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**COMMERCE COMMISSION, ILLINOIS**

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1) **Heading of the Part:** Minimum Clearances Applicable to Tracks, Structures, Fixtures and Other Appurtenances of Railroads

2) **Code Citation:** 92 Ill. Adm. Code 1500

3) **Section Numbers:**

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4) **Statutory Authority:** Implementing Section 18c-7401 and authorized by Section 18c-1202(9) of Illinois Commercial Transportation Law [625 ILCS 5/18c-7401 and 1202(9)].

5) **A Complete Description of the Subjects and Issues Involved:** The proposed amendments clarify the general requirements for vertical and horizontal clearances for railroad tracks to conform with standards prescribed by the American Railway Engineering and Maintenance of Way Association ("AREMA"). The proposed amendments allow the Commission to allow lesser clearances provided that they are justified by engineering, operations or economic conditions. The proposed amendments also impose requirements regarding vertical clearances for highway bridges spanning railroad tracks. Minor wording and grammatical changes to the rules are also being proposed.

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

7) **Does this rulemaking contain an automatic repeal date?** No
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8) Does this rulemaking contain incorporations by reference? Yes

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

10) Statement of Statewide Policy Objective: The proposed amendments neither create nor expand any State mandate on units of local government, school districts, or community college districts.

11) 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 with:

Steven L. Matrisch
Office of Transportation Counsel
Transportation Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL  62701
(217) 782-6447
smatris@icc.state.il.us

12) 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

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because the Commission did not anticipate the need at that time.

The full text of the Proposed Amendments begin on the next page:
NOTICE OF PROPOSED AMENDMENTS
TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1500
MINIMUM CLEARANCES APPLICABLE TO TRACKS, STRUCTURES,
FIXTURES AND OTHER APPURTE NANCES OF RAILROADS

SUBPART A: GENERAL RULES

Section
1500.10 Scope
1500.20 General Requirements

SUBPART B: TRACK CENTERS

Section
1500.110 Main Tracks
1500.120 Tracks Adjacent to Main Tracks
1500.130 Subsidiary Passenger Tracks
1500.140 Subsidiary Freight Tracks
1500.150 Ladder Tracks

SUBPART C: STRUCTURAL CLEARANCES

Section
1500.160 Bridges
1500.170 Buildings and Miscellaneous Structures
1500.180 Awnings and Canopies
1500.190 Overhead Loading Platforms
1500.200 High Freight Platforms
1500.210 High Passenger Platforms
1500.220 Low Passenger Platforms
1500.230 Switch Stands
1500.240 Low Switch Stand Dwarf Signals, Signal Apparatus, etc.
1500.250 Pen Stocks and Water Tanks (Repealed)
1500.260 Semaphore Signals
1500.270 Poles, Posts and Signs
1500.280 Fences
1500.290 Mail Cranes (Repealed)
1500.300 Building Materials or Supplies
NOTICE OF PROPOSED AMENDMENTS

1500.310 Overhead Wire Crossings

SUBPART D: ELECTRIC INTERURBAN RAILROADS: TRACK CENTERS

Section
1500.410 Main Tracks (Repealed)
1500.420 Tracks Adjacent to Main Tracks (Repealed)
1500.430 Subsidiary Passenger Tracks (Repealed)
1500.440 Subsidiary Freight Tracks (Repealed)
1500.450 Ladder Tracks (Repealed)

SUBPART E: ELECTRIC INTERURBAN RAILROADS: STRUCTURAL CLEARANCES

Section
1500.460 Bridges (Repealed)
1500.470 Buildings and Miscellaneous Structures (Repealed)
1500.480 Awnings and Canopies (Repealed)
1500.490 Overhead Loading Platforms (Repealed)
1500.500 High Freight Platforms (Repealed)
1500.510 High Passenger Platforms (Repealed)
1500.520 Low Passenger Platforms (Repealed)
1500.530 Switch Stands (Repealed)
1500.540 Low Switch Stands, Dwarf Signals, Signal Apparatus, etc. (Repealed)
1500.550 Pen Stocks and Water Tanks (Repealed)
1500.560 Semaphore Signals (Repealed)
1500.570 Poles, Posts and Signs (Repealed)
1500.580 Fences (Repealed)
1500.590 Mail Cranes (Repealed)
1500.600 Building Materials or Supplies (Repealed)
1500.610 Overhead Wire Crossings (Repealed)

SUBPART F: STREET RAILROADS

Section
1500.700 General (Repealed)
1500.710 Track Centers (Repealed)
1500.720 Bridges (Repealed)
1500.730 Buildings and Miscellaneous Structures (Repealed)
1500.740 Poles (Repealed)
1500.750 Switch Stands, Signal Apparatus, etc. (Repealed)
1500.760 Building Materials and Supplies (Repealed)
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1500.770 Overhead Wire Crossings (Repealed)

SUBPART G: CLEARANCE PROCEDURE

Section
1500.810 Authorization to Construct and Operate
1500.820 Form of Application (Repealed)
1500.830 Approval of Application (Repealed)
1500.840 Hearings (Repealed)

AUTHORITY: Implementing Section 18c-7401 and authorized by Section 18c-1202(9) of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7401 and 18c-1202(9)].


SUBPART A: GENERAL RULES

Section 1500.10 Scope

a) This Part prescribes minimum track centers, and minimum horizontal and vertical clearances applicable to tracks, structures, fixtures, and other appurtenances of "railroads." The term "railroad" means track and associated structures, including bridges, tunnels, switches, spurs, terminals and other facilities, and equipment, including engines, freight cards, passenger cards, cabooses, and other equipment, used in the transportation of property or passengers by rail [625 ILCS 5/18c-1104(31)](Ill. Rev. Stat. 1985, ch. 95½, par. 18c-1104(29)).

b) This Part applies to all new construction and to the reconstruction of "railroads" carried on after the date on which this Part becomes effective.

c) Nothing herein contained prohibits any "railroad" from constructing its tracks, bridges, buildings and other structures with clearances greater than required by this Part. Where conditions apparently make it impracticable to comply with this Part, a formal petition application for permission to maintain reduced clearances shall be made to the Illinois Commerce Commission ("Commission") in accordance with the directions given under Section 1500.820.

d) Unless otherwise stated all horizontal distances are measured at right angles to the vertical plane passing through the centerline of the track.
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Section 1500.20 General Requirements

a) Compensation for Curvature. The horizontal clearances herein prescribed in this Section are for tangent tracks. For curved tracks, clearance requirements outlined in the AREMA Manual shall be maintained.

b) Compensation for Superelevation. The vertical and horizontal clearances herein prescribed are for tracks where the tops of the rails are at the same level. Where one rail is elevated above the other, compensation shall be made so that clearance requirements outlined in the AREMA Manual shall be maintained.

c) Warning Signs Required. At all overhead freight loading platforms, awnings, canopies, coal chutes, ore tipples, entrances to warehouses, shop buildings and similar structures, where the vertical clearance is less than twenty-one (21 ½) feet six (6) inches, and at all high freight-loading platforms where the horizontal clearance is less than eight (8) feet, warning signs shall be erected as a caution to employees.

d) Location and Lettering of Warning Signs. Warning signs for use at places having reduced clearances shall be of suitable size and placed in conspicuous positions with black letters upon a white background. At the top of the sign shall be placed the word "WARNING" with the letters not less than three (3) inches in height. All other letters upon the sign shall be not less than one and one half (1 ½) inches in height. Unless other words may more appropriately convey proper warning, remaining words on sign shall be "No clearance for a person on the side..."
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(or top) of car." The foregoing words will require a sign fifteen (15) inches by twenty (20) inches in size.

e) Printed Rules. In all cases where clearances require warning signs as provided in subsection (c) above, a printed rule shall be issued by the railroad company prohibiting its employees from occupying the tops or sides (as the case may require) of cars while in motion.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART B: STEAM RAILROADS: TRACK CENTERS

Section 1500.120 Tracks Adjacent to Main Tracks

a) Except as to ladder tracks, the distance from the centerline of any main track to the centerline of any adjacent subsidiary track shall be not less than fifteen (15) feet.

b) The distance from the centerline of any main track to the centerline of any adjacent ladder track in which switches are operated mechanically, shall be not less than fifteen (15) feet; in ladder tracks where switches are not operated mechanically, seventeen (17) feet.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1500.130 Subsidiary Passenger Tracks

a) Except as to ladder tracks the distance between the centerline of any two subsidiary passenger tracks shall be not less than thirteen (13) feet.

b) Any pair of subsidiary tracks used solely for passenger service may have centers less than thirteen (13) feet provided the centerline of any track, adjacent to either side of such pair of tracks is located not less than thirteen (13) feet from the side of the track, therefrom.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1500.140 Subsidiary Freight Tracks

a) Except as to ladder tracks the distance between the centerlines of any two subsidiary freight tracks shall be not less than thirteen (13) feet six (6)
b) Team Tracks. Any two adjacent tracks, commonly known as a pair of team tracks, with a driveway on one side thereof, may have track centers less than $13\frac{1}{2}$ feet six (6) inches. If a third track is constructed adjacent to such pair of tracks its track center must be not less than $13\frac{1}{2}$ feet six (6) inches from the centerline of the nearest track.

