and Purpose of the Rulemaking: The State Board of Education established the Early Childhood Teacher Preparation Assistance Grant in 2007, earmarking \$600,000 from the agency's Early Childhood Block Grant for planning and implementation grants. Patterned after the "Grow Your Own" Teacher initiative, the rules for the Teacher Preparation Assistance grant were promulgated in February 2007 and four grants were awarded. Up until funding was discontinued in FY 2010, a total of 77 candidates enrolled in the programs, the majority of whom either obtained what was then an initial early childhood certificate or were scheduled to complete their programs.

Since FY 2010, agency staff has remained committed to increasing the pool of teachers holding early childhood endorsements through an intergovernmental agreement between the State Board of Education and the Department of Human Services (DHS) rather than by establishing programs under Part 70. Despite the agency's not funding the initiative, however, staff still are required to update the rules to reflect the changes made by PA 97-607, effective August 26, 2011, which repealed the certification system established under Article 21 of the School Code and replaced it with the current system of educator licensure authorized under Article 21B of the School Code. References to certification and related terms will be modified to align the rules to the licensure system, which became effective July 1, 2013.

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

Cindy Zumwalt, Division Administrator  
Division of Early Childhood  
Illinois State Board of Education  
100 N. First Street, E-255  
Springfield IL 62777

217/524-4835

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES  
 SUBTITLE A: EDUCATION  
 CHAPTER I: STATE BOARD OF EDUCATION  
 SUBCHAPTER b: PERSONNEL

## PART 70

## EARLY CHILDHOOD TEACHER PREPARATION ASSISTANCE GRANT

## Section

- 70.10 Purpose and Applicability  
 70.20 Eligible Applicants  
 70.30 Planning Grants – Procedures and Content of Proposals  
 70.40 Criteria for Review and Approval of Planning Proposals  
 70.50 Implementation Grants – Procedures and Content of Proposals  
 70.60 Criteria for Review and Approval of Implementation Proposals  
 70.70 Application Content and Approval Criteria for Continuation Programs  
 70.80 Loans; Waiver or Deferral of Repayment

**AUTHORITY:** Implementing Sections 1C-2 and 2-3.71 of the School Code [105 ILCS 5/1C-2 and 2-3.71] and authorized by Section 1C-5 of the School Code [105 ILCS 5/1C-5].

**SOURCE:** Emergency rule adopted at 30 Ill. Reg. 17952, effective October 24, 2006, for a maximum of 150 days; adopted at 31 Ill. Reg. 3599, effective February 20, 2007; amended at 40 Ill. Reg. 2202, effective January 13, 2016.

**Section 70.10 Purpose and Applicability**

The goal of the Early Childhood Teacher Preparation Assistance Grant is to address the shortages experienced by preschool education programs funded under Section 2-3.71 of the School Code [105 ILCS 5/2-3.71] of teachers holding [a professional educator license endorsed for early childhood education](#)~~Early Childhood certificates~~ issued pursuant to Section ~~21B-2521-2.1~~ [21B-2521-2.1](#) of the School Code [105 ILCS 5/~~21B-2521-2.1~~ [21B-2521-2.1](#)] and State Board of Education rules governing Standards for All Illinois Teachers (23 Ill. Adm. Code 24), [Educator Licensure Certification](#) (23 Ill. Adm. Code 25) and Standards for [Endorsements Certification](#) in Early Childhood [Education](#) and in Elementary Education (23 Ill. Adm. Code 26).

- a) This Part establishes the procedures and criteria for the approval of proposals submitted to the State Board of Education by eligible applicants for grants to establish programs to assist individuals employed in State-funded preschool

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education programs and other early childhood education programs to enroll as candidates in and complete a teacher preparation program leading to a professional educator license endorsed in early childhood education ~~an Initial Early Childhood teaching certificate~~. The Early Childhood Teacher Preparation Assistance Grant program shall:

- 1) be designed to enroll a single group of individuals who will move through their coursework and educational experiences at the same time;
  - 2) offer the coursework necessary for individuals possessing a bachelor's degree to obtain a professional educator license endorsed in early childhood education ~~an Initial Early Childhood teaching certificate~~ or the coursework necessary for individuals possessing an associate's degree to obtain a bachelor's degree and a professional educator license endorsed in early childhood education ~~an Initial Early Childhood teaching certificate~~; and
  - 3) make a commitment to continue the program with the group of candidates so that those candidates will be able to successfully complete their education and teaching experiences in an amount of time that is commensurate with the amount of time it would take a candidate in the institution's regular program to complete the same course of study and experiences, provided that the program continues to receive State funding.
- b) The provisions of this Part shall not apply to a school district that receives funding for early childhood programs as part of its general education block grant pursuant to Section 1D-1 of the School Code [105 ILCS 5/1D-1] nor to any entity that receives a grant from that school district for early childhood programs funded under Section 1D-1 of the School Code.

(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

**Section 70.20 Eligible Applicants**

- a) An eligible applicant for the Early Childhood Teacher Preparation Assistance Grant shall be a partnership consisting of:
  - 1) One or more educational entities serving elementary and secondary schools (e.g., school districts, private schools, Regional Offices of

## STATE BOARD OF EDUCATION

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Education) and/or one or more community-based organizations that provide early childhood education programs or related services, such as technical assistance or professional development, to early childhood programs and practitioners; and

- 2) One or more four-year institutions of higher education with an accredited teacher ~~preparation~~education program for early childhood education.
- b) The partnership shall designate one entity to serve as the administrative agent for the grant.
  - c) Preference for funding shall be provided to eligible applicants whose programs target individuals, as defined in Section 70.10(a) ~~of this Part~~, who are:
    - 1) from a bilingual or minority background and already possess bachelor's degrees and need only to complete coursework necessary for receipt of the professional educator license endorsed for early childhood education~~Early Childhood certification purposes~~; or
    - 2) willing to work in State-funded preschool programs in geographic areas experiencing a shortage of teachers who hold professional educator licenses endorsed for early childhood education~~Early Childhood teaching certificates~~. A shortage area is defined as one in which State-funded preschool education programs operating in that area are unable to enroll additional students in their programs due to a lack of properly licensed~~certified~~ teachers or the State Board of Education is unable to fund additional programs to meet the need of a particular area for preschool education due to a lack of properly licensed~~certified~~ teachers.

(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

**Section 70.30 Planning Grants – Procedures and Content of Proposals**

A planning grant shall be used to support costs associated with developing a plan for implementation of an Early Childhood Teacher Preparation Assistance Grant program, which shall include the identification and recruitment of the group of individuals to be enrolled in the program.

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- a) When sufficient funding is available, the State Superintendent of Education shall issue a Request for Proposals (RFP) specifying the information that applicants shall include in their planning proposals, informing applicants of any bidders' conferences, and requiring that proposals be submitted no later than the date specified in the RFP. The RFP shall provide at least 30 calendar days in which to submit proposals.
- b) Each proposal submitted in response to an RFP shall include the following components.
  - 1) Demographic information about the area to be served by the program, which shall include statistics about number of programs funded under Section 2-3.71 of the School Code that serve the area and their need for educator licensedeertified teachers.
  - 2) Demographic information about individuals employed by State-funded preschool education programs and other early childhood education programs who do not hold professional educator licenses endorsed in early childhood education~~Early Childhood teaching certificates~~, including, but not limited to, their race/ethnicity, language (other than English) and cultural background, and educational attainment.
  - 3) Descriptive information about each entity involved in the partnership:
    - A) the teacher preparation program must provide the specific information about the institution's success in preparing teachers for early childhood teaching positions, particularly in areas serving bilingual and minority children; and
    - B) the community-based or nonpublic educational organization must include its mission statement, organizational structure, and goals or policies regarding early childhood programs and services, including the applicant's existing competencies to provide early childhood education programs, if applicable, and a list of any early childhood accreditations that have been achieved.
  - 4) A list of the persons, and their affiliations, who will be involved in the planning process.

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- 5) A plan of work for the planning process that includes objectives, specific activities, timelines and responsible parties.
  - 6) Budget information that corresponds to the categories of allowable expenditures identified in subsection (c) ~~of this Section~~, completed on the forms provided and detailing each line item of expenditure.
  - 7) ~~AnySuch~~ certifications and assurances as the State Superintendent of Education may require.
- c) Allowable uses of planning grant funds shall include:
- 1) activities that are designed to secure the participation and commitment of the required partners; ~~and~~
  - 2) activities that are designed to attract or identify individuals for teacher preparation who currently work in State-funded preschool education programs or other early childhood education programs and hold either a bachelor's degree or an associate's degree but do not have a professional educator license endorsed for early childhood education ~~an Early Childhood teaching certificate~~; and
  - 3) activities that are designed to identify barriers to educator licensure ~~teacher certification~~ for the individuals to be enrolled and to identify strategies and resources for mitigating those barriers.

(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

**Section 70.40 Criteria for Review and Approval of Planning Proposals**

- a) Planning grant proposals shall be reviewed and ranked according to the following criteria.
  - 1) The applicant demonstrates that the area proposed to be served has unmet needs that could be effectively addressed by the Early Childhood Teacher Preparation Assistance Grant program. (40 points)
  - 2) The planning activities proposed respond to the needs identified and are directed at implementing a program that will enable individuals to

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successfully complete requirements necessary for obtaining a professional educator license endorsed for early childhood education~~an Initial Early Childhood teaching certificate~~. (40 points)

- 3) The activities proposed are cost-effective, as evidenced by the scope of the planning work to be conducted and the potential number of individuals proposed to be enrolled in the program. (20 points)
- b) The State Superintendent of Education shall determine the amount of individual grant awards. The final award amounts shall be based upon:
  - 1) the total amount of funds available for the Early Childhood Teacher Preparation Assistance Grant; and
  - 2) the resources requested in the top-ranked proposals, as identified pursuant to subsection (a) ~~of this Section~~.

(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

**Section 70.50 Implementation Grants – Procedures and Content of Proposals**

Implementation grants shall be offered in years when the level of available funding is such that one or more new partnerships can be funded, or, for partnerships already funded, a new group of individuals can be supported in addition to the group of candidates already enrolled. ~~Priority for funding shall be given in the initial implementation cycle (i.e., FY 2008) to grantees awarded funds under Section 70.40 of this Part that have successfully completed the planning process and are ready to implement an Early Childhood Teacher Preparation Assistance Grant program.~~

- a) When sufficient funding is available, the State Superintendent of Education shall issue a Request for Proposals (RFP) specifying the information that applicants shall include in their implementation proposals, informing applicants of any bidders' conferences, and requiring that proposals be submitted no later than the date specified in the RFP. The RFP shall provide at least 45 calendar days in which to submit proposals.
- b) Each proposal submitted in response to an RFP shall include the following components.

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- 1) Descriptive information about each entity involved in the partnership, including the roles and responsibilities of each partner.
  - A) The teacher preparation program must indicate specific information about the institution's success in preparing teachers for early childhood teaching positions, particularly in areas serving bilingual and minority children.
  - B) The community-based organization or nonpublic educational entity must include its mission statement, organizational structure, and goals or policies regarding early childhood programs and services, including the applicant's existing competencies to provide early childhood education programs, if applicable, and a list of any early childhood accreditations that have been achieved.
- 2) The goals and objectives of the partnership in ensuring a program that is successful and sustainable.
- 3) A description of the need for the program, which shall include:
  - A) Demographic information about the area to be served by the program, including statistics about number of programs funded under Section 2-3.71 of the School Code that serve the area and their need for educator licensedeertified teachers.
  - B) Demographic information about individuals employed by State-funded preschool education programs and other early childhood education programs in the area to be served who do not hold professional educator licenses endorsed for early childhood education~~Early Childhood teaching certificates~~, including, but not limited to, their race/ethnicity, language (other than English) and cultural background, and educational attainment.
- 4) A description of the program to be implemented, to include:
  - A) the partnership's plans for recruiting and providing support to individuals enrolled in the program, including working with employers to ensure that the individuals can fully participate in the program;

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- B) strategies to be employed to ensure that individuals to be enrolled are adequately prepared to successfully progress through the program, which shall include but not be limited to assistance to ensure each individual's passage of Illinois' test of basic skills~~the Basic Skills Test~~ required prior to a candidate's beginning student teaching~~for admittance to a teacher preparation program~~ [105 ILCS 5/21B-3021-1a];
- C) coursework and experiences needed to complete the program, to include the length of the program and sample schedules;
- D) identification of sites where student teaching will occur; and
- E) expectations for candidates' course completion rates or the performance levels needed to continue their participation in the program.
- 5) A plan for evaluating the impact of the proposed program and activities, which shall correspond to the applicable specifications set forth in the RFP.
- 6) Budget information that corresponds to the categories of allowable expenditures identified in the RFP, completed on the forms provided and detailing each line item of expenditure. The budget information shall cover the entire period of time during which the proposed group of candidates is expected to participate in the teacher preparation program.
- A) Applicants shall be required to demonstrate that grant funds will supplement and not supplant amounts typically devoted by the institution of higher education to, and other resources available for, assisting teacher candidates.
- B) Applicants shall be required to describe the steps that will be taken to decrease the need for external financial support for the partnership and its program over time.
- 7) AnySuch certifications and assurances as the State Superintendent of Education may require.

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(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

**Section 70.60 Criteria for Review and Approval of Implementation Proposals**

- a) Proposals for implementation grants shall be evaluated in accordance with the following criteria.
  - 1) Quality of Proposed Program (40 points)
    - A) The proposal demonstrates that:
      - i) coursework and experiences required for educator licensure certification will be scheduled and located to be accessible to candidates in the program; and
      - ii) supportive services (e.g., counseling, tutoring, child care) that have been identified as necessary will be offered to enable candidates to progress through the program and attain a professional educator license endorsed in early childhood education certification.
    - B) The proposal establishes a timetable or performance level for candidates as a condition for their continued receipt of assistance under this program.
    - C) The proposal includes plans for assisting candidates in tapping sources of financial aid beyond those made available under this Part and by the members of the partnership.
    - D) The plan of work for the program includes effective strategies for overcoming known barriers faced by the candidates.
    - E) The evaluation plan is designed to yield information that can be used both in judging the program's qualitative and quantitative impact and in identifying changes or new approaches that will improve the program's outcomes.
  - 2) Program Need (30 points)

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- A) The proposal clearly indicates that the area to be served has State-funded preschool education programs that are experiencing a shortage of teachers with [professional educator licenses endorsed for early childhood education](#)~~Early Childhood certificates~~.
  - B) Criteria and indicators for identifying individuals to be enrolled in the program are clearly established and likely to target those individuals who have the greatest likelihood of successfully completing the program.
  - C) The recruitment strategies that are proposed are likely to be effective in enrolling the individuals in the program, particularly individuals who reflect the diversity of the children participating in State-funded preschool education programs that serve the targeted area.
- 3) Experience and Qualifications (20 points)
- A) The proposal demonstrates that the institution of higher education has the capacity (i.e., faculty and other resources) to serve the group of individuals to be enrolled in its approved teacher preparation program.
  - B) The proposed roles and responsibilities of each entity that is a member of the partnership are appropriate, given the entity's qualifications, experience with early childhood initiatives and services, and the resources each will devote to the program.
  - C) The proposal demonstrates that the community organization or educational entity is familiar with the needs of early childhood education programs, in particular the needs of State-funded preschool education programs, located in the area proposed to be served and has the capacity to recruit individuals for and support them as they progress through the program.
- 4) Cost-Effectiveness (10 points)

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- A) The program is cost-effective as evidenced by the cost of proposed services in relation to the individuals to be enrolled and the services to be provided.
  - B) The proposal describes commitments on the part of all the partnership's members that will enable the partnership to sustain the program over time with a reduction in the need for external resources.
- b) Priority consideration may be given to proposals with specific areas of emphasis, as identified by the State Superintendent of Education in a particular RFP.
  - c) The State Superintendent of Education shall determine the amount of individual grant awards. The final award amounts shall be based upon:
    - 1) the total amount of funds available for the Early Childhood Teacher Preparation Assistance Grant; and
    - 2) the resources requested in the top-ranked proposals, as identified pursuant to subsections (a) and (b) ~~of this Section~~.

(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

**Section 70.70 Application Content and Approval Criteria for Continuation Programs**

- a) A partnership that has received implementation funding for a group of individuals shall be subject to the requirements of this Section with respect to continued funding for that group in subsequent years.
  - 1) The partnership shall submit an application for continued funding for the candidates enrolled in the program, using a format specified by the State Superintendent of Education.
  - 2) Each application shall contain a mid-year report on the current status of the program and the candidates, documenting the activities and support provided to date and describing the degree to which the candidates are achieving the program's objectives.