c) Track System with High Platform Adjacent Thereto. Any system of three or more tracks at freight houses, warehouses, wharves, or similar structures, used exclusively for handling freight to or from high platforms located on one or both sides thereof may have its track centers less than $13\frac{1}{2}$ feet six (6) inches, provided that a least two tracks in any such system shall have centers not less than this distance. Where such system is composed of two tracks only, their centerlines shall not be less than $13\frac{1}{2}$ feet six (6) inches apart.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1500.150 Ladder Tracks

a) The distance from the center line of any subsidiary track to the centerline of any adjacent ladder track where the switches are operated mechanically, shall not be less than fifteen (15) feet; where the switches are not operated mechanically, not less than seventeen (17) feet.

b) The distance between the centerlines of two adjacent parallel ladder tracks where the switches in both are operated mechanically, shall be not less than seventeen (17) feet; where the switches in either or both are not operated mechanically, not less than nineteen (19) feet.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART C: STEAM RAILROADS—STRUCTURAL CLEARANCES

Section 1500.160 Bridges

a) Railroad Bridges Supporting Main Tracks or Subsidiary Freight Tracks. The clearances of all railroad bridges supporting main tracks or subsidiary freight tracks shall be as follows: Beginning at a point in the centerline of track $21\frac{1}{4}$ feet above the top of rail; thence
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horizontally four (4) feet two (2) inches; thence downward at an angle to a point fifteen (15) feet above the top of rail and eight (8) feet laterally distant from the centerline of track; thence downward to a point four (4) feet above the top of rail and eight (8) feet laterally distant from the centerline of track; thence downward on an angle to a point level with the base of rail and five (5) feet laterally distant from the centerline of track.

b) Railroad Bridges Spanning Main Tracks or Subsidiary Freight Tracks. The clearances of all railroad bridges spanning main tracks or subsidiary freight tracks shall be as follows: Beginning at a point in the centerline of track 21½ twenty-one (21) feet six (6) inches above the top of rail the vertical clearance line shall extend thence horizontally each way to points eight (8) feet from the centerline of track, from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.

c) Highway Bridges Spanning Railroad Tracks. A vertical clearance of not less than 23 feet above the top of rail shall be provided for all new and reconstructed highway bridges constructed over a railroad track. Beginning at a point in the centerline of track 23 feet above the top of rail the vertical clearance line shall extend thence horizontally each way to points 9 feet from the centerline of track, from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail. For purposes of this subsection, reconstruction includes pier and/or pier cap replacement, girder removal and/or replacement, and/or widening of existing piers, pier caps or decks. All other work shall be considered as rehabilitation, in which case a minimum of 21½ feet vertical clearance must be attained.

d) The Commission may, by order, permit a lesser clearance if it determines that the 23 foot clearance standard cannot be justified based on engineering, operational, and economic conditions. A recommendation for a lesser clearance may be submitted to the Commission, followed by an evidentiary hearing of all the parties involved before an Administrative Law Judge.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 1500.170 Buildings and Miscellaneous Structures

a) Structures Adjacent to Main Tracks. Except as otherwise specified the clearances between main tracks and buildings or other structures adjacent thereto shall be as follows: Beginning at a point in the centerline of track 21½ twenty-one (21) feet six (6) inches above the top of rail the vertical clearance line shall extend
b) Structures Adjacent to Subsidiary Passenger Tracks. Except as otherwise specified, the clearances between subsidiary passenger tracks and buildings or other structures adjacent thereto shall be as follows:

1) Tracks outside of buildings: Beginning at a point in the centerline of track 21½ twenty-one (21) feet six (6) inches above top of rail, the vertical clearance line shall extend thence horizontally each way to points seven (7½) feet six (6) inches from the centerline of track from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.

2) Tracks entering buildings: Beginning at a point in the centerline of track at such a height as will be most practicable for the height of cars handled on such tracks, the vertical clearance line shall extend thence horizontally each way to points seven (7) feet from the centerline of track from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.

c) Structures Adjacent to Subsidiary Freight Tracks. Except as otherwise specified the clearances between subsidiary freight tracks and buildings or other structures adjacent thereto shall be as follows:

1) Tracks outside of buildings: Beginning at a point in the centerline of track 21½ twenty-one (21) feet six (6) inches above the top of rail the vertical clearance line shall extend thence horizontally each way to points eight (8) feet from the centerline of track, from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.

2) Tracks entering buildings such as warehouses, freight houses, coal chutes, elevators and similar structures: Beginning at a point in the centerline of track at such a height as will be most practicable for cars handled on such tracks, the vertical clearance line shall extend thence horizontally each way to points seven (7) feet from the centerline of track, from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.
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d) Engine Houses. The clearances at the entrances of new engine houses when the engine house doors are open shall be as follows: Beginning at a point in the centerline of track at such a height as will be most practicable for the height of engines using the engine house, the vertical clearance line so established shall extend horizontally each way until it intersects the horizontal clearance lines established 6½ six (6) feet nine (9) inches laterally distant from the centerline of track, from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.

e) Coal Tipples, Ore Tipples, Stone Crusher, etc. The clearances of all subsidiary tracks passing through or underneath coal tipples, ore tipples, stone crushers or similar overhead structures shall be as follows: Beginning at a point in the centerline of track at such height as will be most practicable for the height of equipment handled on such tracks, the vertical clearance line shall extend thence horizontally each way to points eight (8) feet from the centerline of track, from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1500.180 Awnings and Canopies

a) Awnings and Canopies at Main Tracks. Awnings and canopies spanning main tracks or supported at the sides of main tracks shall have clearances as follows: Beginning at a point in the centerline of track 21½ twenty-one (21) feet six (6) inches above the top of rail; the vertical clearance line shall extend thence horizontally each way to points eight (8) feet from the centerline of track, from which points the horizontal clearance lines shall extend vertically downward to points level with the base of rail.

b) Awnings and Canopies at Subsidiary Passenger Tracks. Awnings and canopies spanning subsidiary passenger tracks or supported at the sides of such tracks, shall have clearances as follows: Beginning at a point in the centerline of track at such a height above the top of rail as will be most practicable for the height of cars handled on such tracks, the vertical clearance line shall extend thence horizontally each way to points seven (7½) feet six (6) inches from the centerline of track, from which points the horizontal clearance line shall extend vertically downward to points level with the base of rail.

c) Awnings and Canopies at Subsidiary Freight Tracks.
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1) Except as otherwise specified, awnings and canopies spanning subsidiary freight tracks or supported at the sides of such tracks shall have clearances as follows: Beginning at a point in the centerline of track twenty-one (21) feet six (6) inches above the top of rail; thence horizontally four (4) feet to a point, thence diagonally to a point fifteen (15) feet above the top of rail and eight (8) feet laterally distant from the centerline of track; thence vertically downward to a point level with the base of rail.

2) Awnings and canopies at freight houses and freight loading platforms may be constructed with vertical clearances of not less than fifteen (15) feet provided the edges of such awnings or canopies do not extend closer than five (5½) feet six (6) inches to the centerline of track.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 1500.200 High Freight Platforms

The distance from the centerlines of subsidiary tracks to the faces or edges of high platforms from which freight is handled to or from cars shall not exceed six (6) feet two (2) inches. The minimum horizontal clearance in the area above the floor of such platforms shall be twenty-eight (28) inches greater than the distance from the centerline of the subsidiary track to the face or edge of the platform. This Section shall not apply when the faces or edges of the platforms have horizontal clearances of eight (8) feet or more from the centerlines of the tracks.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 1500.210 High Passenger Platforms

Platforms approximately level with passenger car floors may be constructed and maintained with faces less than eight (8) feet from the centerline of a subsidiary track used solely for passenger service, provided the coaches served by such platforms are equipped with platform gates which are kept closed while the train is in motion.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 1500.220 Low Passenger Platforms

Passenger platforms not higher than eight (8) inches above the top of rail may be constructed and maintained with faces not less than five (5) feet one (1) inch from the centerline of an
adjacent track. Passenger platforms less than four (4) inches above the top of rail may be constructed and maintained with faces not less than four (4½) feet six (6) inches from the centerline of an adjacent track.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 1500.230 Switch Stands

a) Main Tracks. Main track switch stands exceeding two (2) feet ten (10) inches in height and not exceeding four (4) feet in height shall have horizontal clearances of not less than eight (8) feet from the centerline of an adjacent track to the nearest part of the switch stand above the base of rail; and not less than eight (8) feet three (3) inches when the switch stand exceeds four (4) feet in height.

b) Subsidiary Tracks. Subsidiary track switch stands exceeding two (2) feet ten (10) inches in height and not exceeding four (4) feet in height shall be not less than seven (7½) feet six (6) inches from the centerline of an adjacent track to the nearest part of the switch stand above the base of rail; and not less than eight (8) feet when the switch stand exceeds four (4) feet in height.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 1500.260 Semaphore Signals

The distance from the nearest part above the top of rail of a semaphore signal post, other than a dwarf signal, to the centerline of an adjacent main track, shall be not less than eight (8½) feet six (6) inches. For subsidiary tracks, this distance shall be not less than eight (8) feet.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 1500.270 Poles, Posts and Signs

The face of all telegraph, telephone, or other poles, whistle posts, mile posts, posts for signal bridges, whipcords, crossing gates, highway crossing bells, and all other signs, signals or devices not otherwise provided for in this Part, shall be not less than nine (9) feet from the centerline of adjacent tracks. No part of any sign or appurtenance attached to such poles or posts shall be less than eight (8) feet from the centerline of an adjacent track, between the top of rail and a point fifteen (15) feet above.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 1500.300 Building Materials or Supplies
ILLINOIS COMMERCHE COMMISSION

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No building materials or supplies of any kind except ballast or ties intended for immediate use shall be piled nearer to any main track or passing track than nine (9) feet from the centerline thereof; or nearer to any other track than eight (8½) feet six (6) inches from the centerline thereof.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 1500.310 Overhead Wire Crossings

The vertical clearances of all electric or other wires crossing over railroad tracks shall conform to the requirements of 83 Ill. Adm. Code 305 General Order 160 (to be codified as 83 Ill. Adm. Code 305) of this Commission and amendments thereto as may be in force and adopted by this Commission. The requirements of 83 Ill. Adm. Code 305 that address vertical clearances of all electric or other wires crossing over railroad tracks are outlined in the following portions of the National Electric Safety Code (2002 Edition) published by the Institute of Electrical and Electronics Engineers:

a) Section 2 (Definitions of Special Terms);


(Source: Amended at 29 Ill. Reg. _______, effective ____________)

SUBPART G: CLEARANCE PROCEDURE

Section 1500.810 Authorization to Construct and Operate

a) When Permission for Construction is Not Necessary. Except such as may be required by law or by any order of this Commission, permission will not be necessary for any railroad to construct any tracks or other appurtenances or to operate on such tracks provided the track centers and clearances alongside such tracks or other appurtenances conform to this Part.

b) When Permission for Construction is Necessary. Application shall be made to this Commission for permission to construct and maintain such tracks or other appurtenances, or to operate on such tracks, where track centers and clearances will not or do not conform to this Part. The application for such permission shall be submitted by the railroad company involved, or jointly by the railroad company and the owner of the property when the track or appurtenances are upon
NOTICE OF PROPOSED AMENDMENTS

private property. Each application must be accompanied by a plan showing the
location of the proposed track or other appurtenance and the clearances
which it is desired to maintain.

c) The Commission shall consider the following in determining whether a variation
shall be permitted:

1) The impact, if any, on the safety of railroad employees;

2) The expense to the carrier or others, if the variation is not granted; and

3) Experience with similar variations at other locations. Similar variations
would be situations involving like reduced clearances and like railroad
operations. Lack of any problems would indicate acceptable experience.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1500.820  Form of Application (Repealed)

Applications for permission to construct and maintain tracks or other appurtenances or to operate
on such tracks, where track centers and clearances will not or do not conform to this Part, shall
be on the Commission's Clearance Deviation Form.

(Source: Repealed at 29 Ill. Reg. ______, effective ____________)
ILLINOIS REGISTER

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

1) **Heading of the Part:** Registration of Rail Carriers

2) **Code Citation:** 92 Ill. Adm. Code 1501

3) **Section Numbers:** Proposed Action:
   
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4) **Statutory Authority:** Implementing Section 18c-7201 and authorized by Section 18c-1202(9) of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7201 and 18c-1202(9)].

5) **A Complete Description of the Subjects and Issues Involved:** These changes are being proposed to consolidate the requirements of this Part into a single Section.

6) **Will these proposed amendments replace any emergency amendments currently in effect?** No

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

8) **Do these proposed amendments contain incorporations by reference?** No

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives:** This proposed amendment neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **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* with:

    Steven L. Matrisch  
    Office of Transportation Counsel  
    Transportation Division  
    Illinois Commerce Commission  
    527 East Capitol Avenue  
    Springfield IL  62701  
    (217) 782-6447
ILLINOIS COMMERCER COMMISSION

NOTICE OF PROPOSED REPEALER

smatrisc@icc.state.il.us

12) 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

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Amendments begin on the next page:
Section 1501.10  Registration Procedure

a) A rail carrier shall register with the Illinois Commerce Commission ("Commission") by filing a letter, signed by an owner, partner, or officer of the rail carrier, containing the information set forth as follows: in Section 1501.20.

1) The full, legal name of the rail carrier;

2) The mailing address, telephone number and facsimile number of the rail carrier;

3) The name of the rail carrier's chief executive officer;

4) The name, address and facsimile number in Illinois of the rail carrier's agent for service of process.

b) A rail carrier must notify the Commission of any change in the information listed in subsection (a) within 15 days after the change.

(Source: Amended at 29 Ill. Reg. ______, effective ______________.)

Section 1501.20  Contents of Registration (Repealed)
NOTICE OF PROPOSED REPEALER

A completed letter of registration must set forth:

a) The full, legal name of the rail carrier;

b) The mailing address and telephone number of the rail carrier;

c) The name of the rail carrier's chief executive officer;

d) The name and address in Illinois of the rail carrier's agent for service of process.

(Source: Repealed at 29 Ill. Reg. _______, effective ____________)

Section 1501.30 Notice of Change (Repealed)

A rail carrier must notify the Commission of any change in the information listed in Section 1501.20 within 15 days of the change.

(Source: Repealed at 29 Ill. Reg. _______, effective ____________)
DEPARTMENT OF TRANSPORTATION
NOTICE OF PROPOSED REPEALER

1) Heading of the Part:  Sidings and Spur Tracks

2) Code Citation:  92 Ill. Adm. Code 1505

3) Section Number:  Proposed Action:
1505.10  Repeal

4) Statutory Authority: Implementing Section 18c-7203 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7203 and 18c-1202].

5) A Complete Description of the Subjects and Issues Involved: This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) Will this proposed repealer replace emergency amendments currently in effect? No

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

8) Does this proposed repealer contain incorporations by reference? No

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

10) Statement of Statewide Policy Objectives: This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) Time, Place and Manner in which interested persons may comment on this proposed repealer: Comments should be filed, within 45 days after the date of this issue of the Illinois Register with:

Steven L. Matrisch
Office of Transportation Counsel
Transportation Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield IL  62701
(217) 782-6447
smatrisc@icc.state.il.us

12) Initial Regulatory Flexibility Analysis:
DEPARTMENT OF TRANSPORTATION

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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

13) Regulatory Agenda on which this rulemaking was summarized: This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Repealer begins on the next page:
Section 1505.10  Discontinuance of Sidings, Spurs or Other Tracks

AUTHORITY: Implementing Section 18c-7203 and authorized by Section 18c-1202 of the Illinois Commerce Transportation Law [625 ILCS 5/18c-7203 and 18c-1202].


Section 1505.10  Discontinuance of Sidings, Spurs or Other Tracks

No rail carrier shall remove or discontinue the use of any siding, spur, or other track upon which revenue freight has been received by or delivered to the general public during the preceding 2 years, without first having given notice as provided in 92 Ill. Adm. Code 1520; provided, however, that this Part shall not apply to temporary tracks, nor to the extension, alteration, or abandonment of tracks which were constructed or are operated under contracts.
NOTICE OF PROPOSED AMENDMENTS

1) **Heading of the Part:** Report of Railroad Accidents/Incidents

2) **Code Citation:** 92 Ill. Adm. Code 1515

3) **Section Numbers:**
   - 1515.10 Amendment
   - 1515.30 Repeal
   - 1515.70 New Section

4) **Statutory Authority:** Implementing Section 18c-7402(3) and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7402(3) and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved:** These proposed amendments adopt federal regulations as the Commission’s rules relating to the reporting of railroad accidents and incidents. In addition, Section 1515.30 regarding telephonic reporting of accidents and incidents is being repealed due to the adoption of the federal regulation regarding this subject. This proposed rulemaking also adds a new Section that imposes penalties for failure to submit reports.

6) **Will these proposed amendments replace any emergency amendments currently in effect?** No

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

8) **Do these proposed amendments contain incorporations by reference?** Yes

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives:** These proposed amendments neither create nor expand any State mandate on units of local government, school districts, or community college districts.