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- 3) Each application shall provide an updated narrative description of the objectives, activities, timelines, and evaluation procedures for the renewal year, relating the proposed plan of work to the results that have been achieved to date.
  - 4) Each application shall include updated budget information for the renewal year, including a detailed budget breakdown, that describes any needed variances from the budget proposed in the initial year of funding.
  - 5) Each application shall include ~~any such~~ certifications and assurances as the State Superintendent of Education may require.
- b) The State Superintendent of Education shall, contingent upon appropriation of funds for this initiative, provide continuation funding to a partnership that demonstrates:
- 1) success in providing the supports necessary to retain candidates in the program; and
  - 2) Either:
    - A) that a majority of the candidates in the group served has completed coursework or other requirements for ~~educator licensure certification~~ during at least one semester of the preceding year; or
    - B) that funds will be used to support only those candidates who have progressed toward ~~educator licensure certification~~ and/or have identified steps to be taken toward ~~educator licensure certification~~ in the academic year in which funding is requested.

(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

**Section 70.80 Loans; Waiver or Deferral of Repayment**

Any candidate in a program administered under this Part may receive a forgivable loan for direct expenses associated with completion of the Early Childhood teacher preparation program, provided those expenditures are not otherwise paid for through grants-in-aid, other forgivable loans, or other resources of the consortium. Any amount expended for an individual's direct

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expenses shall be considered a part of that individual's loan, regardless of how the payment is administered and regardless of whether the individual receives any actual payment of funds. The total amount of any candidate's loan shall not exceed \$12,000.

- a) Loan funds provided to candidates as part of this program shall be fully forgiven if a graduate completes five years of service in a State-funded preschool education program established pursuant to Section 2-3.71 of the School Code. Forgiveness and repayment of loans shall be determined as provided in this Section.
- b) An individual may accrue the service required for forgiveness of loans under this Part in one or more State-funded preschool education programs.
- c) If an individual has not assumed employment in a State-funded preschool education program or position within two years after receiving a [professional educator license endorsed in early childhood education](#)~~teaching certificate~~, the individual shall be required to begin the repayment of amounts loaned under this Part. No interest shall apply. An individual who drops out of the program shall be required to begin repaying the amounts loaned in the month following the month when it becomes evident that he or she will not be completing any of the program's requirements for two consecutive semesters.
- d) If an individual has not completed five years of service within 10 years after receiving a [professional educator license endorsed for early childhood education](#)~~teaching certificate~~, the individual shall be required to begin the repayment of amounts loaned under this Part. The amount due shall be the total amount borrowed, less a percentage reflecting the relationship that any time taught by the individual in State-funded preschool education programs or positions bears to the total five-year commitment. Loan amounts shall be reduced in increments of 10 percent for each semester completed.
- e) Repayment of loans shall be made in no more than 60 equal installments. The minimum monthly payment will be determined by dividing the total amount due by 60. An individual may prepay the balance due on the loan in its entirety at any time or make payments in addition to the minimum amount owed each month without penalty.
- f) In addition to the loan forgiveness in accordance with subsection (a)~~-of this Section~~, the State Superintendent may defer or waive an individual's obligation to repay an amount due as provided in this subsection (f).

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- 1) The State Superintendent shall waive the repayment obligation for an individual who is counseled out of a preparation program or found ineligible to continue, provided that the individual's exit from the program is not due to a violation of law or of applicable institutional policies.
- 2) The State Superintendent shall waive the repayment obligation for an individual who drops out of a preparation program or demonstrates that he or she is unable to complete a portion of the required teaching service due to:
  - A) the onset or exacerbation of a disability;
  - B) the need to care for an immediate family member during serious illness or disability;
  - C) destruction of the individual's residence; or
  - D) other circumstances that require the individual to assume responsibilities that cannot be avoided without serious financial hardship or other family disruption (e.g., death of a spouse that results in the need to take a second job or assume operation of a business).
- 3) The State Superintendent shall waive the repayment obligation for a candidate who does not complete a preparation program due to the unavailability of a State appropriation for this initiative for at least two consecutive years.
- 4) The State Superintendent shall defer the repayment obligation for a period of time specifically related to the circumstances when an individual:
  - A) is unemployed or is working for fewer than 30 hours per week; or
  - B) is experiencing a financial hardship (e.g., receiving public assistance or earning an amount per month that is no greater than 200 percent of the amount of the loan payment, or experiencing circumstances such as those outlined in subsection (f)(2) ~~of this Section~~); or

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- C) has re-enrolled as a full-time student in an institution of higher education or in a program under this Part.
- 5) Each request for a waiver or deferral of repayment shall be submitted by a representative of the partnership under whose auspices the individual is or was enrolled in teacher preparation. Using a format specified by the State Superintendent, the representative and the affected individual shall describe the specific circumstances that apply. This description shall be accompanied by evidence such as a physician's statement, insurance claim, or other documentation of the relevant facts.
- g) When a professional educator license~~teaching certificate~~ is issued to an individual who received assistance under this Part, the license~~certificate~~ shall be accompanied by:
- 1) a statement indicating the total amount of the loan received by the individual and the amount due and identifying the dates applicable to repayment under this Section; and
  - 2) a claim form that the individual may use to claim forgiveness of the loan amount, which shall require the individual to identify the periods of service completed in a State-funded preschool education program or positions and the school administrators who can verify the individual's service.
- h) Management of Loans
- 1) It shall be the responsibility of the four-year institution of higher education to assist the State Board of Education with the forgivable loan process in the following manner:
    - A) by keeping records of the amounts provided to or on behalf of each individual for direct expenses; ~~and~~
    - B) by keeping up-to-date contact information regarding the address and telephone number of each individual during the individual's preparation at that institution; and

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- C) by notifying the State Superintendent of Education within 30 days after a candidate fails to enroll in coursework as expected or otherwise ceases to participate in the program and informing the State Superintendent of the total amount of the candidate's loan for direct expenses as of that point in time.
- 2) Each institution of higher education shall notify the State Superintendent as to who will be responsible for this information and shall provide contact information for the responsible individual within the institution.
- i) It shall be the responsibility of the State Superintendent of Education to take anysueh actions as may be necessary to secure repayment when necessary.

(Source: Amended at 40 Ill. Reg. 2202, effective January 13, 2016)

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- 1) Heading of the Part: Special Education
- 2) Code Citation: 23 Ill. Adm. Code 226
- 3) 

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
226.10	Amendment
226.60	Amendment
226.75	Amendment
226.100	Amendment
226.110	Amendment
226.120	Amendment
226.125	New Section
226.130	Amendment
226.135	Amendment
226.150	Amendment
226.160	Amendment
226.180	Amendment
226.220	Amendment
226.230	Amendment
226.300	Amendment
226.320	Amendment
226.550	Amendment
226.560	Amendment
226.570	Amendment
226.710	Amendment
226.730	Amendment
226.731	Repealed
226.735	Amendment
226.770	Amendment
226.800	Amendment
226.810	Amendment
226.820	Amendment
226.830	Amendment
226.840	Amendment
226.850	Amendment
226.860	Amendment
- 4) Statutory Authority: 105 ILCS 5/Art. 14 and 2-3.6
- 5) Effective Date of Rules: January 13, 2016

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- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 8906; July 6, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Various style and nonsubstantive technical changes were made to correct errors that appeared in the First Notice version of the rules.

Additionally, the title of Section 226.300 was modified to reference "alternative" placements.

The introductory paragraph of Section 226.110 retains a statement regarding the "date of referral", but eliminated a reference to Section 14-8.02 of the School Code, and specific mention was made to "written" consent in the sentence that followed. Subsection (d) includes the modifier in all instances when "day" is used, and corrects a statutory citation. A change in subsection (k) acknowledges that the State complaint process may be a remedy for parents whose students did not receive an evaluation.

In Section 226.125(a), the definition of "dyslexia" has replaced an incorporation by reference to the International Dyslexia Association and a link to the group's website where the definition could be found.

Section 226.130(b)(1) now includes a commitment to work with various groups when modifications are made to the professional development and technical services that the State Board disseminates to assist districts in their implementation of response-to-intervention systems.

Section 226.150(b) now includes a reference to competencies in a child's "mode of communication" when assigning an individual to participate in an evaluation.

The meaning of Section 226.180(d) was clarified.

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Section 226.220(a) now requires that extended school year services be provided in accordance with a student's Individualized Education Program (IEP).

Section 226.570(c)(3) provides for a limitation of no more than 45 days for an entity to respond to a complaint.

Several changes were made in the introduction to Section 226.735, and to subsections (a) and (b) to make clear that every school district must have and maintain a work load limit for special educators and have the limits in place before the start of each school year.

Section 226.800(k) clarifies that individuals may perform certain medical procedures if they are authorized to do so under State law.

A correction to Section 226.820(a) refers to the short-term emergency approval rather than certification.

A number of changes were made in Section 226.840 to remove gratuitous capitalization.

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any other rulemakings pending on this Part? No
- 15) Summary and Purpose of the Rulemaking: Changes promulgated in Part 226 address five pieces of legislation enacted in the last several years, acknowledge the 2013 change from a system of teacher certification to one of educator licensure, and provide general updates and clarifications.

Of particular note, new Section 226.125 responds to PA 98-705, effective July 14, 2014. The law added Section 2-3.161 to the School Code, directing the agency to incorporate into rules "an international definition" of dyslexia, as was recommended by the Reading Instruction Advisory Group in December 2014. Additionally, new Section 226.125 reminds school districts and special education cooperatives that dyslexia is one of a number of disorders that may result in a child's identification as having a specific learning disability, necessitating an evaluation to determine the child's eligibility for special education and related services. New Section 226.125 has been added – rather than defining dyslexia under Section 226.75 (Definitions) – since the term is not used elsewhere in the rules.

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Section 226.220(a) acknowledges a change in Section 14-6.01 of the School Code, which requires that special education and related services identified in the IEP be provided to a student within 10 "school attendance" days after notice regarding the IEP is provided to the student's parents (PA 98-219, effective August 9, 2013). Previously, the provision of services was required to begin within 10 calendar days. The rules also clarify that the initial or revised IEP may be implemented in the following school year in situations when notice is provided with fewer than 10 school days left in a school year. For purposes of Section 226.220, "school day" is defined in federal regulations as "any day, including a partial day, that children are in attendance at school for instructional purposes".

Under the provisions of PA 98-517, effective August 22, 2013, the IEP for students, beginning at age 14½, must address independent living skills (see Section 226.230). Previously, Section 14-8.03 required that the IEP only include independent living skills "where applicable".

Two changes result from PA 98-383, effective August 16, 2013. Section 226.560 reiterates statutory language requiring that a parent who participates in a mediation process that fails to resolve disagreements file a request for a due process hearing within 10 days after the mediation concludes in order to continue the student's current educational placement and services.

The law also added Section 14-8.02e to the School Code, requiring that the State Board establish, by rule, "State complaint procedures". While Section 226.570 currently enumerates complaint procedures, it does not address a new requirement for providing an opportunity to the school district, special education cooperative or other public entity that is the subject of the complaint to respond before the complaint's consideration by the State Board of Education. New subsection (c) establishes a timeframe for an entity to respond and submit its response to the agency. Since the amount of time needed to respond depends on the complexity of the complaint, the rule proposes that the specific deadline for response be included in the agency's notification to the affected entity, but may not, in any instance, exceed 45 days. Additionally, the rule reinforces the requirement in Section 14-8.02e that the entity also is responsible for providing its response to the parent, individual, or organization (or the representing attorney) filing the complaint at the time the response is submitted to the State Board.

Finally, a technical change in Section 226.830 responds to PA 96-657, effective August 25, 2009. PA 96-657 added Section 14-8.02(g-5) to the School Code, which in part, defined "qualified professionals" for the purpose of independent evaluations of students

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requested by parents; therefore, a cross-reference to the School Code requirement has been added.

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

David Andel, Division Administrator  
Division of Special Education Services  
Illinois State Board of Education  
100 North First Street  
Springfield IL 62777

217/782-4870

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

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## TITLE 23: EDUCATION AND CULTURAL RESOURCES

## SUBTITLE A: EDUCATION

## CHAPTER I: STATE BOARD OF EDUCATION

## SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

## PART 226

## SPECIAL EDUCATION

## SUBPART A: GENERAL

## Section

226.10	Purpose
226.50	Requirements for a Free Appropriate Public Education (FAPE)
226.60	Charter Schools
226.75	Definitions

## SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

## Section

226.100	Child Find Responsibility
226.110	Evaluation Procedures
226.120	Reevaluations
<a href="#">226.125</a>	<a href="#">Specific Learning Disability: Dyslexia</a>
226.130	Additional Procedures for Students Suspected of or Having a Specific Learning Disability
226.135	Additional Procedures for Students Suspected of or Having <a href="#">an Intellectuala Cognitive</a> Disability
226.140	Modes of Communication and Cultural Identification
226.150	Evaluation to be Nondiscriminatory
226.160	Medical Review
226.170	Criteria for Determining the Existence of a Specific Learning Disability (Repealed)
226.180	Independent Educational Evaluation
226.190	Reevaluation (Repealed)

## SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

## Section

226.200	General Requirements
226.210	IEP Team

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- 226.220 Development, Review, and Revision of the IEP
- 226.230 Content of the IEP
- 226.240 Determination of Placement
- 226.250 Child Aged Three Through Five
- 226.260 Child Reaching Age Three

## SUBPART D: PLACEMENT

- Section
- 226.300 Continuum of [Alternative](#) Placement Options
- 226.310 Related Services
- 226.320 Service to Students Living in Residential Care Facilities
- 226.330 Placement by School District in State-Operated or Nonpublic Special Education Facilities
- 226.340 Nonpublic Placements by Parents Where FAPE is at Issue
- 226.350 Service to Parentally-Placed Private School Students
- 226.360 Placement by School Districts in Remote Educational Programs

## SUBPART E: DISCIPLINE

- Section
- 226.400 Disciplinary Actions
- 226.410 Manifestation Determination Review (Repealed)
- 226.420 Appeals (Repealed)
- 226.430 Protection for Children Not Yet Eligible for Special Education (Repealed)
- 226.440 Referral to and Action by Law Enforcement and Judicial Authorities (Repealed)

## SUBPART F: PROCEDURAL SAFEGUARDS

- Section
- 226.500 Language of Notifications
- 226.510 Notification of Parents' Rights
- 226.520 Notification of District's Proposal
- 226.530 Parents' Participation
- 226.540 Consent
- 226.550 Surrogate Parents
- 226.560 Mediation
- 226.570 State Complaint Procedures

## SUBPART G: DUE PROCESS

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Section	
226.600	Calculation of Timelines
226.605	Request for Hearing; Basis (Repealed)
226.610	Information to Parents Concerning Right to Hearing
226.615	Procedure for Request
226.620	Denial of Hearing Request (Repealed)
226.625	Rights of the Parties Related to Hearings
226.630	Qualifications, Training, and Service of Impartial Due Process Hearing Officers
226.635	Appointment, Recusal, and Substitution of Impartial Due Process Hearing Officers
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AUTHORITY: Implementing Article 14 and authorized by Section 2-3.6 of the School Code [105 ILCS 5/Art.14 and 2-3.6].

SOURCE: Adopted August 12, 1976; rules repealed and new emergency rules adopted at 2 Ill. Reg. 37, p. 29, effective September 1, 1978, for a maximum of 150 days; rules repealed and new rules adopted at 3 Ill. Reg. 5, p. 932, effective February 1, 1979; emergency amendment at 4 Ill. Reg. 38, p. 328, effective September 15, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 8021, effective July 22, 1981; amended at 6 Ill. Reg. 558, effective December 23, 1981; emergency amendment at 7 Ill. Reg. 6511, effective May 6, 1983, for a maximum of 150 days; emergency amendment at 7 Ill. Reg. 8949, effective July 15, 1983, for a maximum of 150 days; codified at 8 Ill. Reg. 6669; amended at 8 Ill. Reg. 7617, effective May 17, 1984; emergency amendment at 10 Ill. Reg. 3292, effective January 27, 1986, for a maximum of 150 days; emergency expired June 24, 1986; amended at 10 Ill. Reg. 18743, effective October 22, 1986; amended at 10 Ill. Reg. 19411, effective October 31, 1986; amended at 13 Ill. Reg. 15388, effective September 14, 1989; emergency amendment at 14 Ill. Reg. 11364, effective June 26, 1990, for a maximum of 150 days; emergency expired November 23, 1990; amended at 15 Ill. Reg. 40, effective December 24, 1990; amended at 16 Ill. Reg. 12868, effective August 10, 1992; emergency amendment at 17 Ill. Reg. 13622, effective August 3, 1993, for a maximum of 150 days; emergency expired December 31, 1993; amended at 18 Ill. Reg. 1930, effective January 24, 1994; amended at 18 Ill. Reg. 4685, effective March 11, 1994; amended at 18 Ill. Reg. 16318, effective October 25, 1994; amended at 19 Ill. Reg. 7207, effective May 10, 1995; amended at 20 Ill. Reg. 10908, effective August 5, 1996; amended at 21 Ill. Reg. 7655, effective July 1, 1997; Part repealed, new Part adopted at 24 Ill. Reg. 13884, effective August 25, 2000; amended at 27 Ill. Reg. 8126, effective April 28, 2003; amended at 31 Ill. Reg. 9915, effective June 28, 2007; amended at 32 Ill. Reg. 4828, effective March 21, 2008; amended at 34 Ill. Reg. 17433, effective October 28, 2010; amended at 35 Ill. Reg. 8836, effective May 26, 2011; preemptory amendment, pursuant to PA 97-461, at 35 Ill. Reg. 14836, effective August 22, 2011; amended at 36 Ill. Reg. 12648, effective July 18, 2012; amended at 36 Ill. Reg. 12870, effective July 24, 2012; amended at 37 Ill. Reg. 16788, effective October 2, 2013; amended at 40 Ill. Reg. 2220, effective January 13, 2016.

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SUBPART A: GENERAL

**Section 226.10 Purpose**

This Part establishes the requirements for the treatment of children and the provision of special education and related services pursuant to the Individuals with Disabilities Education Improvement Act (also referred to as "IDEA") (20 USC 1400 et seq.), its implementing regulations (34 CFR 300, as amended by 71 Fed. Reg. 46540 (August 14, 2006) [and 73 Fed. Reg. 73027 \(December 1, 2008\)](#), no later amendments or editions included), and Article 14 of the School Code [105 ILCS 5/Art. 14]. This Part also distinguishes between requirements derived from federal authority and those imposed additionally pursuant to Article 14 of the School Code or the authority of the State Board of Education. The requirements of IDEA, its implementing regulations, and this Part shall apply in every instance when a child is or may be eligible for special education and related services.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.60 Charter Schools**

For purposes of IDEA and this Part, charter schools established pursuant to Article 27A of the School Code [105 ILCS 5/Art. 27A] shall be treated either as schools within school districts or as local educational agencies in their own right.

- a) When a school's charter is issued by a local board of education pursuant to Section 27A-8 of the School Code [105 ILCS 5/27A-8], that charter school shall be considered as a school within the district over which that board of education exercises jurisdiction.
- b) When a school's charter is issued by the State [Charter School Commission](#)~~Board of Education~~ pursuant to Section [27A-7.5](#)~~27A-9(f)~~ of the School Code [105 ILCS 5/[27A-7.5](#)~~27A-9(f)~~], that charter school shall be considered as a local educational agency.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.75 Definitions**

Assistive Technology Device: See 34 CFR 300.5.

Behavioral Intervention: An intervention based on the methods and empirical

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findings of behavioral science and designed to influence a child's actions or behaviors positively.

Case Study Evaluation: See "Evaluation".

Day; Business Day; School Day: See 34 CFR 300.11.

Developmental Delay: See 34 CFR 300.8 and 300.111(b). Delay in physical development, cognitive development, communication development, social or emotional development, or adaptive development (may include children from three through nine years of age).

Disability: IDEA identifies 13 disabilities as the basis for students' eligibility for special education and related services. These disabilities (autism, deaf-blindness, deafness, emotional disability, hearing impairment, [intellectual/cognitive](#) disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment) shall be defined as set forth in 34 CFR 300.8(c). In addition, for purposes of this Part, "autism" shall include, but not be limited to, any Autism Spectrum Disorder that adversely affects a child's educational performance.

Domain: An aspect of a child's functioning or performance that must be considered in the course of designing an evaluation. The domains are health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities.

Equipment (a programmatic definition, not intended to coincide with the definition of "equipment" given in the [Requirements for Accounting, Budgeting, Financial Reporting, and Auditing](#) ~~Program Accounting Manual~~ at 23 Ill. Adm. Code [100.20110.120](#)): See 34 CFR 300.14.

Evaluation: See 34 CFR 300.15.

Extended School Year Services: See 34 CFR 300.106(b).

Functional Behavioral Assessment: An assessment process for gathering information regarding the target behavior, its antecedents and consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for use in developing behavioral interventions.

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**General Curriculum:** The curriculum adopted and/or used by a local school district or by the schools within a district for nondisabled students; the content of the program, as opposed to the setting in which it is offered.

**IEP Team:** See 34 CFR 300.23.

**Independent Educational Evaluation:** See 34 CFR 300.502(a)(3)(i).

**Individualized Education Program or IEP:** See 34 CFR 300.22. An IEP shall be considered "linguistically and culturally appropriate" if it addresses the language and communication needs of a student as a foundation for learning, as well as any cultural factors that may affect the student's education.

**Individualized Family Service Plan or IFSP:** See 34 CFR 300.24.

**Least Restrictive Environment (LRE):** See 34 CFR 300.114.

**Limited English Proficient:** See 34 CFR 300.27.

**Native Language:** See 34 CFR 300.29.

**Parent:** See 34 CFR 300.30.

**Personally Identifiable (with reference to information):** See 34 CFR 300.32.

**Qualified Bilingual Specialist:** An individual who holds the qualifications described in Section 226.800(f) ~~of this Part~~.

**Qualified Personnel:** Staff members or other individuals who hold the certificate, educator or professional license, registration, or credential that is required for the performance of a particular task.

**Qualified Specialist:** An individual who holds the applicable qualifications described in Subpart I ~~of this Part~~.

**Related Services:** See 34 CFR 300.34.

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School District: A public school district established under Article 10 or Article 34 of the School Code [105 ILCS 5/Art. 10 or 34] or a charter school established under Article 27A of the School Code [105 ILCS 5/Art. 27A].

Special Education: See 34 CFR 300.39.

Student Record: See Section 2 of the Illinois School Student Records Act [105 ILCS 10/2] and 23 Ill. Adm. Code 375.10 (Student Records).

Supplementary Aids and Services: See 34 CFR 300.42.

Transition Services: See 34 CFR 300.43.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

## SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

**Section 226.100 Child Find Responsibility**

This Section implements the requirements of 34 CFR 300.111.

- a) Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district (and those parentally-placed private school children for whom the district is responsible under 34 CFR 300.131) who may be eligible for special education and related services. Procedures developed to fulfill the child find responsibility shall include:
- 1) Annual and ongoing screenings~~An annual screening~~ of children under the age of five for the purpose of identifying those who may need early intervention or special education and related services.
  - 2) Ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems ~~that~~which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services.
  - 3) Ongoing coordination with early intervention programs to identify children from birth through two years of age who have or are suspected of having disabilities, in order to ensure provision of services in accordance

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with applicable timelines. Each local school district shall participate in transition planning conferences arranged by the designated lead agency under 20 USC 1437(a)(9) in order to develop a transition plan enabling the public school to implement an IFSP or IEP no later than the third birthday of each eligible child.

- b) When the responsible school district staff members conclude that an individual evaluation of a particular child is warranted based on factors such as a child's educational progress, interaction with others, or other functioning in the school environment, the requirements for evaluation set forth in this Subpart B shall apply.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.110 Evaluation Procedures**

Procedures for requesting and conducting initial evaluations of children who are suspected of requiring special education and related services shall conform to the requirements of 34 CFR 300.301, 300.304, 300.305, ~~and 300.306~~ and 300.309. For purposes of this Section, the "date of referral" ~~discussed in Section 14-8.02 of the School Code~~ shall be understood to be the date of written parental consent for an evaluation, and screening procedures done in accordance with 34 CFR 300.302 shall not be considered an evaluation. Written consent~~Consent~~ for the initial evaluation shall be obtained in conformance with the requirements of 34 CFR 300.300. In addition, the following requirements shall apply.

- a) **Procedures for Requesting an Initial Evaluation**  
Each school district shall develop and make known to all concerned persons procedures by which an evaluation may be requested. These procedures shall:
- 1) Designate the steps to be taken in making a request for an evaluation;
  - 2) Designate the persons to whom a request may be made;
  - 3) Identify the information that must be provided;
  - 4) Provide any assistance that may be necessary to enable persons making requests to meet any related requirements established by the district; and
  - 5) Identify the process for providing the parents with notice of their rights with respect to procedural safeguards.

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- b) A request may be made by a parent of a child or by an employee of a State educational agency, another State agency, a local educational agency, or a community service agency.
- c) District's Response to Request
  - 1) The school district shall be responsible for processing the request, deciding what action should be taken, and initiating the necessary procedures.
  - 2) To determine whether the child requires an evaluation, the district may utilize screening data and conduct preliminary procedures, such as observation of the child, assessment for instructional purposes, consultation with the teacher or other individual making the request, and a conference with the child.
  - 3) Within 14 school days after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 CFR 300.503(b). If an evaluation is to be conducted:
    - A) The district shall convene a team of individuals (including the parent) having the knowledge and skills necessary to administer and interpret evaluation data. The composition of the team will vary depending upon the nature of the child's symptoms and other relevant factors.
    - B) The team shall identify the assessments necessary to complete the evaluation in accordance with 34 CFR 300.305 and shall prepare a written notification for the parents as required under 34 CFR 300.304(a). For each domain, the notification shall either describe the needed assessments or explain why none are needed.
    - C) The district shall ensure that the notification of the team's conclusions is transmitted to the parents within the 14-school-day timeline applicable under this subsection (c)(3), along with the district's request for the parents' consent to conduct the needed assessments.

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- d) Upon completion of the assessments identified pursuant to subsection (c)(3) ~~of this Section~~, but no later than 60 school days following the date the parent signs the written consent ~~from the parent~~ to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed. If fewer than 60 school days remain in a school year after the date of parental consent, the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year. (Section 14-8.02(b) of the School Code)
- e) At the conclusion of the meeting convened pursuant to subsection (d) ~~of this Section~~, the team shall prepare a report describing its consideration of pre-existing information about the child, all new evaluation reports obtained, and any other information relevant to the decision about the child's eligibility. This description shall relate the information considered to the child's needs and shall further conform to the requirements of Section 226.130 ~~of this Part~~ if applicable. The IEP Team's report shall also include:
- 1) the date of the meeting;
  - 2) the signatures of the participants, indicating their presence at the meeting; and
  - 3) any separate written statement provided by a participant who wishes to be on record as disagreeing with the conclusions expressed in the team's report.
- f) The school district shall provide a copy of the IEP Team's report to the parent at the conclusion of the team's meeting. In addition, the district shall provide to the parent, ~~within ten school days after the meeting~~, written notice conforming to the requirements of Section 226.520 ~~of this Part~~ as to the eligibility determination reached with respect to the child. The parent shall also be entitled to receive copies of any evaluation reports upon request.
- g) A copy of the IEP Team's report, together with all documentation upon which it is based, shall become a part of the child's temporary student record.
- h) If an assessment is conducted under nonstandard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report. This information is needed so that the team of evaluators

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can assess the effects of these variances on the validity and reliability of the information reported and determine whether additional assessments are needed. For example, the use of a translator when a qualified bilingual specialist is not available may create nonstandard conditions.

- i) If any needed portion of the evaluation cannot be completed due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the district shall note the missing portions in the child's evaluation report and state the reasons why those portions could not be completed.
- j) In the event that the student is determined to be eligible for special education and related services pursuant to the procedures described in subsections (d) and (e) ~~of this Section~~, the IEP meeting shall be conducted within 30 days after the date of that determination.
- k) If a district fails to conduct the evaluation, the parent of the child in question (or the student, if Section 226.690 ~~of this Part~~ applies) may appeal this failure in an impartial due process hearing or request consideration of this failure using the State complaint procedures set forth at Section 226.570.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.120 Reevaluations**

Procedures for the completion of reevaluations of children for whom special education and related services are currently being provided shall conform to the requirements of 34 CFR 300.303, 300.304, 300.305, ~~and 300.306~~ and 300.309, as well as ~~the relevant provisions of~~ Section 226.110 of this Part.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.125 Specific Learning Disability: Dyslexia**

- a) For the purposes of this Section, dyslexia means a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may

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include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge. (Definition from the Board of Directors of the International Dyslexia Association.)

- b) In accordance with 34 CFR 300.8(b)(10), dyslexia is one of a number of disorders included as a specific learning disability that may adversely affect the student's educational performance and result in the child's eligibility for special education and related services.
- c) Each child suspected of having dyslexia or identified as dyslexic shall be referred for an evaluation in accordance with the requirements of 34 CFR 300.304 through 300.311 and Subpart B of this Part.

(Source: Added at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.130 Additional Procedures for Students Suspected of or Having a Specific Learning Disability**

- a) In addition to the requirements set forth in Sections 226.110 and 226.120 of this Part, the district shall adhere to the procedures set forth at 34 CFR 300.307, 300.308, 300.309, 300.310, and 300.311 when evaluating a student who is suspected of, or who has previously been identified as having, a specific learning disability as described in 34 CFR 300.8.
- b) Provided that the requirements of this subsection (b) are met, each district shall; ~~no later than the beginning of the 2010-11 school year,~~ implement the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR 300.304. When a district implements the use of a process of this type, the district shall not use any child's participation in the process as the basis for denying a parent's request for an evaluation.
  - 1) ~~The~~ No later than January 1, 2008, the State Superintendent of Education shall, ~~in consultation with the statewide teacher organizations, statewide school management organizations, and State Advisory Council on Education of Students with Disabilities, prepare and~~ disseminate a plan outlining the nature and scope of the professional development that is necessary to permit implementation of a process of this type and describing any additional activities or resources that the Superintendent finds to be essential. Any amendments to the plan will be made in

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consultation with the statewide teacher organizations, statewide school management organizations, and State Advisory Council on Education of Students with Disabilities.

- 2) The plan shall quantify the estimated cost of the professional development and other necessary resources and shall identify sources of funding that are or may become available to the State Superintendent for these purposes.
- 3) The plan shall include:
  - A) a method of identifying school districts that are less able than others to implement a process of the required type without technical or financial assistance from the State;
  - B) a timeframe for the provision of training, other technical assistance and materials, or financial resources for related purposes that demonstrates the State Superintendent's best efforts to secure and provide relevant support to districts; and
  - C) a method of allocating resources that affords first consideration to districts that may otherwise be unable to implement a process of the required type without diverting necessary support from other aspects of the educational program.
- c) ~~Each~~ ~~No later than January 1, 2009, each~~ district shall ~~have developed~~ a plan for the ~~transition to the~~ use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR 300.304. Each district's plan shall identify the resources the district will devote to this purpose and include an outline of the types of State-level assistance the district expects to need, with particular reference to the professional development necessary for its affected staff members to implement this process. The ~~transition~~ plan developed pursuant to this subsection (c) may be incorporated into a district's district improvement plan (see 23 Ill. Adm. Code 1.85(b)) if one exists.
- d) In addition to using an identification process of the type required by subsection (b) ~~of this Section~~, a district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.

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(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.135 Additional Procedures for Students Suspected of or Having an Intellectual~~a Cognitive~~ Disability**

In addition to the requirements set forth in Sections 226.110 and 226.120~~of this Part~~, the district shall ensure that a psychological evaluation has been conducted and a recommendation for eligibility made by a school psychologist for any child who is suspected of or determined to have an intellectual~~a cognitive~~ disability.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.150 Evaluation to be Nondiscriminatory**

Each evaluation shall be conducted so as to ensure that it is nondiscriminatory with respect to language, culture, race, and gender. (See also 34 CFR 300.304(c).)

- a) The languages used to evaluate a child shall be consistent with the child's primary language or other mode of communication. (See Section 226.140~~of this Part~~.) If the language use pattern involves two or more languages or modes of communication, the child shall be evaluated by qualified specialists or, when needed, qualified bilingual specialists using each of the languages or modes of communication used by the child. The provisions of subsections (b) and (c) of this Section shall apply when a qualified bilingual specialist is needed but unavailable.
- b) If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the district shall use an individual who possesses the professional credentials required under Section 226.840~~of this Part~~ to complete the specific components of the evaluation. This qualified specialist shall be assisted by a~~certificated~~ school district employee holding an educator license issued pursuant to Article 21B of the School Code [105 ILCS 5/Art. 21B] or other individual who has demonstrated competencies in the language or modes of communication of the child.
- c) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual as provided in subsection (b)~~of this Section~~ are unsuccessful, the district shall conduct assessment procedures which do not depend upon language. Any special

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education resulting from ~~thesesuch~~ alternative procedures shall be reviewed annually until the student's proficiency is determined no longer to be limited pursuant to 23 Ill. Adm. Code ~~228.25228~~ (Program Options, Placement, and Assessment~~Transitional Bilingual Education; see Section 228.15~~).

- d) Tests given to a child whose primary language is other than English shall be relevant, to the maximum extent possible, to his or her culture.
- e) If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the district shall utilize test instruments and procedures that do not stress spoken language and one of the following:
  - 1) Visual communication techniques in addition to auditory techniques.
  - 2) An interpreter to assist the evaluative personnel with language and testing.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.160 Medical Review**

- a) In accordance with 34 CFR 300.304(c)(4), any student who is being evaluated or re-evaluated for special education services shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, communicative status, and motor abilities. The results of the medical review shall be used by the IEP team to address any educationally relevant medical findings or other health concerns that may affect the provision of FAPE to students with disabilities. The medical review shall consist of the following components.
  - 1) Subjective information, if relevant, which may include:
    - A) a description of the perceptions that the parents and student, as applicable, have regarding the student's health;
    - B) a health history of the student from the parents; and
    - C) a description of perceptions of the student's teachers relative to how the student's health may be affecting his or her academic performance or access to the curriculum.