11) **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* with:

    Steven L. Matrisch
    Office of Transportation Counsel
    Transportation Division
    Illinois Commerce Commission
12) **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

13) **Regulatory Agenda on which this rulemaking was summarized:** This rulemaking was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Amendments begin on the next page:
NOTICE OF PROPOSED AMENDMENTS

PART 1515
REPORT OF RAILROAD ACCIDENTS/INCIDENTS

Section 1515.10 Monthly Reports

a) The Illinois Commerce Commission adopts 49 CFR 225 and 234, as of October 1, 2003 as of December 1, 1986, as its regulation governing monthly reporting of railroad accidents and incidents as defined in Sections 225.5 and 234.5. No incorporation in this Part includes any later amendment or edition.

b) Copies of written reports submitted to the Federal Railroad Administration shall be concurrently submitted to the Illinois Commerce Commission Transportation Division, Railroad Section.

c) Telephonic reports submitted to the Federal Railroad Administration shall also be submitted to the Illinois Emergency Management Agency (IEMA) by calling (217)782-7860 day or night.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
NOTICE OF PROPOSED AMENDMENTS

Section 1515.30  Telephonic Reports **(Repealed)**

a) The Commission also requires immediate telephone notification of certain types of accidents/incidents.

b) The following classes of accidents/incidents occurring within the State of Illinois should be reported immediately to the Illinois Commerce Commission by calling 217-782-4971 day or night:
   1) All accidents/incidents in which a fatality occurs;
   2) All collisions occurring on main tracks classified by the Federal Railroad Administration as accidents/incidents;
   3) All derailments occurring on main tracks classified by the Federal Railroad Administration as accidents/incidents;
   4) All derailments, collisions, accidents or any incidents involving the exposure of hazardous materials as prescribed in 49 CFR 171 and 172 and defined in 49 CFR 171.8 as of December 1, 1986. The incorporated material does not include any later amendments or additions;
   5) All accidents at rail/highway grade crossings involving rail equipment carrying passengers and all accidents at rail/highway grade crossings involving any type of rail equipment and buses transporting passengers.

c) In the case of accidents/incidents involving joint operations, the telephone notification shall be made by the railroad that controls the track and directs the movement of trains where the accident occurred.

d) When making such telephone reports, the following information shall be provided:
   1) name and title of person reporting,
   2) name of railroad,
   3) date, time and location of incident,
   4) description and nature of incident,
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5) persons killed or injured indicating if employee, passenger or other.

6) identification of any hazardous material involved.

(Source: Repealed at 29 Ill. Reg. _______, effective ____________)

Section 1515.70  Penalties for Noncompliance

Failure to submit reports as required by this Part shall result in violations and sanctions as prescribed in 625 ILCS 5/18c-1701 and 1704.

(Source: Added at 29 Ill. Reg. _______, effective ____________)
NOTICE OF PROPOSED REPEALER

1) **Heading of the Part:** Removal or Discontinuance of Station or Agency

2) **Code Citation:** 92 Ill. Adm. Code 1520

3) **Section Numbers:**
   - 1520.10 Repeal
   - 1520.20 Repeal
   - 1520.30 Repeal
   - 1520.40 Repeal

4) **Statutory Authority:** Implementing Section 18c-7203 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7203 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved:** This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) **Will this proposed repealer replace any emergency amendments currently in effect?** No

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

8) **Does this proposed repealer contain incorporations by reference?** No

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives:** This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **Time, Place and Manner in which interested persons may comment on this proposed repealer:** Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* with:

    Steven L. Matrisch  
    Office of Transportation Counsel  
    Transportation Division  
    Illinois Commerce Commission  
    527 East Capitol Avenue  
    Springfield, IL  62701  
    (217) 782-6447  
    smatris@icc.state.il.us
NOTICE OF PROPOSED REPEALER

12) **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

13) **Regulatory Agenda on which this rulemaking was summarized:** This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Repealer begins on the next page:
NOTICE OF PROPOSED REPEALER

SECTION 1520
REMOVAL OR DISCONTINUANCE OF STATION OR AGENCY (REPEALED)

Section 1520.10  Filing of Working Time Schedules (Repealed)
Section 1520.20  Change in Arrival or Departure Times (Repealed)
Section 1520.30  Abandonment of Depot or Station Building (Repealed)
Section 1520.40  Notice of Proposed Removal or Discontinuance of Station or Agency

AUTHORITY: Implementing Section 18c-7203 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law. [625 ILCS 5/18c-7203 and 18c-1202].


Section 1520.10  Filing of Working Time Schedules (Repealed)

Section 1520.20  Change in Arrival or Departure Times (Repealed)

Section 1520.30  Abandonment of Depot or Station Building (Repealed)

Section 1520.40  Notice of Proposed Removal or Discontinuance of Station or Agency

a) When any rail carrier proposes to remove or abandon a freight station or agency, it shall post and serve notice in the manner set forth in subsections (b) and (c) of this Section.

b) This notice shall be in words and figures substantially as follows and shall be not less than eight and one-half inches (8½") by eleven inches (11") in size:

Notice is hereby given that the undersigned proposes to (specify facility affected and proposed date of action).

Any affected shipper, receiver or other member of the public objecting to
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the proposed change may file a petition in opposition with the Illinois Commerce Commission at its offices in Springfield no later than (insert date at least 30 days from date of notice). A copy of the petition must also be sent to proponent at the following address: (insert address of rail carrier).

________________________
(Name of Rail Carrier)

By _______________________
(Title)

c) A copy of the notice shall be served by the rail carrier upon the Commission at its office in Springfield and upon the Mayor and Clerk of each municipality and the Supervisor and Town Clerk of each unorganized settlement or community where a station or agency affected by the proposed change is located.

d) The letter of transmittal to the Commission shall certify that notice, as required by this Section, has been given.

e) If no petitions in opposition to a proposed removal or discontinuance of a station or agency are filed by the deadline for filing such petitions, the Commission shall notify the proponent carrier(s), in writing, that no such petitions have been filed.
NOTICE OF PROPOSED AMENDMENTS

1) **Heading of the Part:** Crossings of Rail Carriers and Highways

2) **Code Citation:** 92 Ill. Adm. Code 1535

3) **Section Numbers:**

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1535.Appendix B - Illustration G  Repeal
1535.Appendix B - Illustration H  Repeal

4) Statutory Authority: Implementing Section 18c-7401 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7401 and 18c-1202].

5) A Complete Description of the Subjects and Issues Involved: These changes are being proposed to clarify definitions, eliminate discrepancies between the Sections regarding highway approach grades, to update references to American Railway Engineering and Maintenance of Way Association (“AREMA”) standards, and to correct grammatical and typographical errors.

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

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

8) Does this rulemaking contain incorporations by reference?  Yes

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

10) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand any State mandate on units of local government, school districts, or community college districts.

11) 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 with:

Steven L. Matrisch
Office of Transportation Counsel
Transportation Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL  62701
(217) 782-6447
smatris@icc.state.il.us

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations
ILLINOIS REGISTER

ILLINOIS COMMERCE COMMISSION

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affected: None

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

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Amendments begin on the next page:
ILLINOIS COMMERCE COMMISSION

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TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1535
CROSSINGS OF RAIL CARRIERS AND HIGHWAYS

SUBPART A: SCOPE AND APPLICATION

Section
1535.10 General Order
1535.20 Part Not Retroactive
1535.30 Requirements for Maintenance of Grade Crossings
1535.40 Requirements for Marking and Warning Devices at Grade Crossings
1535.50 Requirements for Establishment and Construction of Grade Crossings
1535.60 Permission to Install Other Equipment or Devices

SUBPART B: DEFINITIONS

Section
1535.100 Definitions

SUBPART C: ESTABLISHMENT, CONSTRUCTION AND MAINTENANCE OF GRADE CROSSINGS

Section
1535.201 Application for Permission to Extend a Street or Highway
1535.202 General Plan or Plat
1535.203 Construction and Maintenance of Grade Crossing
1535.204 Grade Line of Highway Approaches
1535.205 Right-of-Way to Be Kept Clear
1535.206 Crossings and Approaches
1535.207 Adjustment of Crossings and Approaches
1535.208 Maintenance, Operation and Renewal of Signs, Signals, and Other Warning Devices
1535.209 Poles, Structures or Other Objects in Right-of-Way
1535.210 Erection and Maintenance of Other Signs
1535.211 Provisions of Law (Repealed)

SUBPART D: MARKING AND WARNING DEVICES
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AT GRADE CROSSINGS

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SUBPART E: CHANGES IN EXISTING CROSSING MARKING OR WARNING DEVICES

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SUBPART F: OPERATION OF RAILROAD TRAINS AND CARS OVER GRADE CROSSINGS

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AUTHORITY:  Implementing Section 18c-7401 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7401 and 18c-1202].