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- 2) Objective information, if relevant, which shall include:
    - A) a summary of information contained in the student's health record and the record of other health-related information, as defined at 23 Ill. Adm. Code 375.10 (Definitions), about his or her prior and current health conditions; and
    - B) a summary of any relevant health-related information obtained from records provided by or requested from the student's parent, health care provider, or health facility where the student has received services, which may address prenatal and birth history; early growth and development; medical issues the child has experienced; hospitalizations and significant injuries; medical diagnosis, if any; and medications or treatments the child currently receives.
  - 3) Nursing services, if relevant, which shall include the identification of the school health services or school nurse services necessary to enable a student with a disability to receive FAPE as described in his or her IEP. (See 34 CFR 300.34(c)(13).)
  - 4) Educationally relevant medical findings, which shall include the identification of the medical conditions and other health-related issues that are likely to adversely affect a child's educational performance.
  - 5) Recommendations, which shall include an analysis of the information gathered for the purpose of:
    - A) determining the medical, school health, and/or school nurse services that should be provided during the school day; and
    - B) developing a proposed plan that provides for specific accommodations, modifications, or interventions to be implemented when educationally relevant medical, school health, and/or school nurse findings are made, which shall include annual goals, short-term objectives, and ongoing evaluation.
- b) Qualifications of Personnel

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- 1) Until June 30, 2016, the practitioners who are qualified to conduct a medical review that addresses each of the components listed in subsection (a) ~~of this Section~~ shall be limited to:
  - A) An individual who holds a professional educator license endorsed for school support personnel ~~for~~ school ~~nurse~~nursing, pursuant to 23 Ill. Adm. Code 25.245 (Endorsement for School Nurses); or
  - B) An individual licensed to practice medicine in all of its branches pursuant to the Medical Practice Act of 1987 [225 ILCS 60]; or
  - C) An individual licensed as a registered professional nurse pursuant to Article 60 of the Nurse Practice Act [225 ILCS 65/Art. 60]; or
  - D) An individual licensed as an advanced practice nurse pursuant to Article 65 of the Nurse Practice Act [225 ILCS 65/Art. 65].
  
- 2) Beginning July 1, 2016, the practitioners who are qualified to conduct certain components of the medical review, as identified in this subsection (b)(2), shall be limited to:
  - A) An individual who holds a professional educator license ~~with endorsed for~~ school support personnel ~~endorsement for~~ school ~~nurse~~nursing, pursuant to 23 Ill. Adm. Code 25.245 (Endorsement for School Nurses), who may conduct any of the components listed in subsections (a)(1) through (5) ~~of this Section~~; or
  - B) An individual licensed to practice medicine in all of its branches pursuant to the Medical Practice Act of 1987 [225 ILCS 60], who may conduct any of those components listed in subsections (a)(1) through (4) ~~of this Section~~; or
  - C) An individual licensed as a registered professional nurse pursuant to Article 60 of the Nurse Practice Act [225 ILCS 65/Art. 60] and who also holds a bachelor's degree in nursing, education or a related field, who may conduct any of those components listed in subsections (a)(1) through (4) ~~of this Section~~; or
  - D) An individual licensed as an advanced practice nurse pursuant to Article 65 of the Nurse Practice Act [225 ILCS 65/Art. 65], who

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may conduct any of those components listed in subsections (a)(1) through (4) ~~of this Section~~.

- c) Certain exceptions shall apply to the personnel qualifications set forth in subsection (b) ~~of this Section~~.
- 1) After July 1, 2016, an individual meeting the qualifications set forth in subsection (b)(1)(B), (b)(1)(C) or (b)(1)(D) ~~of this Section~~ who is currently employed by a school district or special education cooperative also may continue to conduct activities described in subsection (a)(5) ~~of this Section~~, provided that no later than June 30, 2016, he or she:
- A) successfully completes a training course specific to special education laws and regulations and students with disabilities that is approved by the State Board of Education; or
  - B) passes the content-area test for the school nurse endorsement authorized under 105 ILCS 5/21B-30 ~~and subject to the limitations regarding testing attempts set forth in 23 Ill. Adm. Code 25.720(i) (Applicability of Testing Requirement and Scores)~~.
  - C) Any practitioner receiving authorization under subsection (c)(1) ~~of this Section~~ to conduct activities set forth in subsection (a)(5) ~~of this Section~~ retains that authorization provided he or she completes the professional development required at 23 Ill. Adm. Code 25.Subpart J-25.275 (Renewal of ~~the~~ Professional Educator Licenses License for School Support Personnel).
- 2) Beginning on July 1, 2016, a school district or special education cooperative may first employ a practitioner who meets the qualifications set forth in subsection (b)(2)(B), (b)(2)(C) or (b)(2)(D) to conduct the activities described in subsection (a)(5) ~~of this Section who is not fully qualified~~, provided that each of the conditions listed in this subsection (c)(2) are met.
- A) A school district or special education cooperative has not been able to recruit an individual meeting the qualifications set forth in subsection (b)(1)(A) ~~of this Section~~ due to a shortage of these individuals.

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- B) The school district or special education cooperative must be actively engaged in the recruitment process, as evidenced by written documentation such as notices on the agency's website, postings with professional organizations, or personnel notices placed in newspapers, either online or in print. The school district or special education cooperative shall retain this documentation, which must include the date of publication or notice, for the duration of the employment of the practitioner recruited under the provisions of subsection (c)(2) ~~of this Section~~, and make it available upon request to the State Board of Education or its designee.
- C) Any individual hired pursuant to subsection (c)(2) ~~of this Section~~ shall meet the qualifications of subsection (b)(2)(B), (b)(2)(C) or (b)(2)(D) ~~of this Section~~ and meet either of the requirements stated in subsection (c)(1) ~~of this Section~~ as soon as is practicable, but in no case longer than 12 months from the date of hire.
- D) Any practitioner receiving authorization under this subsection (c)(2) to conduct activities set forth in subsection (a)(5) ~~of this Section~~ retains that authorization provided he or she completes the professional development required at 23 Ill. Adm. Code 25.Subpart J25.275 (Renewal of ~~the~~ Professional Educator Licenses~~License~~ for School Support Personnel).

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.180 Independent Educational Evaluation**

Parents have the right to obtain an independent educational evaluation of their child at public expense in accordance with 34 CFR 300.502 and Section 14-8.02(b) and (g-5) of the School Code. The following rights and requirements shall also apply.

- a) If the parents disagree with the district's evaluation and wish to obtain an independent educational evaluation at public expense, their request to that effect shall be submitted in writing to the local school district superintendent.
- b) When an independent evaluation is obtained at public expense, the party chosen to perform the evaluation shall be either:

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- 1) an individual whose name is included on the list of independent educational evaluators developed by the State Board of Education pursuant to Section 226.830 ~~of this Part~~ with regard to the relevant types of evaluation; or
  - 2) another individual possessing the credentials required by Section 226.840 ~~of this Part~~.
- c) If the parent wishes an evaluator to have specific credentials in addition to those required by Section 226.840 ~~of this Part~~, the parent and the school district shall agree on the qualifications of the examiner and the specific evaluations to be completed prior to the initiation of an independent educational evaluation at public expense. If agreement cannot be reached, the school district shall initiate a due process hearing subject to the time constraints set forth in this Section, as applicable.
- d) Within 10 days after receiving a report of an independent evaluation conducted at either public or private expense, the ~~The~~ district shall provide written notice stating the date upon which ~~convening~~ the IEP Team will meet Team's meeting to consider the results within ten days after receiving the report of an evaluation conducted at public expense. (Also see Section 226.530.) ~~In the case of an evaluation conducted at private expense, the district shall send the notice within ten days after the parent requests a meeting to consider the results.~~

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

## SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

**Section 226.220 Development, Review, and Revision of the IEP**

The development, review, and revision of each child's IEP shall conform to the requirements of 34 CFR 300.324 and 300.328. The additional requirements of this Section shall also apply.

- a) When an IEP has been developed or revised, the district shall provide notice in accordance with 34 CFR 300.503(b) and (c) immediately to the parents, and implementation of the IEP shall occur no later than 10 school ~~ten~~ days after the provision of this notice or by the beginning of the following school year if the IEP is developed or revised with fewer than 10 school days remaining in the school year. If the new or revised IEP requires extended-year services, those services shall be provided in accordance with the provisions of the IEP.

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- b) Either a child's educational provider or a child's parent may request an IEP meeting at any time. Within ~~10~~<sup>ten</sup> days after receipt of ~~such~~ a request, the district shall either agree and notify the parent in accordance with 34 CFR 300.503 or notify the parents in writing of its refusal, including an explanation of the reason no meeting is necessary to ensure the provision of FAPE for the child.
- c) The development of an IEP for a child who has a disability on the autism spectrum shall include consideration of the factors specified in Section 14-8.02(b)(1) through (7) of the School Code.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.230 Content of the IEP**

The content of each child's IEP shall conform to the requirements of 34 CFR 300.320. The additional requirements of this Section shall also apply.

- a) Each IEP shall include:
  - 1) A statement of measurable annual goals that reflect consideration of the State Goals for Learning and the Illinois Learning Standards (see 23 Ill. Adm. Code 1), as well as benchmarks or short-term objectives developed in accordance with the child's present levels of academic and functional educational performance.
  - 2) A statement regarding the child's ability to participate in State and district-wide assessments.
  - 3) A statement as to the languages or modes of communication in which special education and related services will be provided, if other than or in addition to English.
  - 4) A statement as to whether the child requires the provision of services beyond the district's normal school year in order to receive FAPE ("extended school year services") and, if so, a description of those services that includes their amount, frequency, duration, and location.
- b) The IEP of a student who requires a behavioral intervention plan shall:

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- 1) Summarize the findings of the functional behavioral assessment;
  - 2) Summarize prior interventions implemented;
  - 3) Describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors;
  - 4) Identify the measurable behavioral changes expected and methods of evaluation;
  - 5) Identify a schedule for a review of the interventions' effectiveness; and
  - 6) Identify provisions for communicating with the parents about their child's behavior and coordinating school-based and home-based interventions.
- c) Beginning not later than the first IEP to be in effect when the child turns 14½, and updated annually thereafter, the IEP shall include:
- 1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and, ~~as needed,~~ independent living;
  - 2) the transition services that are needed to assist the child in reaching those goals, including courses of study and any other needed services to be provided by entities other than the school district; and
  - 3) any additional requirements set forth in Section 14-8.03 of the School Code [105 ILCS 5/14-8.03].
- d) For purposes of 34 CFR 300.320(c), the age of majority under Illinois law is 18. The IEP of a student who may, after reaching age 18, become eligible to participate in the home-based support services program for adults with ~~intellectual~~~~cognitive~~ disabilities that is authorized by the Developmental Disability and Mental Disability Services Act [405 ILCS 80] shall set forth specific plans related to that program that conform to the requirements of Section 14-8.02 of the School Code.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

## SUBPART D: PLACEMENT

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**Section 226.300 Continuum of Alternative Placement Options**

Each local school district shall, in conformance with the requirements of 34 CFR 300.39 and 300.115, ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services. With respect to the home instruction and instruction in hospitals and institutions referenced in 34 CFR 300.39 and 300.115:

- a) The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.
- b) When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, as defined in Section 14-13.01(a) of the School Code [105 ILCS 5/14-13.01(a)], the IEP Team for that child shall consider the need for home or hospital services. The provision of home or hospital services shall be based upon a written statement from a physician licensed to practice medicine in all its branches that specifies:
  - 1) the child's medical condition;
  - 2) the impact on the child's ability to participate in education (the child's physical and mental level of tolerance for receiving educational services); and
  - 3) the anticipated duration or nature of the child's absence from school.
- c) *Special education and related services required by the child's IEP must be implemented as part of the child's home or hospital instruction, unless the IEP Team determines that modifications are necessary during the home or hospital instruction due to the child's condition. (Section 14-13.01 of the School Code)*
  - 1)⊕ The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to the child's educational needs and physical and mental health needs.
  - 2) The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week. In the event that the child's illness or a teacher's absence reduces the number of hours in a given week to which the child is entitled, the school district shall work

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with the IEP Team and the child's parents to provide the number of hours missed, as medically advisable for the child.

- ~~d)e)~~ A child whose home or hospital instruction is being provided via telephone or other technological device shall receive not less than two hours per week of direct instructional services.
- ~~e)f)~~ Instructional time shall be scheduled only on days when school is regularly in session, unless otherwise agreed to by all parties.
- ~~f)g)~~ Home or hospital instructors shall meet the requirements of 23 Ill. Adm. Code 1.610 (Personnel Required to be Qualified).
- ~~g)h)~~ In accordance with Section 14-13.01(a) of the School Code, services required by the IEP shall be implemented not later than five school days after the district receives the physician's statement.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.320 Service to Students Living in Residential Care Facilities**

Children with disabilities may be placed into public or nonpublic residential facilities for reasons other than education by various public entities, such as the Department of Corrections, the Department of Children and Family Services, or the juvenile courts. Except as provided in Section 14-8.01 of the School Code, the school district within whose boundaries ~~such a~~ public or nonpublic residential facility is located is responsible for ensuring special education and related services in the least restrictive environment to those students who are eligible pursuant to this Part. "Residential facilities" refers to any of the following.

- a) "Children's Home" or "Orphanage": any licensed residential institution, other than those directly operated by the State of Illinois, ~~that~~which cares for disabled, neglected, delinquent, and/or dependent children.
- b) "Foster Family Home": an individual residential unit ~~that~~which cares for one or more disabled, neglected, delinquent, or dependent children who are not members of the primary family. ~~A~~Such a home of this type accepts foster children for care under specific and written authority of a municipal, county, or State agency authorized to make ~~the~~such placement.
- c) "State Residential Units": residential housing units ~~that~~which are directly

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operated by the State of Illinois, on property owned by the State, and primarily funded by an agency of the State.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

## SUBPART F: PROCEDURAL SAFEGUARDS

**Section 226.550 Surrogate Parents**

The qualifications, responsibilities, and appointment procedures for surrogate parents shall conform to the requirements of 34 CFR 300.519 and Section 14-8.02a of the School Code [105 ILCS 5/14-8.02a]. In addition, the following requirements shall apply:

- a) When a child who is a ward of the State is placed in a residential facility, a representative of that facility shall submit to the State Board of Education a request for the appointment of a surrogate parent. Upon enrollment of a student, the resident school district is responsible for ensuring the assignment of a surrogate parent if the residential facility has not already done so. ~~if the district has not already done so.~~
- b) The State Board of Education shall appoint a surrogate parent for each child who requires one, in keeping with the criteria set forth in 34 CFR 300.519(d) and the following requirements.
  - 1) All reasonable efforts shall be made to secure a surrogate parent whose racial, linguistic, and cultural background is similar to the child's.
  - 2) The surrogate parent shall have been trained by the State Board.
- c) When a surrogate parent is appointed, the State Board of Education shall provide written notification to the local school district, the individual appointed, and, if applicable, the residential facility of the name and address of the surrogate parent, the specific responsibilities to be fulfilled, and the length of time for which the appointment is valid.
- d) When a child living in a residential facility no longer requires a surrogate parent, a representative of the facility shall notify the State Board of Education in writing to that effect. This notification shall include the reason for withdrawal of the request.

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- e) When a surrogate parent's appointment is terminated, the State Board of Education shall so notify the surrogate parent, the local school district, and, if applicable, the residential facility.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.560 Mediation**

- a) The procedures for mediation shall conform to the requirements of 34 CFR 300.506.
- b) The agreement of the parties to enter mediation shall allow the child to remain, or "stay put", in his or her current placement during the pendency of the mediation. The placement shall be the last placement to which the parties agreed. If mediation fails to resolve the dispute between the parties, the parent (or student if 18 years of age or older or emancipated) shall have 10 days after the mediation concludes to file a request for a due process hearing in order to continue to invoke the "stay-put" provisions. (Section 14-8.02(j) of the School Code)

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.570 State Complaint Procedures**

This Section sets forth the State Board of Education's written complaint procedures, as required by 34 CFR 300.151, 300.152, and 300.153 and Section 14-8.02e of the School Code.

- a) A parent, individual, or organization, ~~or advocate~~ may file a signed, written complaint with the State Board of Education alleging that a local school district, cooperative service unit, or the State has violated the rights of one or more children with disabilities. ~~The~~ Such a complaint shall include:
- 1) A statement that a responsible public entity has violated a requirement of Part B of the IDEA, 34 CFR, Article 14 of the School Code, or this Part;
  - 2) The facts on which the statement is based;
  - 3) The signature and contact information for the complainant;
  - 4) The names and addresses of the students involved (and the names of the schools of attendance), if known;

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- 5) A description of the nature of the problem of the child, including the facts relating to the problem; and
  - 6) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- b) A complaint shall only be considered if it alleges that the violation occurred not more than one year prior to the date on which the complaint is received.
- c) Within 60 days after receiving a complaint that meets the requirements of subsections (a) and (b) a valid complaint is filed, the State Board of Education shall:
- 1) Carry out an independent on-site investigation, if deemed necessary by the State Board of Education.
  - 2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
  - 3) Require that the public entity that is the subject of the complaint submit a written response to the complaint. (See Section 14-8.02e of the School Code.) The public entity shall submit its response and all other documentation to the State Board of Education and the parent, individual, or organization filing the complaint no later than the date indicated in the written correspondence received under this subsection (c)(3), which in no case shall exceed 45 days.
  - 4) Provide the public entity with the opportunity during the complaint process to:
    - A) offer a proposal to resolve the complaint; ~~and/or~~
    - B) offer to engage the parent in mediation or alternative means of dispute resolution.
  - 5)4) Review all relevant information and make an independent determination as to whether the public entity is violating a requirement of Part B of the IDEA, 34 CFR, Article 14 of the School Code, or this Part.

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- ~~6)5)~~ Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
- A) findings of fact and conclusions;
  - B) the reasons for the State Board of Education's final decision;
  - C) orders for any actions, including without limitation technical assistance activities and negotiation, that are necessary to bring the public entity into compliance with applicable requirements.
- d) An extension of the time limit set forth in subsection (c) ~~of this Section~~ shall be allowed if exceptional circumstances exist with respect to a particular complaint or if the parent and the public entity agree to extend the time to conduct the activities pursuant to subsection (c)(3)(B) ~~of this Section~~.
- e) If a written complaint is received by the State Board of Education involving one or more issues that are also the subject of a due process hearing, the State Board shall hold those portions of the complaint in abeyance pending the completion of the hearing. However, any issues that are not the subject of the hearing shall be resolved as provided in this Section.
- f) If a complaint is filed about an issue that has previously been decided in a due process hearing involving the same parties, the decision arising from that hearing shall be considered binding, and the State Board shall inform the complainant to that effect. A complaint alleging a public entity's failure to implement a decision arising from due process, however, shall be resolved by the State Board pursuant to Section 226.675 ~~of this Part~~.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

## SUBPART H: ADMINISTRATIVE REQUIREMENTS

**Section 226.710 Policies and Procedures**

- a) Each local school district, or the special education cooperative entity of which it is a member, shall develop written policies and procedures conforming to the requirements of subsection (b) ~~of this Section and shall submit these to the State Board of Education for approval, using a format supplied by the State Board. The policies and procedures shall be kept on file and presented to the State Board of~~

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~~Education upon request. The State Board shall approve those that conform to the requirements of this Section and are consistent with applicable federal and State statutes and regulations. The State Board shall notify districts of any deficiencies that must be remedied before approval will be granted.~~

- b) Each set of policies and procedures shall address the district's compliance with at least the requirements for:
- 1) the provision of a free appropriate public education;
  - 2) child find;
  - 3) evaluation (including policies and procedures developed pursuant to Section 226.130) and determination of eligibility;
  - 4) Individualized Education Programs;
  - 5) students' participation in assessments;
  - 6) serving students in the least restrictive environment;
  - 7) the provision of extended school year services;
  - 8) transition of children served under Part C of the Individuals with Disabilities Education Act into preschool programs;
  - 9) serving students who attend nonpublic schools;
  - 10) procedural safeguards;
  - 11) establishing the goal of full educational opportunity;
  - 12) confidentiality of personally identifiable information; and
  - 13) the use of federal matching funds under the Medicaid (Title XIX) or Children's Health Insurance (KidCare; Title XXI) program to supplement special education programs and services (if the district is participating in one or more of those federal programs).

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- e) ~~Any revision of a set of policies and procedures shall be submitted to the State Board for approval prior to its implementation.~~

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.730 Class Size for 2009-10 and Beyond**

- a) When a student's IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor ~~holding an educator license~~certified for general education and who is employed for that purpose, and that is not designated as a general remedial classroom. For purposes of this subsection (a), a student who receives speech services outside of the general education classroom and who does not require modifications to the content of the general education curriculum shall be included in the calculation of the percentage of students without IEPs. (See 105 ILCS 5/14-2.)
- b) Class size means the total number of students an educator serves during any special education class. As used in this subsection (b), "class" means any circumstance in which only students with IEPs are served and at least one special education teacher is assigned and provides instruction and/or therapy exclusively to students with IEPs. In the formation of special education classes, consideration shall be given to the age of the students, the nature and severity of their disabilities, the educational needs of the students, and the degree of intervention necessary, subject to the limitations of this subsection (b).
- 1) Except as provided in subsection (b)(5)~~of this Section~~, classes in which all the students receive special education services for 20 percent of the school day or less shall have at least one qualified teacher for each 15 students in attendance during any given class. However, the district may increase the class size by a maximum of two students when a paraprofessional educator is provided for the entire class.
- 2) Except as provided in subsection (b)(5)~~of this Section~~, each class in which any student receives special education services for more than 20 percent of the school day but no more than 60 percent of the school day shall have at least one qualified teacher for each 10~~ten~~ students in attendance during that class. However, the district may increase the class

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size by a maximum of five students when a paraprofessional [educator](#) is provided for the entire class.

- 3) Except as provided in subsection (b)(5) ~~of this Section~~, each class in which any student receives special education services for more than 60 percent of the school day shall have at least one qualified teacher for each eight students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional [educator](#) is provided for the entire class.
  - 4) Each class for children ages three through five shall have at least one qualified teacher for each five students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional [educator](#) is provided for the entire class.
  - 5) For any school year in which the amount of State reimbursement for teachers identified in Section 14-13.01 of the School Code [105 ILCS 5/14-13.01] exceeds the amount in effect on January 1, 2007 by at least 100 percent and no corresponding reduction has been made in other State sources of support for special education:
    - A) The maximum class size stated in subsection (b)(1) ~~of this Section~~ shall be 13 rather than 15;
    - B) The maximum class size stated in subsection (b)(2) ~~of this Section~~ shall be eight rather than 10; and
    - C) The maximum class size stated in subsection (b)(3) ~~of this Section~~ shall be six rather than eight.
  - 6) The provisions of subsections (b)(1) through (5) ~~of this Section~~ notwithstanding, class size shall be limited according to the needs of the students for individualized instruction and services.
- c) The maximum class sizes set forth in subsection (b) ~~of this Section~~ shall, if necessary, be further restricted at the local level to account for the activities and services in which the affected educators participate in order to provide students with IEPs the free, appropriate public education in the least restrictive environment to which they are entitled.

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(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.731 Class Size Provisions for 2007-08 and 2008-09 (Repealed)**

- a) ~~When a student's IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor certified for regular (general) education, and that is not designated as a general remedial classroom.~~
- b) ~~A student shall be considered to require "instructional" classes when he or she receives special education instruction for 50 percent of the school day or more. Classes for such students shall be subject to the limitations of this subsection (b):~~
- 1) ~~Early childhood instructional classes shall have a maximum ratio of one qualified teacher to five students in attendance at any given time; total enrollment shall be limited according to the needs of the students for individualized programming.~~
  - 2) ~~Instructional classes for students who have either a severe/profound disability or multiple disabilities shall have a maximum enrollment of five students.~~
  - 3) ~~Instructional classes for children whose primary disability is a severe visual, auditory, physical, speech or language impairment, autism, traumatic brain injury, or an emotional disability or behavioral disorder shall have a maximum enrollment of eight students.~~
  - 4) ~~Instructional classes for children whose primary disability is a specific learning disability or that serve children who have different disabilities shall have a maximum enrollment of ten students. Instructional programs that group students who have different disabilities shall be formulated only under the following circumstances:~~
    - A) ~~The students are grouped in relation to a common educational need; or~~
    - B) ~~The program can be completely individualized and the teacher is qualified to plan and provide an appropriate educational program for each student in the group.~~

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- 5) ~~Instructional classes designed for children whose primary disability is moderate visual or auditory impairment shall have a maximum enrollment of 12 students.~~
- 6) ~~Instructional classes for children whose primary disability is mild/moderate cognitive disability shall have a maximum enrollment of 12 students at the primary level and 15 students at the intermediate, middle, junior high, and secondary levels.~~
- 7) ~~A school district may increase the enrollment in an instructional class by a maximum of two students in response to unique circumstances that occur during the school year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met. Alternatively, the district may increase the enrollment in an instructional class by a maximum of five students when a full-time, noncertified assistant is provided.~~
- e) ~~A student shall be considered to require "resource" classes when he or she receives special education instruction for less than 50 percent of the school day. Classes for such students shall be subject to the limitations of this subsection (c).~~
- 1) ~~Enrollment shall be limited to the number of students who can effectively and appropriately receive assistance, up to a maximum of 20 students.~~
- 2) ~~The teacher shall participate in determining the appropriate enrollment.~~
- d) ~~The caseload/class size for any service provider includes each student who receives direct or indirect service, such as consultation services, as delineated in an IEP.~~

(Source: Repealed at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.735 Work Load for Special Educators**

In order to provide students with IEPs the free, appropriate education to which they are entitled, each entity subject to this Part shall ~~implement and maintain~~~~adopt a plan specifying~~ limits on the work load of its special educators so that all services required under students' IEPs, as well as all needed ancillary and support services, can be provided at the requisite level of intensity.

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- a) Work load limits~~Each plan~~ shall be developed in cooperation with the entity's affected employees and, where there is an exclusive representative, in accordance with the Illinois Educational Labor Relations Act (IELRA) [115 ILCS 5], to ensure timely implementation by the start of the school year. ~~Each plan shall take effect for the 2009-10 school year, or as soon as possible after that date, if a later date is necessary to comply with an agreement under the IELRA in effect at the beginning of that school year.~~
- b) Work load limits~~Each plan~~ shall be based on an analysis of the activities for which the entity's special educators are responsible and shall encompass, but need not be limited to:
- 1) individualized instruction;
  - 2) consultative services and other collaboration among staff members;
  - 3) attendance at IEP meetings and other staff conferences; and
  - 4) paperwork and reporting.
- c) The number of children served by a speech and language~~speech language~~ pathologist shall be based on the speech-language needs of each child. The other provisions of this Section notwithstanding, at no time shall the caseload of a speech and language~~speech language~~ pathologist exceed 60 students.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.770 Fiscal Provisions**

- a) Requirements Related to the Provision of FAPE
- 1) A school district is responsible for developing students' IEPs and remains responsible for ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.
  - 2) A school district may look to non-educational entities such as insurance companies and the Medicaid program, to pay for services for which thesesueh entities are otherwise responsible. The district must have

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written consent from parents in order to use their private insurance.

- 3) Services required by an IEP must be provided at no cost to the child's parents, whether they have public or private insurance. Parents shall be notified that the use of their private insurance proceeds to pay for services is voluntary. In the case of a child who is dually insured (through private insurance and Medicaid), a family shall not be required to draw upon private insurance whose use is a prerequisite to billing Medicaid if that use of insurance will result in financial costs to the family.
- 4) "Financial costs to the family" include:
  - A) Out-of-pocket expenses incurred in filing a claim, such as the payment of a deductible or required co-payment, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;
  - B) A decrease in available lifetime coverage or any other benefit under an insurance policy;
  - C) Payment by the family for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
  - D) An increase in premiums or the discontinuation of a policy; and
  - E) A risk in terms of loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.
- b) The federal regulations implementing the Individuals with Disabilities Education Act (see 34 CFR 300) establish detailed requirements for the use of federal funds in connection with service to students who are eligible under this Part. School districts and cooperative entities are required to comply with those federal requirements.
- c) School districts and cooperative entities shall use federal matching funds received under Medicaid or the KidCare program only to supplement special education programs and services.
- d) Computation of Reimbursement Under Section 14-7.03 of the School Code

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The amount of reimbursement for which a district shall be eligible under Section 14-7.03 of the School Code shall be computed by determining the actual cost of maintaining the program in accordance with the State Board's rules for Determining Special Education Per Capita Tuition Charge (23 Ill. Adm. Code 130), ~~as further specified in this subsection (d). 1)The district's cost for administration and supervision shall be computed based on the relationship that the average daily membership of children in special education classes bears to the district's total average daily membership. 2)The cost of buildings and facilities shall not exceed 10% of the expenditures for classes. 3)All payments authorized by law, including State or federal grants for the education of children, shall be deducted when program reimbursement or per capita tuition is calculated. 4)The~~ total reimbursement for a child who is living in a residential care facility and who has been placed in a nonpublic special education program by the responsible district shall not exceed the amount authorized under Section 14-7.02 of the School Code.

- e) Eligibility of Students for Funding Under Section 14-7.03 of the School Code
- 1) A student who meets the requirements of Section 14-1.11a(5) of the School Code [105 ILCS 5/14-1.11a(5)] is eligible for reimbursement under Section 14-7.03 of the School Code if he or she:
    - A) is a resident of one of the residential care facilities described in Section 226.320 ~~of this Part~~;
    - B) would not be a resident of that school district except by virtue of his or her placement in one of the residential care facilities described in Section 226.320(a) ~~of this Part~~; and
    - C) has been declared eligible for special education and related services pursuant to this Part.
  - 2) A student who has been declared eligible for special education and related services pursuant to this Part and is living in a State residential unit or county-operated detention center is eligible for reimbursement under Section 14-7.03 of the School Code.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

## SUBPART I: PERSONNEL

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**Section 226.800 Personnel Required to be Qualified**

- a) General
- 1) Each school district, or the special education cooperative-entity of which it is a member, shall employ sufficient professional personnel and ~~noncertified~~ personnel not holding Illinois educator licensure to deliver and supervise the full continuum of special education and related services needed by the eligible students who reside in the district or districts served by the cooperative. The number and types of personnel employed shall be based on students' need rather than administrative convenience.
  - 2) Each school district or special education cooperative-entity shall periodically submit to the State Board of Education, on forms supplied by the State Board, the roster of the individuals who will be or are providing special education or related services. The State Board may request any additional documentation needed in order to verify that each individual holds the qualifications that are required for his or her assignments.
  - 3) Reimbursement for personnel expenditures shall be made by the State Board with respect to only those individuals who are qualified, pursuant to this Subpart I, to *deliver services to students with IEPs* [105 ILCS 5/14-1.10 and 14-13.01] and whose positions are listed either in Section 226.850 or 226.860 of this Part, or pursuant to 23 Ill. Adm. Code 25.48 (Short-Term Emergency Approval Certification in Special Education) when applicable.
  - 4) Each school district or special education cooperative-entity shall develop and implement a comprehensive personnel development program for all personnel involved with the education of children with disabilities.
- b) Professional Instructional Personnel  
Each individual employed in a professional instructional capacity shall:
- 1) hold a valid professional educator license endorsed for special preschool-age 21-~~certificate~~ and meet the qualifications required for the teaching area pursuant to 23 Ill. Adm. Code 25.43; or

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- 2) hold ~~another~~ valid professional educator license endorsed in another teaching area certificate and approval issued by the State Board of Education specific to the area of responsibility (see Section 226.810 ~~of this Part~~); or
  - 3) be employed pursuant to an authorization for assignment issued to the employing entity under Section 226.820 ~~of this Part~~; or
  - 4) hold short-term emergency approval certification issued pursuant to 23 Ill. Adm. Code 25.48 ~~(beginning January 1, 2002)~~.
- c) An individual assigned as a career and technical vocational coordinator shall be required to hold approval for this position, which shall be granted provided that the individual submits an application demonstrating that he or she:
- 1) has two years' teaching experience;
  - 2) holds a valid professional educator license with either a special preschool-age 21 endorsement certificate or a secondary endorsement high school certificate; and
  - 3) has completed at least 16 semester hours of college coursework, which shall at least include each of the areas identified in subsections (c)(3)(A) through (D) and may include one or more of the areas identified in subsections (c)(3)(E) through (H)(I) of this Section:
    - A) Survey of the exceptional child;
    - B) Diagnosis of, and characteristics ~~Characteristics~~ of the student with, all the disabilities encompassed by the Learning Behavior Specialist I (LBS I) credential ~~an intellectual disability~~;
    - C) Adaptations or modifications of the general curriculum to meet the needs of students with the disabilities encompassed by the LBS I credential ~~Characteristics of the socially and/or emotionally maladjusted student~~;
    - D) Career and technical ~~Vocational~~ programming for students with disabilities;

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- E) ~~Characteristics of other exceptionalities;~~
- F) Methods appropriate for teaching children with all the disabilities encompassed by the LBS I credential course in special education;
- ~~F)G)~~ Guidance and counseling;
- ~~G)H)~~ Educational and psychological diagnosis;
- ~~H)I)~~ Career~~Vocational~~ and technical education.
- d) An individual assigned as a teacher coordinator shall be required to hold approval for this position, which shall be granted provided that the individual submits an application demonstrating that he or she:
- 1) holds a valid professional educator license with either a special preschool-age 21 ~~endorsement certificate endorsed~~ for the disability area of assignment issued pursuant to 23 Ill. Adm. Code 25.43 or a secondary endorsement~~high school certificate~~ with special education approval in the applicable disability area issued pursuant to Section 226.810 ~~of this Part~~;
  - 2) has completed a course in career and technical~~vocational~~ programming for students with disabilities; and
  - 3) has at least one year's work experience outside the field of education or has completed at least one course in either guidance and counseling or career~~vocational~~ and technical education.
- e) An individual assigned as a business manager's assistant shall hold a valid professional educator license~~an administrative certificate~~ endorsed for chief school business official pursuant to 23 Ill. Adm. Code 25.345.
- f) Qualified Bilingual Specialists  
Professional staff otherwise qualified pursuant to this Section shall be considered "qualified bilingual specialists" if they submit the required application and meet the applicable requirements set forth in this subsection (f).
- 1) A holder of a valid professional educator license with a special preschool-age 21 ~~endorsement certificate endorsed~~ in the area of responsibility issued pursuant to 23 Ill. Adm. Code 25.43 shall successfully complete a

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language examination in the non-English language of instruction and shall have completed coursework covering:

- A) Psychological/educational assessment of students with disabilities who have limited English proficiency;
  - B) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition; and
  - C) Methods and materials for teaching students of limited English proficiency or students with disabilities who have limited English proficiency.
- 2) A holder of a valid professional educator license with an early childhood, elementary, secondaryhigh school, or special preschool-age 21 endorsementcertificate who also holds special education approval in the area of responsibility (see Section 226.810 ~~of this Part~~) shall successfully complete a language examination in the non-English language of instruction and shall have completed the coursework listed in subsections (f)(1)(A), (B), and (C) ~~of this Section~~.
- 3) A holder of a valid professional educator license with an early childhood, elementary, secondaryhigh school, or special kindergarten-grade 12 or preschool-age 21 endorsementcertificate who also holds an endorsementapproval to teach bilingual education or English as a second language shall have completed coursework covering:
- A) Methods for teaching in the special education area of assignment;
  - B) Psychological/educational assessment of students with disabilities who have limited English proficiency, or psychological diagnosis for children with all types of disabilities; and
  - C) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.
- 4) A holder of a valid educator license with stipulations endorsed for transitional bilingual educatoreertificate issued pursuant to 23 Ill. Adm.