SUBPART A: SCOPE AND APPLICATION

Section 1535.20 Part Not Retroactive
This Part shall not be retroactive in the sense of declaring or implying that crossings already lawfully constructed, or installations of crossing warning devices now lawfully in place, are to be considered in violation of this Part where such crossings or installations do not comply with the rules set forth herein. All lawfully existing crossings, and installations of crossing warning devices are hereby approved, subject however to the right of the Commission by appropriate proceedings, to require changes or improvements at any particular crossing or crossings at any time.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.30 Requirements for Maintenance of Grade Crossings

The requirements with reference to maintenance of grade crossings as set forth in Section 1535.205 through 1535.211, inclusive, apply both to crossings now in existence and those which may hereafter be established.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.40 Requirements for Marking and Warning Devices at Grade Crossings

The requirements with respect to the marking and warning devices at grade crossings as set forth in Sections 1535.300 to 1535.365 inclusive, apply, in general, to the installations of signs, signals, illumination, and gates made after the date of service of this Part. Certain of these Sections, however, have application to crossings now in existence and where signs, signals, and gates or watchmen may now be maintained, and in such cases, the application is specifically stated in the Section.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.60 Permission to Install Other Equipment or Devices

The Commission reserves the right to permit, or after appropriate proceedings, to require, the installation of other and different construction, equipment, and devices than those provided by this Part. Exceptions to the application of any of the rules of this Part may be made whenever good cause shows, wherever, for experimental or developmental purposes or otherwise, action appears that appear desirable and reasonable, and, for good cause shown, exceptions to the application of any of the rules of this Part may be made.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
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SUBPART B: DEFINITIONS

Section 1535.100 Definitions

"Advance warning sign" means a fixed sign, located at a distance from a grade crossing and intended to warn drivers of vehicles of the presence of the crossing before the vehicle reaches the crossing.


"Automatic gates" means gates which are designed to move into the obstructing position automatically upon the approach of a train or trains, and to move into the clear position when the train or trains have cleared the crossing and are generally used in conjunction with "flashing light signals" as defined in this Section.

"City" means all incorporated cities, villages and towns.

"Clearance signs" means the signs posted at a subway to indicate the maximum height of vehicles that may safely pass beneath the grade separation structure.

"Crossbuck sign" means a sign consisting essentially of two boards or blades, crossing each other in the general form of the letter X, and designed to be mounted upon a post or upon the mast of an automatic signal. The word "RAILROAD" is inscribed upon the board or blade extending from the upper left to the lower right portion of the sign as viewed by a person facing the crossing, and the word "CROSSING" is inscribed upon the board or blade extending from the lower left to the upper right portion of the sign.

"Crossing" means any place where a public street or highway and a railroad cross either at grade or by separation of grades. It may also apply to locations where a railroad running longitudinally in a street is crossed by a roadway or sidewalk.

"Crossing proper" means that portion of the grade crossing over the crosstie area.

"Crosstie" means a transverse beam that connects and supports the rails of a railroad.
"Department" means the Illinois Department of Transportation.

"Flashing light signal" means a signaling device consisting essentially of two red lamps mounted horizontally about 2 feet 6 inches between centers and which flash alternately to indicate the approach of a train. Such signals usually are designed to operate automatically upon the approach of a train but sometimes are so arranged as to start and cease operation by a manual controlling device.

"Gates" means a barrier that employs arms so arranged as to be moved into a position wholly or partly to obstruct a street. "Gates" provide a definite obstruction to street traffic but are not designed positively to stop moving vehicles.

"Grade crossing" means any crossing where the street or highway and the railroad are at the same elevation.

"Hazard marker" means a fixed sign consisting of a vertical rectangle, size 1 foot by 3 feet having alternating black and reflectorized yellow or white stripes 3 inches in width sloping down at an angle of 45 degrees toward the side of the obstruction on which traffic is to pass, or should conditions dictate other type of marker, one of those described in the current edition of Illinois Manual of Uniform Traffic Control Devices (92 Ill. Adm. Code 546).

"Highway" means the same as "street".


"Rail carrier" means the same as the definition in Section 18c-1104 of the Law [625 ILCS 5/18c-1104] (Ill. Rev. Stat. 1986 Supp., ch. 95 ½, par. 18c-1104).

"Railroad" means the same as the definition in Section 18c-1104 of the Law (Ill. Rev. Stat. 1986 Supp., ch. 95 ½, par. 18c-1104).

"Railroad train" means any locomotive with or without cars coupled to it, operating upon a railroad. This term, however, is not applied to handcars,
speeders, motor cars, hi-rail cars or self-propelled work equipment operated for maintenance or other railroad purposes and not used for the transportation of persons or property for hire.

"Reflector button" means a unit consisting essentially of a glass lens and a reflecting mirror or a plastic lens so designed as to reflect the rays of light from headlights of vehicles. The reflecting mirror may be a separate mirror or consist of reflecting material deposited directly upon the surface of the lens.

"Reflector type" or "reflectorized," when applied to any sign, means that either the letters or some outstanding feature of the sign is marked by reflector buttons, or by other suitable reflecting devices or materials, in such manner as to be illuminated and made visible by headlights of vehicles.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel.

"Shoulder" means that portion of a highways between the edge of the pavement and the curb line where there is a sidewalk, or, where there is no sidewalk, between the edge of the pavement and the outer edge of the surface graded for possible vehicular use.

"Sidewalk" means that portion of a street, between the curb lines or the lateral lines of a roadway and the adjacent property lines, intended for the use of pedestrians.

"Street" means the entire width between property lines of every way or place of whatever nature when any part is open to the use of the public as a matter of right for purposes of vehicular traffic.

"Subway" means a crossing where the street or highway passes underneath the railroad.

"Temporary STOP Sign" means the installation of temporary STOP signs whenever the Commission authorizes the installation of automatic flashing light signals or automatic flashing light signals and gates at public highway-rail grade crossings, pursuant to Section 18c-7401(3) of the Law.

"Viaduct" means a crossing where the street or highway passes above the railroad.
"Watchman" means any person stationed at a crossing whose duty it is to give warning to persons upon a street when any on-track movement is approaching.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART C: ESTABLISHMENT, CONSTRUCTION AND MAINTENANCE OF GRADE CROSSINGS

Section 1535.201 Application for Permission to Extend a Street or Highway

Where application is made to this Commission for permission to extend a street or highway at grade across a railroad track or to extend a railroad track across a street or highway at grade as contemplated in Section 18c-7401 of the Law (Ill. Rev. Stat. 1985, ch. 95½, par. 18c-7401) the petitioner shall be the interested rail carrier or a public body having jurisdiction over the highway involved.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.202 General Plan or Plat

A petition for permission and authorization under Section 1535.201 should be accompanied by a general plan or plat showing with reasonable certainty the nature, location and construction of the proposed crossing.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.203 Construction and Maintenance of Grade Crossing

Every grade crossing shall be constructed and maintained in such manner that it will not interfere with the reasonably safe use of the roadway when traveled in the usual and ordinary manner. The surface of the roadway shall reasonably conform to the elevation of the rails for the entire area between rails and between tracks (where track centers are 15 feet or less) and for a distance of 24 inches beyond the outside of the outer rails of the outer tracks. In situations where super-elevation of rails through the crossing makes a reasonably smooth continuous surface impractical, the surface of the roadway in the crossing area shall be made as smooth as practicable, consistent with the safe operation of trains on the railroad tracks in accordance with Section 18c-7401(2) of the Law (Ill. Rev. Stat. 1985, ch. 95½, par. 18c-7401(2)). Any crossing hereafter constructed or reconstructed shall conform to the width of the roadway and shall include a reasonable width of usable shoulder, but in no case shall the width be less than 16 feet measured at right angles to the center line of the highway unless the Commission specifically
Section 1535.207 Adjustment of Crossings and Approaches

a) Where tracks are raised through a highway crossing at the rail carrier's instance and the approach grades to the said crossing conformed to the requirements of Section 1535.204 prior to the said track raise, the rail carrier shall resurface or arrange for the resurfacing of the highway approaches to meet the elevation of the raised crossing surface, so that the change in grade does not exceed 1% greater than the pre-existing grade on primary highways with a maximum authorized speed in excess of 30 miles per hour, or 2% greater than the pre-existing grade on all other highways with a maximum authorized speed of 30 miles per hour or less. Where more than one track crosses a highway with 15 feet or less between the centerline of one track and the centerline of an adjacent track, the rail carrier shall adjust all tracks so that they conform with the requirements of Section 1535.203.

b) Where tracks are raised through a highway crossing at the rail carrier's instance, and the approach grades to the such crossing did not conform to the requirements of Section 1535.204 prior to the said track raise, and the track raise increases the such grades by more than 1%, it shall be the responsibility of the rail carrier to resurface, or to arrange for the resurfacing of, the highway approaches within a distance of 25 feet from the centerline of the outermost track, to minimize the change in grade to the extent practicable within the 25 feet.

c) It shall be the responsibility of the highway authority to make arrangements with the respective rail carriers for the necessary crossing warning signs and signals, and/or crossing surfaces adjustments where vertical and/or horizontal adjustments are made to the approaches of a grade crossing at the highway authority's instance (whether by reconstruction, resurfacing, or widening). The rail carrier shall, at the sole cost and expense of the highway authority, adjust the track, crossing warning signs and signals, and/or crossing surfaces to conform to Section 1535.203, and the highway authority shall, at its own expense, perform all necessary approach work to comply with
Section 1535.204.