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Code 25.90 and endorsed for the language of assignment shall have completed two years of successful teaching experience and have completed coursework covering:

- A) Survey of children with all types of disabilities;
- B) Assessment of the bilingual student, or psychological/educational assessment of the student with disabilities who has limited English proficiency;
- C) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition;
- D) Methods for teaching in the special education area of assignment; and
- E) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.

- 5) A holder of a valid professional educator license with a school support service personnel endorsement certificate endorsed for school counselor guidance, school social worker work, school psychologist psychology, or speech and language pathologists speech-language pathology shall successfully complete an examination in the non-English language and shall have completed coursework in assessment of the bilingual student or psychological/educational assessment of the student with disabilities who has limited English proficiency.

- g) Directors and Assistant Directors of Special Education  
Each school district, or the special education cooperative entity of which it is a member, shall employ a full-time director of special education, who shall be the chief administrative officer of the special education programs and services of the district or cooperative entity.

- 1) Each director or assistant director of special education shall hold a valid professional educator license endorsed for director of special education administrative certificate issued pursuant to 23 Ill. Adm. Code 25.365 and a master's degree, including 30 semester hours of coursework

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distributed among all the areas specified in ~~either~~ 23 Ill. Adm. Code 25.365(b) ~~or (c), as applicable~~. Beginning July 1, 2005, directors and assistant directors of special education shall be subject to the requirements of 23 Ill. Adm. Code 29.140 (Director of Special Education).

- 2) Each school district or the special education cooperative ~~entity~~ of which it is a member, shall submit to the State Board of Education a letter identifying the individual employed as the director of special education by his or her full name and Illinois Educator Identification Number. If the individual is qualified as required, the State Board shall confirm that the individual is the State-approved director of special education for the school district or special education cooperative ~~entity~~.

h) Supervisors

- 1) Each school district or special education cooperative ~~entity~~ shall employ sufficient supervisory personnel to provide consultation to and coordination of special education services.
- 2) Each individual performing a supervisory function shall hold one of the following:
  - A) a valid professional educator license with a special preschool-age 21 endorsement certificate in the area to be supervised, and a supervisory endorsement issued ~~endorsed for supervision~~ pursuant to 23 Ill. Adm. Code 25.497, with two years' teaching experience in that area; or
  - B) a valid professional educator license with a school support service personnel endorsement, and a supervisory endorsement issued, with certificate endorsed for supervision and two years' experience in the area to be supervised; or
  - C) a valid professional educator license with an administrative endorsement issued under 23 Ill. Adm. Code 25.Subpart E certificate and either a ~~valid~~ special preschool-age 21 endorsement certificate endorsed for the area to be supervised or special education approval in that area.

i) Chief Administrator of Special School

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The chief administrator of a special school shall hold a valid professional educator license~~an administrative certificate~~ with a general administrative, principal or director of special education endorsement issued pursuant to 23 Ill. Adm. Code 25.335, 25.337, or 25.365 and either:

- 1) an endorsement or approval that is specific to at least one of the disabilities prevalent in the students served by the school, if the school serves students who are deaf or hard of hearing, blind or visually impaired, or speech- and language-impaired; or
  - 2) an endorsement as Learning Behavior Specialist I that either is unlimited or specific to one of the disabilities prevalent in the students served by the school (see 23 Ill. Adm. Code 25.46); or
  - 3) approval as an LBS I issued by the State Board of Education pursuant to Section 226.810 and 23 Ill. Adm. Code 25.47 (Special Provisions for the Learning Behavior Specialist I Approval)~~of this Part~~ that either is unlimited or specific to one of the disabilities prevalent in the students served by the school.
- j) Other Professional Personnel  
Each individual employed in a professional capacity not specified in subsections (a) through (i) ~~of this Section~~ shall, as appropriate to his or her assignment, hold:
- 1) a valid professional educator license endorsed for~~the school support service~~ personnel ~~certificate endorsed as~~ appropriate to the area of responsibility (see 23 Ill. Adm. Code 25, Subpart D); or
  - 2) a valid professional license or permission to practice, if the individual's profession is governed by such a requirement and either no educational credential in the same or a related field is issued by the State Board of Education (e.g., for a physical therapist) or the School Code permits the individual to perform the functions assigned; or
  - 3) a credential, regardless of title, issued by a professional association or organization in the relevant field, when no educational credential in the same or a related field is issued by the State Board of Education and no license or permission to practice is required by the State (e.g., for a music therapist or a daily living skills specialist). Evidence of the individual's credential shall be kept on file by the school district or special education

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cooperative and presented to the State Board of Education upon request.

- k) ~~Noncertified~~ Personnel Not Holding Educator Licensure
- 1) Each ~~noncertified~~ professional individual not holding educator licensure issued under Article 21B of the School Code [105 ILCS 5/Art. 21B] employed in a special education class, program, or service, and each individual providing assistance at a work site, shall function under the general direction of a professional staff member.
  - 2) Each program assistant or aide, whether providing instructional or noninstructional services/aide, as well as each nonemployee providing any service in the context of special education, shall function under the direct supervision of a professional staff member.
    - A) Nothing in this subsection (k) authorizes individual student aides or others who do not hold an appropriate professional license to perform any nursing activity, as nursing activity may be defined in the Nurse Practice Act [225 ILCS 65] and rules governing that Act (68 Ill. Adm. Code 1300), including any procedures and duties requiring a medical order (e.g., tube feedings, catheterizations, administration of medications, tracheal suctioning, tube insertions, blood draws, dressing changes), except as may be otherwise authorized under State law.
    - B) The provisions of this subsection (k) do not apply to paraprofessional educators licensed under Section 21B-20 of the School Code [105 ILCS 5/21B-20] nor to educational interpreters approved pursuant to 23 Ill. Adm. Code 25.550 (Approval of Educational Interpreters).
  - 3) Each school district shall provide training experiences appropriate to the nature of their responsibilities to the individuals discussed in subsections (k)(1) and (2) ~~of this Section~~. Training shall be in lieu of the requirements for ~~noncertified~~ personnel not holding educator licensure set forth in 23 Ill. Adm. Code 1, Subpart F.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.810 Special Education Teaching Approval**

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Special education approval for LBS I or early childhood may be issued by the State Board of Education to an individual who does not hold a special preschool-age 21 endorsement on his or her professional educator license certificate or who lacks some of the qualifications for one of the endorsements enumerated in 23 Ill. Adm. Code 25.43. After August 31, 2015, LBS I approvals under this Section shall no longer be issued.

- a) Beginning July 1, 2001, special education teaching approval will be issued for individuals to serve as LBS I Learning Behavior Specialist (LBS) I and may be limited to one or more of the following areas, as applicable (see 23 Ill. Adm. Code 25.47):
  - 1) Learning disabilities;
  - 2) Social/emotional disorders;
  - 3) Intellectual disability; and
  - 4) Physically handicapped.
- b) An individual who holds a valid professional educator license with an early childhood, special, elementary or secondary endorsement, high school, or a valid educator license with stipulations endorsed for transitional bilingual educatore certificate shall receive LBS I approval to teach in a special education area listed in subsection (a) ~~of this Section~~ if he or she has successfully completed college-level coursework addressing each of the following areas:
  - 1) Survey of exceptional children;
  - 2) Characteristics of special education students in the specific area of approval sought;
  - 3) Methods of teaching in the area of special education approval sought; and
  - 4) Psychological diagnosis for children with all types of disabilities.
- c) Except as provided in subsection (d) ~~of this Section~~, an individual who wishes to receive special education teaching approval shall submit an application for an LBS I endorsement ~~a special certificate~~ on a form supplied by the State Board of

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Education and shall comply with ~~anysuch~~ other application procedures as the State Board may require.

- 1) If the individual qualifies for ~~an LBS I endorsementa special certificate~~, the State Board shall issue one and endorse it as warranted.
  - 2) If the individual does not qualify for ~~an LBS I endorsementa special certificate~~, the State Board shall evaluate the application for special education approval and either issue the approval or notify the applicant of any deficiencies.
- d) Special education approval issued prior to January 1, 2002, shall not be limited with regard to time or district of employment but shall be valid only for the special education areas indicated and the grade levels to which the individual's ~~professional educator license or educator license with stipulationseertificate~~ applies.
- e) Any approval issued on or after January 1, 2002, shall be valid for three years, after which time the holder shall no longer be assigned to a special education teaching position unless he or she has received an unlimited LBS I endorsement pursuant to 23 Ill. Adm. Code 25.47 (Special Provisions for the Learning Behavior Specialist I Approval).
- e) ~~As of July 1, 2001, each teaching approval listed in subsection (a) of this Section shall automatically be reissued for service as an LBS I. An individual's pre-existing approvals shall result in receipt of either a limited or an unlimited LBS I approval (see 23 Ill. Adm. Code 25.47).~~
- f) Beginning January 1, 2002, the State Board shall issue early childhood special education approval to an individual who ~~either~~ holds a valid professional educator license with an early childhood ~~endorsementeertificate~~ or ~~a special preschool age 21 certificate with~~ an LBS I endorsement, provided that the individual makes application for approval ~~in a format specified on a form supplied~~ by the State Board demonstrating that he or she has successfully completed coursework in all the following areas:
- 1) Methods – Developmentally and individually appropriate methods for fostering the social, emotional, cognitive, communication, adaptive, and motor development and learning of young children with special needs in various settings, such as the home, the school, and the community.

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- 2) Assessment – Strategies, procedures, and formal and informal instruments for assessing young children's social, emotional, cognitive, communication, and motor skills; family concerns, priorities, and resources; and school, home, and community learning environments; and methods for conducting formative and summative individual and program evaluation.
- 3) Language Development – Typical and atypical language development in young children; specific language disabilities; the relationship between communication delays and other areas of early learning and development; and alternative communication systems for young children with disabilities.
- 4) Family and Community Relationships – Strategies in developing positive and supportive relationships with families of young children with special needs, including the legal and philosophical basis for family participation; family-centered services; and strategies for working with socially, culturally, and linguistically diverse families. Strategies and models for promoting effective consultation and collaboration with other professionals and agencies within the community.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.820 Authorization for Assignment**

In the circumstances described in this Section, neither the qualifications required by Section 226.800 ~~of this Part~~ nor special education approval under Section 226.810 ~~of this Part~~ shall be required. When authorized pursuant to this Section, reimbursement shall be available for staff providing special education and related services.

- a) No Fully Qualified Individual Available  
~~When a district or cooperative entity, regional superintendent of schools, or nonpublic special education facility approved pursuant to 23 Ill. Adm. Code 401 (Special Education Facilities Under Section 14-7.02 of the School Code) demonstrates to the State Board of Education that it is unable to secure the services of an individual who holds the required credentials for a particular assignment, the State Board may authorize the assignment of another individual in accordance with if the director of special education submits a written request through the regional superintendent of schools, on a form provided by the State~~

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~~Board, that: A) describes the position or assignment involved or the services to be provided and identifies the required certificate or approval; B) describes the population to be served, including the number of students in each disability category represented; C) describes the type and frequency of supervision and technical assistance to be provided to the individual, including the name and title of the supervisor and any other individual who will provide technical assistance; D) describes the unique training, education, experience, or other qualifications that will assist the individual in fulfilling the requirements of the position; E) describes the district's or cooperative entity's efforts to locate a fully qualified individual to fill the position, including contacts with universities, regional superintendents, and the State Board of Education; and F) indicates that the individual to be assigned is working toward attainment of the required certificate, endorsement, or approval for the position. 2) The State Board's authorization to assign such an individual shall be specific to the affected position and to the district or cooperative entity requesting the authorization and shall be limited to two years in duration. 3) As of January 1, 2002, no further authorizations to assign individuals to special education teaching positions shall be issued pursuant to this Section. The provisions of 23 Ill. Adm. Code 25.48 (Short-Term Emergency Approval Certification in Special Education) shall apply instead. An individual for whom an authorization was issued prior to January 1, 2002, shall be allowed to serve in the current assignment until that authorization expires.~~

## b) Interns

The State Board may also authorize the assignment of interns in school psychology, school social work, school nursing, and speech and language~~speech/language~~ pathology who will work under the supervision of fully qualified professionals, subject to the requirements of this subsection (b).

- 1) For each intern in school psychology, school social work, or school nursing, the director of special education shall submit, on forms supplied by the State Board:
  - A) verification provided by an educational institution that the candidate is participating in a formal internship under its auspices; and
  - B) a request for authorization to assign the individual to an intern's position.

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- 2) For each intern in ~~speech and languages~~ speech/language pathology, the director of special education shall submit evidence that the individual holds a valid interim approval issued under 25 Ill. Adm. Code 25.255 (Interim Approval for Speech-Language Pathologist Interns), ~~teaching certificate and has a bachelor's degree in communication disorders. The individual shall also either have completed graduate level coursework in communication disorders or be enrolled in a program providing such coursework.~~ The director of special education shall provide evidence that the intern will be supervised by an individual who holds a valid professional educator license endorsed for a special preschool-age 21 certificate endorsed for speech and language-impaired or speech language pathologist issued pursuant to 23 Ill. Adm. Code 25.43 (Standards for Licensure of Special Education Teachers) or 23 Ill. Adm. Code 25.252 (Endorsement for Non-Teaching Speech-Language Pathologist) ~~25.45~~, as applicable.
- e) ~~No Specific Credential Required~~
- 1) ~~When a school district or cooperative entity needs to fill a position for which no specific certificate, endorsement, or other credential is required, the district or cooperative entity shall seek authorization from the State Board of Education to assign the individual who has been selected.~~
  - 2) ~~The director of special education shall submit a written request through the regional superintendent of schools, on a form provided by the State Board, that:~~
    - A) ~~describes the position or the service to be provided, why it is needed, and for how long it is expected to be needed; and~~
    - B) ~~describes the training, education, experience, or other qualifications held by the individual selected that will be relevant to the unique needs of the students to be served (e.g., experience in teaching students with similar disabilities, experience in providing the specific services involved).~~
  - 3) ~~The State Board's authorization to assign such an individual shall be limited to the period for which the service is stated to be needed and shall be specific to the affected position and to the requesting entity.~~

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(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.830 List of Independent Evaluators**

- a) The State Board of Education shall develop a list of independent educational evaluators who hold the credentials required for the performance of the various evaluation components pursuant to Section 226.840 of this Part and meet the requirements of Section 14-8.02(g-5) of the School Code.
- b) No person shall be included in the State Board's list unless he or she has provided in writing to the State Board the following specific information for each credential for which the Board's acknowledgment is sought:
  - 1) name of license, certificate, or other credential;
  - 2) name of credentialing agency or body;
  - 3) number of certificate, license, registration, or other credential;
  - 4) date of issue; and
  - 5) period of validity.
- c) An individual who wishes to be considered a qualified bilingual specialist shall identify any languages~~language(s)~~ other than English in which he or she is proficient and identify the specific qualifications held that correspond to the relevant requirements of Section 226.800(f) ~~of this Part.~~
- d) Persons wishing to be included on this list may submit the information about their credentials required under subsection (b) ~~of this Section~~ to the State Board at any time. The State Board shall update the list as changes may warrant and shall provide the list to school districts.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.840 Qualifications of Evaluators**

The following list identifies the credentials required to administer certain types of evaluations. Where no requirements are established, an evaluation may be performed by an individual who is qualified to administer it according to the technical specifications of the publisher.

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<u>TYPE</u>	<u>REQUIRED QUALIFICATIONS</u>
Academic Performance	<u>Professional educator license or approval issued under Section 226.810 Teaching certificate/approval</u> appropriate for the age or disability of the child, or <u>professional educator license with a school support personnel endorsement</u> <del>School Service Personnel Certificate endorsed</del> for school <u>psychologistpsychology</u> or <u>school counselorguidance</u> . (See Article 21B of the School Code [105 ILCS 5/Art. 21B-24] and the State Board's rules at 23 Ill. Adm. Code 1 and 23 Ill. Adm. Code 25.)
Adapted Physical Education	<u>Professional educator license</u> <del>Special Certificate</del> endorsed for physical education with approval in adapted physical education (23 Ill. Adm. Code 25.43).
Assistive Technology	To the extent that a test is used in performing this assessment, qualification for administering the test according to the instructions provided by the test's publisher.
Audiological	License to practice as an <u>audiologist</u> <del>Audiologist</del> issued by the Department of Financial and Professional Regulation pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].
Clinical Psychological	License issued pursuant to the Clinical Psychologist Licensing Act [225 ILCS 15].
Cultural Background Assessment	<u>Professional educator license with a school support personnel</u> <del>School Service Personnel endorsement</del> <u>Certificate endorsed</u> for school <u>psychologistpsychology</u> , school social <u>workerwork</u> , or school <u>counseloreounseling</u> .

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Hearing Screening	License to practice as an <del>audiologist</del> <u>Audiologist</u> issued by the Department of Financial and Professional Regulation pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110]; <u>professional educator license with a school support personnel endorsement for speech and language pathologist or special preschool-age 21 endorsement</u> , <del>Special Certificate endorsed</del> for speech and language <del>pathologist impairment</del> (23 Ill. Adm. Code <del>25.43 or 25.252</del> ; <u>25.45</u> ), or certificate of training issued by the Department of Public Health (77 Ill. Adm. Code 675).
Learning Processes Evaluation	<u>Professional educator license with a school support personnel</u> <del>School Service Personnel endorsement</del> <u>Certificate endorsed</u> for school <del>psychologist</del> <u>psychology</u> or <del>Special Preschool-Age 21 Certificate endorsed for LBS I endorsement</del> <u>Learning Behavior Specialist I</u> .
Medical Review	Meet the requirements set forth in Section 226.160 of this Part, as applicable.
Neurological Evaluation	Licensure/registration issued by the Department of Financial and Professional Regulation pursuant to the Medical Practice Act of 1987 [225 ILCS 60].
Occupational Therapy Evaluation	Certificate/Registration issued by the Department of Financial and Professional Regulation pursuant to the Illinois Occupational Therapy Practice Act [225 ILCS 75].
Orientation/Mobility	Certification for orientation/mobility instruction and evaluation ( <del>Certified</del> <u>Certification for</u> Orientation and Mobility <u>Specialist</u> , <u>Academy for Certification of Vision Rehabilitation and Education Professionals, 4732 North Oracle Road, Suite 217, Tucson AZ 85705, or</u>

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	<del>predecessor credential issued by the Orientation and Mobility Division, Association for Education and Rehabilitation of the Blind and Visually Impaired, 1703 North Beauregard Street, Suite 440, 4600 Duke Street, #430, P.O. Box 22397, Alexandria VA 22311, Virginia 22304; 1984; no later amendments or editions are included).</del>
Physical Therapy Evaluation	Certificate/registration issued by the Department of Financial and Professional Regulation pursuant to the Illinois Physical Therapy Act [225 ILCS 90].
Psychiatric Evaluation	Licensure/registration issued by the Department of Financial and Professional Regulation pursuant to the Medical Practice Act of 1987.
School Psychological	<del>Professional educator license with a school support personnel endorsement</del> <del>School Service Personnel Certificate endorsed</del> for school <del>psychologist</del> <del>psychology</del> .
Social Developmental Study (Adaptive Behavior, Cultural Background, Family History)	<del>Professional educator license with a school support personnel endorsement</del> <del>School Service Personnel Certificate endorsed</del> for social <del>worker</del> <del>work</del> , <del>school counselor</del> <del>guidance</del> , or school <del>psychologist</del> <del>psychology</del> (23 Ill. Adm. Code 25.215, 25.225, or, <u>as applicable, 25.230 or 25.235</u> ).
Speech and Language Assessment	<del>Professional educator license with a special preschool-age</del> <del>Special Preschool Age 21</del> <del>speech and language pathologist endorsement</del> <del>Certificate endorsed for speech and language impairment or speech language pathology</del> (23 Ill. Adm. Code <del>25.43</del> <del>25.45</del> ), or <del>school support personnel endorsement</del> <del>School Service Personnel Certificate endorsed</del> for <del>speech and language pathologist</del> <del>speech language pathology</del> (23 Ill. Adm. Code <del>25.252</del> <del>25.250</del> ).

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Vision Screening

Certificate of training issued by the Department  
of Public Health (77 Ill. Adm. Code 675).

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.850 List of Qualified Workers**

The following table lists the work assignments and qualifications for qualified workers for whom reimbursement may be requested under Section 14-13.01 of the School Code. All requirements necessary for proper certification, [educator or professional licensure](#), or approval in these work assignments are found in this Subpart I, unless otherwise noted.

WORK ASSIGNMENT	REQUIRED QUALIFICATIONS
Adapted Physical Education	A valid Illinois <a href="#">professional educator licensure</a> <del>teaching certificate</del> endorsed for physical education and an adapted physical education approval encompassing the grade levels and age ranges of the students served.
Administrator of a Special School	Must meet the requirements of Section 226.800(i) <del>of this Part</del> .
Art Therapist	Registration from American Art Therapy Association or a master's degree in art therapy awarded by a regionally accredited institution of higher education.
Assistant Director	<del>A</del> Must hold a valid <a href="#">professional educator licensure</a> <del>administrative certificate</del> with a director of special education endorsement issued pursuant to 23 Ill. Adm. Code 25.365 and 23 Ill. Adm. Code 1.705 and <del>meets</del> meet the requirements of Section 226.800(g) of this Part.
Audiologist	Licensed to practice as an audiologist by the Department of Financial and Professional Regulation pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110] or Certificate of Clinical Competence in Audiology from the American Speech-Language-Hearing Association.

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Autism	A valid Illinois <u>professional educator license</u> <del>teaching certificate</del> either with <u>an LBS I or early childhood special education a</u> <del>ategorical or cross-categorical special education</del> endorsement or approval encompassing the grade levels and age ranges of the students served.
Behavior Analyst	Board Certified Behavior Analyst (BCBA) as evidenced by a current valid certificate awarded by the Behavior Analyst Certification Board, Inc.
<u>Career and Technical Coordinator</u>	<u>Meets the requirements set forth in Section 226.800(c) of this Part and 23 Ill. Adm. Code 1.737(c)</u>
<u>Career and Technical Transition Specialist</u>	<u>Must hold a contract with the Illinois Department of Human Service-Division of Rehabilitation Services, under the Secondary Transition Experience Program (STEP).</u>
<del>Cognitive Disability</del>	<del>A valid Illinois teaching certificate either with a cross-categorical special education endorsement or approval or intellectual disability endorsement or approval encompassing the grade levels and age ranges of the students served.</del>
<del>Cross-categorical</del>	<del>A valid Illinois teaching certificate with a cross-categorical special education endorsement or approval encompassing the grade levels and age ranges of the students served.</del>
Daily Living Skills Specialist	Certificate from the Academy for Certification of Vision Rehabilitation and Education Professionals or its predecessor organization.
Diagnostic <u>Teacher</u>	A valid Illinois <u>professional educator license with an LBS</u> <del>Iprekindergarten through age 21 (PreK-21) teaching certificate</del> either <del>with a learning disability or cross-categorical special education</del> endorsement or approval.
Early Childhood	A valid Illinois <u>professional educator license with an</u> early childhood <u>endorsement and</u> <del>certificate</del> either with an early childhood special education endorsement or early childhood special education approval or <u>with a valid Illinois professional educator license with an LBS I endorsement</u> <del>PreK-21 certificate</del>

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~~endorsed either for categorical or cross-categorical special education~~ and early childhood special education approval.

Emotional Disability	A valid Illinois <del>professional educator licenseteaching certificate</del> either with <u>an LBS I</u> <del>a cross-categorical special education or a social-emotional disorders</del> endorsement or approval encompassing the grade levels and age ranges of the students served.
Hearing Impairment	A valid Illinois <del>professional educator licenseteaching certificate</del> endorsed for teacher of students <u>who are deaf or hard of hearing with deafness/hard of hearing</u> pursuant to 23 Ill. Adm. Code 25.43.
Home/Hospital Instructor (see Section 226.300 of this Part)	A valid Illinois <del>professional educator licenseteaching certificate</del> either with <u>an LBS I</u> <del>a cross-categorical special education</del> endorsement or approval encompassing the area of student's disability (i.e., intellectual disability, physically handicapped, learning disabilities or social/emotional disorders), <u>professional educator license</u> <del>or a valid Illinois teaching certificate</del> endorsed in the area of <u>speech and language pathologists</u> <del>speech language pathology</del> , blind or visually impaired, or deaf or hard of hearing.
Infant/Toddler/Family Specialist	For federally funded programs serving infants and toddlers, birth through two years of age: Completion of a degree program with evidence of specific training in child development and family development specific for children ages birth to five years.
Inservice Coordinator	A valid Illinois <u>professional educator license with an LBS I endorsement</u> <del>teaching certificate endorsed either for categorical or cross-categorical special education</del> or a valid Illinois <u>professional educator license endorsed for school support</u> <del>service</del> personnel <del>certificate</del> (see 23 Ill. Adm. Code 25.Subpart D).
<u>Intellectual Disability</u>	<u>A valid Illinois professional educator license endorsed in a teaching field with an LBS I endorsement or approval encompassing the grade levels and age ranges of the students served.</u>

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<u>LBS I</u>	<u>Meets the requirements of 23 Ill. Adm. Code 25.43 appropriate to the area of responsibility or holds a valid Illinois professional educator license with an LBS I endorsement or approval encompassing the grade levels and age ranges of the students served.</u>
Medical Services Personnel (Diagnostics and Evaluation)	Registration with the Illinois Department of Financial and Professional Regulation.
Music Therapist	Registration from the <u>National Music Therapy Registry</u> , <u>certification from the Certification Board for Music Therapists</u> , <del>American Music Therapy Association</del> or master's degree in music therapy from a regionally accredited institution of higher education.
Occupational Therapist	Licensed by the Illinois Department of Financial and Professional Regulation pursuant to the Illinois Occupational Therapy Practice Act [225 ILCS 75].
Orientation and Mobility Specialist	Certificate from the Academy for Certification of Vision Rehabilitation and Education Professionals or its predecessor organization or the Association for the Education and Rehabilitation of the Blind and Visually Impaired.
Orthopedic Impairment	A valid Illinois <u>professional educator license</u> <del>teaching certificate</del> either with a cross-categorical special education or physically handicapped endorsement or <u>with</u> approval encompassing the grade levels and age ranges of students served.
Physical Therapist	Licensed by the Illinois Department of Financial and Professional Regulation pursuant to the Illinois Physical Therapy Act [225 ILCS 90].
Recreational Therapist	Licensed by the National Council for Therapeutic Recreation or its predecessor organization.
Rehabilitation Counselor	Certificate from the Commission on Rehabilitation Counselor Certification (CRCC) or a master's degree in rehabilitation

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counseling awarded by a regionally accredited institution of higher education.

School Counselor/ Guidance Counselor	<del>Meets the requirements of 23 Ill. Adm. Code 25.43 appropriate to the area of responsibility or holds a valid Illinois professional educator license endorsed for school supportservice personnel certificate endorsed for school counselor issued under 23 Ill. Adm. Code 25.225 counseling.</del>
School Counselor Intern	Meets the requirements of 23 Ill. Adm. Code 25.227.
School Nurse	Meets the requirements of Section 10-22.23 of the School Code [105 ILCS 5/10-22.23] and 23 Ill. Adm. Code 25.245.
School Nurse (Grandfathered)	Employed as a registered school nurse prior to July 1, 1976 and continuing in the same position with the same district or joint agreement.
School Nurse Intern	Meets the requirements of Section 226.820(b) <del>of this Part</del> . Reimbursement for this position shall not be for a period of time that exceeds four months.
School Psychologist	Meets the requirements of Section 14-1.09 of the School Code [105 ILCS 5/14-1.09] and 23 Ill. Adm. Code <u>25.230 or 25.235, as applicable.</u>
School Psychologist Intern	Meets the requirements of Section 226.820(b) <del>of this Part</del> .
School Social Worker	Meets the requirements of Section 14-1.09a of the School Code [105 ILCS 5/14-1.09a], and Section 226.820(b) of this Part and 23 Ill. Adm. Code 25.215, as applicable.
School Social Work Intern	Meets the requirements of Section 226.820(b) <del>of this Part</del> .
Specific Learning Disability	A valid Illinois <u>professional educator licenseteaching certificate</u> either with <u>an LBS Ia cross-categorical special education or learning disability</u> endorsement or <u>with</u> approval encompassing the grade levels and age ranges of the students served.

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Speech-Language	<p>Non-teaching Position: Meets the requirements of Section 14-1.09b of the School Code [105 ILCS 5/14-1.09b] and 23 Ill. Adm. Code 25.252, as applicable, for <u>speech and language</u><del>speech language</del> pathologist.</p> <p>Teaching Position: Holds a valid Illinois <u>professional educator licenseteaching certificate</u> issued pursuant to 23 Ill. Adm. Code 25.43 endorsed <u>for speech and language pathologist</u><del>in speech language pathology</del>.</p>
Speech-Language Pathologist Intern (Interim)	Meets the requirements of 23 Ill. Adm. Code 25.255 and Section 226.820(b) of this Part.
State-Approved Director of Special Education (serving in a full-time capacity)	Meets the requirements of 23 Ill. Adm. Code 25.365 and Section 226.800(g) of this Part.
Supervisor	Meets the requirements of Section 226.800(h) of this Part and 23 Ill. Adm. Code 1.705(h), as applicable.
Support Teacher	A valid Illinois <u>professional educator licenseteaching certificate</u> either with <u>an LBS Ia categorical or cross-categorical special education</u> endorsement or <u>with</u> approval encompassing the grade levels and age ranges of the students served.
Teacher Coordinator of Vocational Education	Meets the requirements of Section 226.800(d) <del>of this Part</del> .
Visual Impairment	A valid Illinois <u>professional educator licenseteaching certificate</u> issued pursuant to 23. Ill. Adm. Code 25.43 and endorsed for teacher of students <u>who are blind or visually impaired</u> <del>with visual impairments</del> .
<del>Vocational Coordinator</del>	<del>Meets the requirements set forth in Section 226.800(c) of this Part and 23 Ill. Adm. Code 1.737(c)(3).</del>

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~~Vocational Transition Specialist~~ ~~Must hold a contract with the Illinois Department of Human Services, Division of Rehabilitation Services, under the Secondary Transition Experience Program (STEP).~~

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

**Section 226.860 List of Other Noncertified Employees Qualifying for Reimbursement**

The following table lists the work assignments and qualifications for ~~noncertified~~ employees considered to be "noncertified" for the purposes of requesting whom reimbursement may be requested under Section 14-13.01 of the School Code. In order to qualify for reimbursement, the noncertified employee shall provide direct services to students with IEPs. (See Section 14-13.01(h) of the School Code; also see Section 226.800(k) of this Part.)

WORK ASSIGNMENT	REQUIRED QUALIFICATIONS
Hearing Screening Technician	Must hold a certificate from the Illinois Department of Public Health pursuant to 77 Ill. Adm. Code 675.
Individual Student Aide (noninstructional duties)	Training specific to the needs of the students being served, as determined by the school district under Section 226.800(k) <del>of this Part.</del>
Interpreter for the Deaf or <u>Oral Transliteration</u> <del>Cued Speech</del>	Meets the requirements of 23 Ill. Adm. Code 25.550 for approval from the State Board of Education.
Noncertified Health Aide	Licensed by the Illinois Department of Financial and Professional Regulation pursuant either to Article 55 or 60 of the Nurse Practice Act [225 ILCS 65/Art. 55 or 60].
Occupational Therapy Assistant	Licensed by the Illinois Department of Financial and Professional Regulation pursuant to Section 9 of the Illinois Occupational Therapy Practice Act [225 ILCS 75/9] and 68 Ill. Adm. Code 1315.
Paraprofessional <u>Educator/Teacher Aide</u>	<u>Holds a valid educator license with stipulations for paraprofessional educator and/or meets</u> <del>Meets</del> the requirements of 23 Ill. Adm. Code 25.510, <u>or holds for</u> approval <u>issued in</u>

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accordance with 23 Ill. Adm. Code 25.15 (Types of Licenses; Exchange) from the State Board of Education.

Physical Therapy  
Assistant

Licensed by the Illinois Department of Financial and Professional Regulation pursuant to Section 8.1 of the Illinois Physical Therapy Act [225 ILCS 90/8.1] and 68 Ill. Adm. Code 1340.

Speech-Language  
Pathology Assistant

Licensed by the Illinois Department of Financial and Professional Regulation pursuant to Section 8.5 of the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110/8.5] and 68 Ill. Adm. Code 1465.