(Source: Amended at 29 Ill. Reg. _____, effective _________)

SUBPART D: MARKING AND WARNING DEVICES
AT GRADE CROSSINGS

Section 1535.300 Crossbuck Signs

a) Every rail carrier shall furnish, erect and maintain at every grade crossing on its line of railroad two crossbuck signs as set forth in MUTCD Section 8B.03 and MUTCD Figure 8B-1 of standard design as set forth in this Part, except at crossings where flashing light signals or other warning devices incorporating a "crossbuck" as part of their design are maintained and except at crossings within the cities where train crews or watchmen provide warnings of all movements of cars or engines thereover. At such excepted crossings, crossbuck signs may be installed and maintained at the option of the rail carrier or may be required by specific order of the Commission.

b) Crossbuck signs shall be so located with reference to local conditions at each crossing as to provide proper visibility and in accordance with good practice. One sign shall be placed on each side of the track or tracks preferably on the right hand side of the highway as viewed by a traveler approaching the crossing. An additional sign shall be installed in accordance with MUTCD Section 8B.03 on the left side of the roadway where there is restricted sight distance or unfavorable roadway geometry. The distance from the sign to the nearest track should be not less than 12 feet from the centerline of track, measured perpendicular to the track, as set forth in MUTCD Section 8B.03. This distance is preferably shall be not less than 8½ feet nor more than 15 feet, and the distance from the near edge of the pavement or roadway to the sign preferably shall not be less than 6 feet nor more than 12 feet. These distances are to the center of the mast. The distance from the sign to the edge of the shoulder should not be less than 6 feet or less than 12 feet from the sign to the edge of the traveled way (whichever is greater). Where there are curbs, the distance from the sign to the face of curb should not be less than 12 feet. These distances are as set forth in MUTCD Section 8B.03 and are measured from the nearest edge of the crossbuck sign. No sign shall be permitted to be obscured materially by trees or other obstructions.

c) The crossbuck signs referred to in Section 1535.300(a) may be either the 6 foot blade length type with an angle of 50 degrees between blades (Appendix B,
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Illustration A) or the 4 foot reflectorized blade type, as set forth in MUTCD Section 8B.03, with an angle of 90 degrees between blades (Appendix B, Illustration B) each to be equipped with reflecting material to give an indication at night in both directions along the highway except that where, for any reason, the rear indication cannot be seen on any highway approaching the crossing, such rear indication will not be required. The back of each blade shall have one or more strips of retroreflective white material, the combined width of which shall not be less than 2 inches for its full visible length. The rear indication may also be obtained by placing two one way signs back to back. A strip of retroreflective white material, not less than 2 inches in width, shall be used on each crossbuck support for the full length of the front and back of the support from the crossbuck sign or "Number of Tracks" sign to within 2 feet above the edge of the roadway, except on the side of those supports where a STOP or YIELD sign or flashing lights have been installed or on the back side of supports for crossbuck signs installed on one-way streets. On or before January 17, 2011, the crossbucks at every highway-rail grade crossing in the State of Illinois shall be equipped with retroreflective white material in the manner set forth in this subsection and all crossbuck signs placed thereafter shall be equipped with retroreflective white material in the manner set forth in this Section. On or before December 31, 1975 the crossbucks at every grade crossing in the State of Illinois shall be equipped with reflectorized material in the manner set forth herein and all crossbuck signs placed thereafter shall be reflectorized. The height of the crossbuck above the surface of the pavement or roadway may be varied to suit local conditions, but ordinarily shall be such as will provide a clearance of approximately 7½ feet beneath the crossbuck.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.310 Advance Warning Signs and Pavement Markings

a) Railroad Advance Warning Signs

1) The railroad advance warning sign as set forth in MUTCD Section 8B.04 and MUTCD Figure 8B-2 (Appendix B, Illustration C) shall be used in advance of every railroad grade crossing, whether marked by crossbucks or equipped with active warning devices or provided with a watchman, except in the following instances:

A) At a minor siding or spur which is infrequently used and which is guarded by a member of the train crew when in use.
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B) In the business districts of cities where the crossings are equipped with active warning devices and the physical conditions are such that even a partially effective display of the sign is impossible.

2) In rural areas advance warning signs shall be located from 400 to 700 feet in advance of the grade crossing on each side thereof, said distance to be governed by prevailing speed of vehicular traffic.

3) On a divided highway, it may be desirable to erect a supplemental sign on the left of the roadway. In residential or business districts where low speeds are prevalent, the sign may be placed a minimum distance of 100 feet from the crossing. If there is a street intersection within 100 feet, an additional sign or signs should be so placed as to warn traffic approaching the crossing from each intersected street.

b) Unless otherwise specifically ordered by the Commission, advance warning signs at crossings are to be furnished, installed, maintained and replaced by and at the expense of the public authority having the duty of maintaining such signs along said highway.

c) Advance warning signs hereafter installed near or at crossings, either as replacements or as new or additional signs, shall be of the reflector type and shall conform as to type, aspect and color with MUTCD Section 8B.04 and MUTCD Figure 8B-2 Appendix B, Illustration C.

d) The public authority having the duty of maintaining the approach to a grade crossing is required, where practicable, to place pavement markings consisting of a cross and the letters "R.R." in accordance with current applicable standards.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.330 Watchman Warning (Repealed)

a) At every grade crossing where a watchman is stationed, the watchman shall be provided with the following equipment to be used as warning signs to public traffic on the street or highway.

4) For use in daylight hours, an octagonal facsimile of the standard Illinois boulevard stop sign at least 16 inches by 16 inches, painted or enameled red on both sides, with a white border with the word "STOP" in white
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letters 5 inches high, 3 inches wide with ¾ inch stroke.

2) For use between the hours of dusk and dawn, a red lantern equipped with shields so that the red lantern when properly held will not be visible to approaching trains and engines.

3) A warning whistle.

b) 1) At every grade crossing where only part-time watchman warning is maintained, the rail carrier shall, at its own expense, furnish, erect and maintain on each side of the crossing, a reflector type sign conforming to Appendix B, Illustration D. These signs shall be displayed at all times when the watchman is not on duty, and shall be either covered or removed from position when the watchman is on duty.

2) Each rail carrier may locate said signs either adjacent to the crossing or in advance as it may deem best but subject to the right of this Commission, which is hereby reserved, to determine the location of said signs at any particular crossing.

c) At every crossing where only part-time watchman warning is maintained, the rail carrier shall also furnish, erect and maintain at least one informational sign showing the hours during which a watchman is not on duty. The sign should be affixed to the watchman's shanty or tower in such manner as to be readily seen by motorists.

(Source: Repealed at 29 Ill. Reg. ______, effective ____________)

Section 1535.335 Location of Signals

a) For two directional traffic, one signal is to be located upon each side of the track or groups of tracks except that, where local conditions so require, a greater number of signals or flashing light units may be employed. The signals shall be placed on the right hand side of the highway as viewed by a traveler approaching the crossing unless local conditions require different arrangement. The distance from the signals to the railroad and to the edge of the pavement will be governed by local conditions, but in general the signals shall be located not more than 15 feet from the near rail except where a point in the centerline of the highway opposite the signal would be less than 10 feet therefrom. In general, the signals shall be located not less than 8½ feet from the nearest rail. The distance from the signals to the edge of pavement shall not be less than 6 feet or more than 12 feet except when the pavement has curb and guttering, then the signals may be located 4 feet 1 inch but not less from the face of curb. These distances are to the center of the mast.
b) On multilane highways extending on either side of a median strip at least 8 feet 2 inches in width one additional flashing unit as shown in Figure 5 (Appendix B, Illustration E) shall be placed on each side of track or group of tracks, in such a manner as to provide appropriate warning to vehicles approaching crossing in traffic lane on left side of pavement. **Back lights shall not be required.**

c) Unless otherwise ordered by the Commission, on highways four or more lanes in width with no additional flashing units as set forth in Section 1535.335(b), supplemental sets of flashing light signals shall be mounted on appropriate cantilever arms (Figure 6 (Appendix B, Illustration F)) in such a manner as to provide appropriate warning to vehicles using the outer lanes. **Back lights shall also be required.**

d) Where conditions require, special signals such as side lights, illuminated "no left turn" and "no right turn" signs (Figure 7, (Appendix B, Illustration G)) may be installed.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