~~Speech-Language  
Paraprofessional~~

~~Holds a bachelor's degree in speech-language pathology and approval from the State Board of Education.~~

Vision Screening  
Technician

Must hold a certificate from the Illinois Department of Public Health pursuant to 77 Ill. Adm. Code 685.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)

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## NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Student Records
- 2) Code Citation: 23 Ill. Adm. Code 375
- 3) Section Number: 375.10                      Adopted Action:  
Amendment
- 4) Statutory Authority: 105 ILCS 5/2-3.13a
- 5) Effective Date of Rule: January 13, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 39 Ill. Reg. 12285; September 4, 2015
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: None
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were requested, and no agreement letter was issued.
- 13) Will this rulemaking replace any emergency rules currently in effect? No
- 14) Are there any other rulemakings pending on this Part? No
- 15) Summary and Purpose of the Rulemaking: PA 98-885, effective August 15, 2014, amended Section 27-22 of the School Code to allow schools to count for the purposes of high school graduation credit a student's successful completion of an Advanced Placement (AP) computer science course. In order to count the course for credit, a student also must successfully complete either an Algebra II or integrated mathematics course incorporating Algebra II content. The law further requires that the academic

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transcript of a student who completed the AP computer science course state that the AP course "qualifies as a mathematics-based, quantitative course" for the purposes of awarding credit for high school graduation under Section 27-22 of the School Code.

Section 375.10 ("Definitions") lists under "Student Permanent Record" the information that must be included on a student's academic transcript. In order for the rule to be complete and to assist school districts in complying with all applicable statutes, mention has been made under "academic transcript" of the AP computer science course meeting State graduation requirements in mathematics, as authorized under Section 27-22 of the School Code.

An additional change in Section 375.10 clarifies what is to be included in the "health record" that becomes part of a student's permanent record. Staff members have indicated that the phrase, "proof of dental examinations", has caused confusion in the field.

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

Stephanie Donovan, General Counsel  
Illinois State Board of Education  
100 W. Randolph Street, CH 14-300  
Chicago IL 60601

217/782-8535

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

## STATE BOARD OF EDUCATION

## NOTICE OF ADOPTED AMENDMENT

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER I: STATE BOARD OF EDUCATION  
SUBCHAPTER k: SCHOOL RECORDSPART 375  
STUDENT RECORDS

Section	
375.10	Definitions
375.20	Rights of Students
375.30	Notification
375.40	Maintenance and Destruction of School Student Records
375.50	Cost for Copies of Records
375.60	Emergency Release of Information
375.70	Release of Information
375.75	Public and Nonpublic Schools: Transmission of Records for Transfer Students
375.80	Directory Information
375.90	Challenge Procedures
375.100	Implementation
375.110	Enforcement

**AUTHORITY:** Implementing and authorized by the Illinois School Student Records Act [105 ILCS 10] and Section 2-3.13a of the School Code [105 ILCS 5/2-3.13a].

**SOURCE:** Emergency rule adopted March 24, 1976; codified at 7 Ill. Reg. 12864; amended at 10 Ill. Reg. 12602, effective July 9, 1986; amended at 12 Ill. Reg. 4818, effective February 25, 1988; amended at 20 Ill. Reg. 15304, effective November 18, 1996; amended at 23 Ill. Reg. 13843, effective November 8, 1999; amended at 26 Ill. Reg. 16202, effective October 21, 2002; amended at 29 Ill. Reg. 5467, effective March 29, 2005; amended at 32 Ill. Reg. 7143, effective April 17, 2008; amended at 32 Ill. Reg. 16475, effective September 29, 2008; amended at 36 Ill. Reg. 2220, effective January 24, 2012; amended at 37 Ill. Reg. 9479, effective June 19, 2013; amended at 39 Ill. Reg. 2449, effective February 2, 2015; amended at 40 Ill. Reg. 2287, effective January 13, 2016.

**Section 375.10 Definitions**

"Accident Report" means documentation of any reportable student accident that results in an injury to a student, occurring on the way to or from school or on

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school grounds, at a school athletic event or when a student is participating in a school program or school-sponsored activity or on a school bus and that is severe enough to cause the student not to be in attendance for one-half day or more or requires medical treatment other than first aid. The accident report shall include identifying information, nature of injury, days lost, cause of injury, location of accident, medical treatment given to the student at the time of the accident, or whether the school nurse has referred the student for a medical evaluation, regardless of whether the parent, guardian or student (if 18 years or older) or an unaccompanied homeless youth (as defined by 42 USC 11434a) has followed through on that request.

"Act" means the Illinois School Student Records Act [105 ILCS 10].

"Health Record" means medical documentation necessary for enrollment and proof of ~~having certain dental~~ examinations, as may be required under Section 27-8.1 of the School Code [105 ILCS 5/27-8.1].

"Health-related Information" means current documentation of a student's health information, not otherwise governed by the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110] or other privacy laws, which includes identifying information, health history, results of mandated testing and screenings, medication dispensation records and logs (e.g., glucose readings), long-term medications administered during school hours, documentation regarding a student athlete's and his or her parents' acknowledgement of the district's concussion policy adopted pursuant to Sections 10-20.53 and 34-18.45 of the School Code [105 ILCS 5/10-20.53 and 34-18.45], and other health-related information that is relevant to school participation (e.g., nursing services plan, failed screenings, yearly sports physical exams, interim health histories for sports).

"Official Records Custodian" means the individual appointed in each school in accordance with Section 4 of the Act [105 ILCS 10/4] who has responsibility for the *maintenance, care and security of all school student records, whether or not the records are in his or her personal custody or control.*

"School Student Record" shall have the meaning set forth in Section 2(d) of the Act [105 ILCS 10/2(d)], except that school student records shall not include:

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Video or other electronic recordings created and maintained by law enforcement professionals working in the school or for security or safety reasons or purposes, provided the information was created at least in part for law enforcement or security or safety reasons or purposes;

Electronic recordings made on school buses, as defined in Section 14-3 of the Criminal Code of 1961 [720 ILCS 5/14-3]; and

Any information, either written or oral, received pursuant to Section 22-20 of the School Code [105 ILCS 5/22-20] and Sections 1-7 and 5-905 of the Juvenile Court Act of 1987 [705 ILCS 405/1-7 and 5-905].

The content of a video or other electronic recording may become part of a student's school student record to the extent school officials use and maintain this content for a particular reason (e.g., disciplinary action, compliance with a student's Individualized Education Program) regarding that specific student. Video or other electronic recordings that become part of a student's school record shall not be a public record and shall be released only in conformance with Section 6(a) of the Act and the federal Family Educational Rights and Privacy Act (20 USC 1232g).

"Special Education Records" means school records that relate to identification, evaluation, or placement of, or the provision of a free and appropriate public education to, students with disabilities under the Individuals with Disabilities Education Act (20 USC 1400 et seq.) and Article 14 of the School Code [105 ILCS 5/Art. 14], to include the report of the multidisciplinary staffing conference on which placement or nonplacement was based, and all records and audio recordings in any format relating to special education placement hearings and appeals.

"Student Permanent Record" means and shall consist of the following, as limited by Section 2(d) of the Act:

Basic identifying information, including the student's name and address, birth date and place, and gender, and the names and addresses of the student's parents;

Evidence required under Section (5)(b)(1) of the Missing Children's Records Act [325 ILCS 50/5(b)(1)];

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Academic transcript, including:

grades, class rank, graduation date and grade level achieved;

scores on college entrance examinations, except that a parent may request, in writing, the removal from the academic transcript of any score received on college entrance examinations (also see Section 375.30(d));

the unique student identifier assigned and used by the Student Information System established pursuant to 23 Ill. Adm. Code 1.75 (Student Information System);

[as applicable, designation of an Advanced Placement computer science course as a mathematics-based, quantitative course for purposes of meeting State graduation requirements set forth in Section 27-22 of the School Code \[105 ILCS 5/27-22\];](#)

as applicable, designation of the student's achievement of the State Seal of Biliteracy, awarded in accordance with Section 2-3.157 of the School Code [105 ILCS 5/2-3.157] and 23 Ill. Adm. Code 1.442 (State Seal of Biliteracy); and

as applicable, designation of the student's achievement of the State Commendation Toward Biliteracy, awarded in accordance with 23 Ill. Adm. Code 1.442 (State Seal of Biliteracy);

Attendance record;

Health record;

Record of release of permanent record information in accordance with Section 6(c) of the Act [105 ILCS 10/6(c)];

Scores received on all State assessment tests administered at the high school level (i.e., grades 9 through 12) (see 105 ILCS 5/2-3.64a-5); and

If not maintained in the temporary record, may also consist of:

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Honors and awards received; and

Information concerning participation in school-sponsored activities or athletics, or offices held in school-sponsored organizations.

No other information shall be placed in the student permanent record.

"Student Temporary Record" means all information not required to be in the student permanent record and shall consist of the following, as limited by Section 2(d) of the Act:

A record of release of temporary record information in accordance with Section 6(c) of the Act [105 ILCS 10/6(c)];

Scores received on the State assessment tests administered in the elementary grade levels (i.e., kindergarten through grade 8) (see 105 ILCS 5/2-3.64a-5);

The completed home language survey form (see 23 Ill. Adm. Code 228.15 (Identification of Eligible Students));

*Information regarding serious disciplinary infractions (i.e., those involving drugs, weapons, or bodily harm to another) that resulted in expulsion, suspension or the imposition of punishment or sanction;*

*Information provided under Section 8.6 of the Abused and Neglected Child Reporting Act [325 ILCS 5/8.6], as required by Section 2(f) of the Act [105 ILCS 10/2(f)];*

Any biometric information that is collected in accordance with Section 10-20.40 or 34-18.34 of the School Code [105 ILCS 5/10-20.40 or 34-18.34];

Health-related information;

Accident Reports; and

May also consist of:

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Family background information;

Intelligence test scores, group and individual;

Aptitude test scores;

Reports of psychological evaluations, including information on intelligence, personality and academic information obtained through test administration, observation or interviews;

Elementary and secondary achievement level test results;

Participation in extracurricular activities, including any offices held in school-sponsored clubs or organizations;

Honors and awards received;

Teacher anecdotal records;

Other disciplinary information;

Special education records;

Records associated with plans developed under section 504 of the Rehabilitation Act of 1973 (29 USC 701 et seq.); and

Any verified reports or information from non-educational persons, agencies or organizations of clear relevance to the education of the student.

(Source: Amended at 40 Ill. Reg. 2287, effective January 13, 2016)

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLYWITHDRAWAL OF FILING PROHIBITION  
OF PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC HEALTH

Heading of the Part: Grade A Pasteurized Milk and Milk Products

Code Citation: 77 Ill. Adm. Code 775

Section Numbers: 775.10            775.30            775.55  
775.20            775.50            775.57

Date Originally Published in the *Illinois Register*: 9/5/14  
38 Ill. Reg. 18346

Date Filing Prohibition Published in *Illinois Register*: 8/28/15  
38 Ill. Reg. 12034

Date Filing Prohibition Became Effective: 8/11/15

Date Filing Prohibition Withdrawn: 1/13/16

Pursuant to Section 5-115 of the Illinois Administrative Procedure Act, the Joint Committee, at its meeting on 1/13/16, has withdrawn the prohibition against the filing of the Department of Public Health's rulemaking contingent upon, and effective with, the Department adopting this rulemaking with the agreed upon modifications. The Committee originally issued this Filing Prohibition at its 8/11/15 meeting.

Please take notice that the agency is no longer prohibited from filing the rulemaking with the Secretary of State, as modified in accordance with agreements between the agency and the Joint Committee on Administrative Rules and the modifications submitted in response to the Objection and Filing Prohibition, and from enforcing or invoking the rule.

## DEPARTMENT OF PUBLIC HEALTH

NOTICE OF AGENCY RESPONSE TO AN OBJECTION OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Grade A Pasteurized Milk and Milk Products
- 2) Code Citation: 77 Ill. Adm. Code 775
- 3) 

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
775.10	Amendment
775.20	Amendment
775.30	Amendment
775.50	Amendment
775.55	New Section
775.57	New Section
- 4) Date Notice of Proposed published in the *Illinois Register*: September 5, 2014, 38 Ill. Reg. 18346
- 5) Date JCAR Statement of Objection published in the *Illinois Register*: August 28, 2015, 39 Ill. Reg. 12034
- 6) Summary of Action taken by the Agency: At its meeting on August 11, 2015, the Joint Committee on Administrative Rules objected to the rulemaking because the rulemaking had not achieved an adequate balance between the State's role in protecting the public health and its mission to avoid unduly burdensome restrictions on small business.

Agency Response: The Department has been working diligently on additional research on the rulemaking subject. Additionally, the Department has been meeting with interested and additional parties and stakeholders in hopes of achieving a better balance between the competing interests. The Department will use its best efforts to continue discussions with stakeholders in hopes of achieving a resolution in order to move this rulemaking forward for adoption.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

The following second notices were received during the period of January 12, 2016 through January 19, 2016. The rulemakings are scheduled for review at the Committee's February 16, 2016 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start of First Notice</u>	<u>JCAR Meeting</u>
2/26/16	<u>Illinois Environmental Protection Agency,</u> Procedures for Issuing Loans From the Water Pollution Control Loan Program (35 Ill. Adm. Code 365)	9/25/15 39 Ill. Reg.13131	2/16/16
2/27/16	<u>Department of Human Services,</u> Electronic Prescription Monitoring Program (77 Ill. Adm. Code 2080)	11/6/15 39 Ill. Reg.14212	2/16/16

## PROCLAMATIONS

**2015-168 (Revised)****Illinois Flag Display Day - Second Lieutenant McGuire**

WHEREAS, all citizens owe a tremendous debt of gratitude to the men and women of the armed forces who selflessly serve to protect our lives and keep our families safe; and,

WHEREAS, Second Lieutenant Harry B. McGuire of Chester, Illinois served in the United States Army Air Force during the Second World War in support of America's war efforts; and,

WHEREAS, on January 30th, 1944, Second Lieutenant McGuire was engaged in a bombing mission with the 718th Squadron, 449th Bomber Group as the navigator of a B-24H Liberator; and,

WHEREAS, Second Lieutenant McGuire's aircraft was shot down by enemy force while returning from a mission against enemy forces near Udine, Italy; and,

WHEREAS, the resulting crash claimed the lives of nine of the ten crew members with one survivor parachuting from the aircraft who was captured by enemy forces; and,

WHEREAS, the remains of two crew members were recovered after the crash and the remaining seven crew members including McGuire, were declared missing and presumed dead; and,

WHEREAS, Second Lieutenant McGuire's remains were identified 70 years after the combat mission that claimed his life, along with those of his crew; and,

WHEREAS, the remains of Second Lieutenant McGuire will be laid to rest on Wednesday, June 3, 2015 in St. Louis Missouri; and,

WHEREAS, throughout his service as a member of the United States Army Air Force, Second Lieutenant McGuire represented the State of Illinois admirably and with honor;

THEREFORE, I, Bruce Rauner, Governor of the State of Illinois, do hereby order all persons or entities governed by the Illinois Flag Display Act to fly their flags at half-staff from sunrise on Monday, June 1, 2015, until sunset on Wednesday, June 3, in honor and remembrance of Second Lieutenant McGuire, whose selfless service and sacrifice is an inspiration.

Issued by the Governor May 28, 2015

Filed by the Secretary of State June 26, 2015

**2015-337****Illinois Flag Display Act – Deputy Dwight Maness**

## PROCLAMATIONS

WHEREAS, all citizens owe a tremendous debt of gratitude to the men and women of law enforcement who selflessly serve to protect our lives and keep our families safe; and,

WHEREAS, every day these men and women face great risks and in many cases put their safety on the line to perform their duties; and,

WHEREAS, on Monday, September 14, 2015, McHenry County Sheriff Deputy Dwight Maness died from injuries suffered in a line of duty shooting on October 16, 2014; and,

WHEREAS, Deputy Dwight Maness was a loving husband, father and friend who will always be remembered for the countless lives he impacted; and,

WHEREAS, Deputy Dwight Maness joined the McHenry County Sheriff's Department in 2007 and had previously served in the United States Army; and,

WHEREAS, Deputy Dwight Maness served as a field training officer, a member of the SWAT team and a first aid instructor; and,

WHEREAS, throughout his career in law enforcement, Deputy Dwight Maness represented the State of Illinois admirably; and,

WHEREAS, a funeral service will be held on Saturday, September 19, 2015; and,

THEREFORE, I, Bruce Rauner, Governor of the State of Illinois, do hereby order all persons or entities governed by the Illinois Flag Display Act to fly their flags at half-staff starting at sunrise on Thursday, September 17, 2015 until sunset on Saturday, September 19, 2015, in honor and remembrance of Deputy Dwight Maness, whose selfless service and sacrifice is an inspiration to the residents of the Land of Lincoln.

Issued by the Governor September 16, 2015

Filed by the Secretary of State January 14, 2016

**ILLINOIS ADMINISTRATIVE CODE**  
**Issue Index - With Effective Dates**

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