**Section 1535.340 Direction of Indication**

In general and except as otherwise stated elsewhere herein, lamp units shall be provided to give an indication in both directions along the highway. Local conditions, such as one-way highway traffic, etc., may require a different arrangement. The lamp units shall be equipped with peepholes in the sides thereof. Hoods should be used on peepholes except in special cases where they may interfere with a train crew's observation of the light emanating therefrom.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

**Section 1535.342 Design of Lamps, Hoods, and Backgrounds**

The design of lamp units including hoods and backgrounds shall conform with current signal specifications of **AREMA** the Association of American Railroads.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

**Section 1535.343 Warning Indication**
The lights shall be arranged to flash alternately, the number of flashes per minute to conform to current AREMA Signal Section specifications and AREMA said AAR specifications shall constitute the minimum requirements of this Commission with respect to range and beam intensity of incandescent lamp and light emitting diode (LED) signals. Except as hereafter set forth in this Section each complete lamp unit shall give a beam 15 degrees each side of the horizontal axis. Where however, at any particular crossing, lamp units which produce such beams of less than 30 degrees total width provide adequate coverage for the street or streets protected, such lamp units may be used. The coverage for the street or streets shall be deemed to be adequate, within the meaning of the last preceding sentence, whenever all portions of the paved width, from points 800 feet from the crossing in each direction therefrom (or such lesser distances to which local conditions, such as curvature and contour of the street, may limit the effective range of the signal) to a line parallel to the railroad and 20 feet outside of the outer rail of the outer track, lie within one or more of such beams. The beams so to be considered in determining coverage shall include those produced by both the front indication and the rear indication of each signal installed at the crossing.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.344 Lenses and Roundels

Lamp units shall have lenses or roundels, red in color, at least 12½ inches in diameter for both front and rear indication. Light transmission values shall conform to current AREMA signal specifications.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.345 Signs on Flashing Light Signals

Where two or more tracks are crossed, the current standard reflector type sign prescribed by the AREMA Association of American Railroads, or as approved by this Commission, indicating the number of tracks shall be placed upon each signal (Appendix B, Illustration E).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.349 Manual Operation (Repealed)

Where signals are operated manually, as distinct from either straight automatic operation or automatic operation with manual control, such signals shall be operated for a full period of 24 hours each day, except as the Commission may by special order provide. Gatemen shall be
Section 1535.360  Gates

a) Section 1535.335(a) relating to the location of flashing light signals shall apply in locating crossing gates whether such gates are installed in conjunction with flashing light signals or independently. In general gate arms shall extend at right angles to the highway when in lowered position.

b) Gates hereafter installed shall conform, as to aspect and design, with current signal specifications of AREMA the Association of American Railroads.

c) Gates arms shall be striped diagonally in red and white and shall be kept reasonably clean so as to be readily observable.

d) Three red lights shall be mounted upon each roadway gate arm in such manner as to give an indication in both directions along the highway at all times when gates are in the lowered position and when they are being raised and lowered. The red lights shall be of such brilliancy as to give indication to highway traffic when at a reasonable distance from the crossing. When lighted, the red light unit nearest the tip of the gate arm is to be steady burning and the other two lights shall flash alternately in unison with the flashing light signals. The three lamp units shall be operated together with the flashing light signals in such manner as to give reasonable advance warning to highway traffic of the lowering of gate arms.

e) At crossings where part-time operation of gates is in effect the railroad company shall, at its own expense, furnish, erect and maintain on each side of the said crossing a reflector type sign conforming to Figure 8 (Appendix B, Illustration H). The said signs shall be located in the manner set forth in Section 1535.330(b).

Section 1535.365  Automatic Gates

a) In general, controls for automatic gates shall conform to current signal specifications of AREMA the Association of American Railroads. Appropriate refinements in track circuit controls such as "speed control," "time-out" sections, presence detectors, motion detectors, and constant warning time devices to
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prevent unnecessary delays to highway traffic shall be provided consistent with the importance of the highway and the character and volume of rail traffic.

b) Bell, when used, shall sound a warning from the time the signal lights start to operate at least until the gate arm has descended to within ten \(10^\circ\) degrees of the horizontal position.

c) In case there is a failure of the automatic gates, the railroad company will take action, as soon as it can be done, to give warning to highway traffic until the gates are put in operable condition.

d) For interconnection of automatic flashing light signals and gates with nearby traffic control signals procedures outlined in Section 1535.350(c) are to be followed.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 1535.366 Temporary STOP Signs

A rail carrier shall install temporary STOP signs whenever the Commission authorizes the installation of automatic flashing light signals or automatic flashing light signals and gates at existing public highway-rail grade crossings equipped with crossbuck warning signs. The temporary STOP signs shall remain in place until the luminous flashing signal or crossing gate devices have been installed. The rail carrier is responsible for the cost of the installation and subsequent maintenance of any required temporary STOP signs.

(Source: Added at 29 Ill. Reg. _____, effective ____________)

SUBPART E: CHANGES IN EXISTING CROSSING MARKING OR WARNING DEVICES

Section 1535.400 Procedure Before Commission

a) No change, except in case of emergencies, shall be made in existing marking or warning devices at any grade crossing, unless and until the approval of the Commission is obtained as hereinafter outlined in this subpart. This rule shall not apply to the substitution of reflector type signs for plain signs.

b) Approval for making minor changes in the marking or warning devices at crossings may be made by shortened procedure under Section 1535.400(c) if the
changes consist of any of the following:

1) Extending, or adjusting without reducing, the hours of watchman or gateman service.

12) Installing bells or additional lamp units on flashing light signals, or additional signal units to meet special conditions at crossings where flashing light signals are already established.

23) Establishing new or additional lighting, either by floodlight or by new or additional lamps placed on gates, signs or other warning devices.

34) A temporary change, such as one made necessary by highway reconstruction in progress, or the like.

45) Relocating of flashing light signals or other warning devices at a particular crossing to conform to changed traffic conditions where the new location of the signals or other equipment meets the requirements of other applicable rules of this Part, including removal of track from crossing or increasing width of highway.

56) Changes in track circuits or controls for automatic warning devices to conform to changed traffic conditions, to eliminate unnecessary indication or to otherwise improve operation. Only general description of change is required.

67) Eliminating signs and signals where all tracks through the crossing are abandoned and removed.

c) Where changes in or additions to marking or warning devices of the nature outlined in Section 1535.400(b) are to be made, the rail carrier shall so notify the Commission, in writing, substantially according to the Commission's Form 1, at least fifteen (15) days prior to making the change or addition. If change requires relocation of signals, Form 1 shall be accompanied by a sketch of the crossing showing existing and proposed location of said signals as well as any other contemplated changes. If no objection is made in writing by the Commission to such change, then, upon the expiration of the said fifteen (15) days notice, the rail carrier shall be deemed to have the approval of the Commission and may proceed to make the change as described, and shall again notify the Commission in writing, substantially in accordance with the
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When a rail carrier has completed a minor change in the marking or warning devices at crossings, which was previously approved by the Commission, a Form 2 shall be submitted to the Commission.

d) Where a rail carrier plans a major change or a reduction in marking or warning devices at any public grade crossing and no order has been issued by the Commission approving such change or reduction, the rail carrier shall give written notice of such change or reduction to the highway authority having jurisdiction over the roadway involved, and a copy of a letter setting forth notice of such change or reduction shall be attached to the Commission's Form 3 when filed with the Commission. If the highway authority has objection to the proposed change or reduction, it shall notify the Commission within 45 days of receipt of the notice from the rail carrier. If no objection is filed with the Commission, the Commission may approve the proposed change or reduction without hearing by X-Resolution.

e) When any city, town, village, township, county or the Department proposes any highway change, including changes in highway traffic direction, which would necessitate a change in the marking, warning devices at, or construction of any crossing, notice of such proposed change shall be submitted to the rail carrier involved at least three months in advance of the date upon which the change is to be made. Copy of said notice shall be furnished to this Commission.

f) When a significant deviation from improvements approved by the Commission occurs, the rail carrier shall submit a set of "as-built" plans to explain the deviations.

g) When a rail carrier has completed a minor change in the marking or warning devices at crossings, which was previously approved by the Commission, a Form 2 shall be submitted to the Commission.

h) Where a rail carrier plans a major change or a reduction in marking or warning devices at any public grade crossing and no order has been issued by the Commission approving such change or reduction, the rail carrier shall give written notice of such change or reduction to the highway authority having jurisdiction over the roadway involved, and a copy of a letter setting forth notice of such change or reduction shall be attached to the Commission's Form 3 when filed with the Commission. If the highway authority has objection to the proposed change or reduction, it shall notify the Commission within 45 days of receipt of the notice from the rail carrier. If no objection is filed with the Commission, the Commission may approve the proposed change or reduction without hearing by X-Resolution.

i) When a significant deviation from improvements approved by the Commission occurs, the rail carrier shall submit a set of "as-built" plans to explain the deviations.

j) When any city, town, village, township, county or the Department proposes any highway change, including changes in highway traffic direction, which would necessitate a change in the marking, warning devices at, or construction of any crossing, notice of such proposed change shall be submitted to the rail carrier involved at least three months in advance of the date upon which the change is to be made. Copy of said notice shall be furnished to this Commission.
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**h)** A reasonable supply of blank "Forms 1, 2 and 3" may be requested from the Railroad Section by making request to the Chief Clerk of the Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, Illinois.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

**SUBPART F: OPERATION OF RAILROAD TRAINS AND CARS OVER GRADE CROSSINGS**

Section 1535.504  Crew Member to Give Warning at Crossing

a) When cars are pushed by an engine over public highway crossings that are not equipped with warning devices at grade, a member of the crew on the ground must give warning at the crossing.

b) When the leading car is equipped with a back up brake hose or whistle in proper operating condition and is controlled by a member of the crew, warning by a crew member on the ground is not required.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

**SUBPART G: SUBWAYS AND VIADUCTS**

Section 1535.602  Petitioner For Permission

Petitioner for permission from this Commission for the construction of such subway or viaduct shall be the interested railroad company or a public officer or public body having authority to extend, or cause to be extended, the highway as proposed. The application should be accompanied by a general plan or plat showing with reasonable certainty the nature, location and construction of the proposed separation of grades, along with a preliminary design report or a bridge condition report that defines the need for the project, the scope of the project, and a detailed preliminary estimate of cost.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 1535.603  Plans Considered Separately

The plans for each proposed subway or viaduct will be considered separately in the light of local conditions. The clearances with respect to railroad tracks will be governed by 92 Ill. Adm. Code
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1500 (General Order 22) or any amendment or modification thereof that may hereafter be adopted. The current practice of the Department for subways or viaducts will be regarded as a reasonable practice. The general design requirements of AREMA the American Railway Engineering Association will be regarded as reasonable construction standards for structures carrying railroad traffic. It is recommended that those in charge of such projects consult with the said Department prior to the preparation of detail plans or the filing of an application with this Commission.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 1535.604 Hazard Markers

Hazard markers, unless otherwise specifically ordered by this Commission, are to be furnished, installed, maintained and replaced by and at the expense of the public authority having the duty of maintaining the signs along the highway upon which such signs are located and they shall be of the reflectorized type and conform to the Illinois Manual on Uniform Traffic Control Devices (to be codified as 92 Ill. Adm. Code 546) published by the Department.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART H: BARRICADES

Section 1535.701 Construction of Barricades

When by order of the Commission a grade crossing is closed and abolished pursuant to the provisions of Section 18c-7401 of the Law, suitable barricades of neat design shall be constructed in such manner as to prevent use of the crossing by vehicular traffic. The barricades and they shall be provided with retroreflective material so as to be readily visible during both daylight hours and during nighttime hours in the beam of motor vehicle headlamps. The rail carrier shall be required to pay for the installation of the barricades, and the road authority shall be responsible for all future maintenance.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)
ILINOIS COMMERCE COMMISSION

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Section 1535. APPENDIX A  Forms

Section 1535. ILLUSTRATION A  Form 1 (Repealed)

STATE OF ILLINOIS
Illinois Commerce Commission
Transportation Division

Form 1

Notice of proposed minor change in crossing markings or warning devices under 92 Illinois Administrative Code 1535.400(b) and (c).

Date:

To the Illinois Commerce Commission:

The (name of railroad company) hereby gives notice that it proposes to make a change, designated as a minor change under 92 Illinois Administrative Code 1535.400(b) and (c) at (DOT Inventory #) located (in or near) (city or village), being the crossing of (name of street or highway), with (designation of tracks or lines to be crossed). A full statement of the proposed changes is as follows:

(Railroad Company)

By ___________________________________________

(Name)
(Title)
(Phone Number)

(Attach additional sheet if necessary)

Completion of this form is necessary to accomplish the statutory purpose as outlined in the Illinois Commercial Transportation Law, Section 18c-7401.

(Source: Old Illustration A repealed at 11 Ill. Reg. 19027, effective November 15, 1987; new Illustration A adopted at 29 Ill. Reg. _____, effective __________)
STATE OF ILLINOIS
Illinois Commerce Commission
Transportation Division

Form 2

Notice of completion of minor change in crossing warning devices under 92 Illinois Administrative Code 1535.400(c).

Date:

To the Illinois Commerce Commission:

The (name of railroad company) hereby gives notice that on (date) it completed the making of a minor change at crossing (DOT Inventory #) (Railroad Milepost), located (in or near) (city or village) in accordance with the notice proposing such change given to this Commission on (date).

(Railroad Company)

By ________________________________

(Name)
(Title)
(Phone Number)

Completion of this form is necessary to accomplish the statutory purpose as outlined in the Illinois Commercial Transportation Law, Section 18c-7401.

(Source: Old Illustration B repealed at 11 Ill. Reg. 19027, effective November 15, 1987; new Illustration B adopted at 29 Ill. Reg. _____, effective _________)
Petition for permission to make a change in crossing warning devices, or to install new warning devices, under 92 Illinois Administrative Code 1535.400(d).

Date:_______________

To the Illinois Commerce Commission:

The petitioner (Name of Railroad Company) shows:

(1) That it is a railroad company operating a line of railroad in the State of Illinois.

(2) That petitioner proposes and hereby makes application for authority to make a major change in crossing warning devices, or to install new warning devices, under 92 Illinois Administrative Code 1535.400(d) adopted by this Commission.

(3) That the location of the crossing, the nature of existing warning devices and proposed warning devices, and other pertinent facts in connection therewith, are set forth in the statement attached to and forming part of this petition.

(4) That petitioner's reasons and purpose, with reference to its said proposal are:

(State reasons and purpose)

(5) That the facts set forth in this petition and in the statement and plans or plats attached thereto are, all of them, true and correct to the best of petitioner's knowledge and belief.

WHEREFORE, the petitioner prays that the Commission will, if deemed desirable by the
NOTICE OF PROPOSED AMENDMENTS

Commission, set the aforesaid matter for hearing, and that the Commission enter an order or adopt a resolution consenting to and granting authority for the making of the said proposed changes in or additions to crossing warning devices.

(Name of Railroad Company)

By

(Name of Person Submitting Form 3)
(Title of Person – use Enter key for additional lines)
(Phone Number)

(Attorney for Petitioner)

(Attorney's Address)
(Use Enter key for up to four additional lines.)

Statement, attached to and part of an application for permission to make a major change in crossing warning devices or to install new warning devices, under 92 Ill. Adm. Code 1535.400(d).

1. Name of Railroad Company
2. Crossing Number & Railroad Milepost (Separate statement should be filed for each crossing)
3. Village or City (Please indicate whether in or near Village/City)
4. Name of Street or Highway
5. Public Agency Maintaining Highway (DOT, County, Township, City)
6. Existing warning devices: (Give full description, Indicate the hours of any manual warning devices.)

7. Proposed warning devices: (Give details)
8. Number of main tracks Other tracks
9. Number of passenger train movements: 6 a.m. to 6 p.m. _______ 6 p.m. to 6 a.m. _______
10. Number of freight train movements: 6 a.m. to 6 p.m. _______ 6 p.m. to 6 a.m. _______
11. Approximate number of switch movements: 6 a.m. to 6 p.m. _______ 6 p.m. to 6 a.m. _______
12. Maximum speed of trains at crossing on each track in each direction
   Track 1 N/E Bound _______ mph S/W Bound _______ mph
   Track 2 N/E Bound _______ mph S/W Bound _______ mph
   Track 3 N/E Bound _______ mph S/W Bound _______ mph
13. Passenger platforms served by tracks within the limits of track circuits, if any _______
14. Where automatic signals or gates are proposed, approximate number of train
or engine movements daily that would cause false indications or operation _______
15. Nature and approximate amount of street or highway traffic over crossing _______
16. In addition to the information listed hereinbefore in Form 3, attach a track plan or plat of
the proposed crossing. This plan should show:
   (a) Width and surface of highway.
   (b) Highway intersections (including private driveways to be so indicated) and
location of established highway signs or signals within 100 feet of crossing.
   (c) Location of tracks, switches and other railroad facilities such as block signals,
etc., within limits of track circuits, present and/or proposed
   (d) Where automatic warning devices are proposed, show proposed location of
signals (sidelights, cantilevers, etc., if any).
   (e) Show the length of each operation track section within the control limits of the
crossing warning devices and its function.

ADDITIONAL INFORMATION

VERIFICATION
I, ____________________________, first being duly sworn upon oath depose and say that I am
______________________________, of ________________________, an __________ corporation; that I
have read the above and foregoing petition by me subscribed and know the contents thereof; that
said contents are true in substance and in fact, except as to those matters stated upon information
and belief, and as to those, I believe same to be true.

______________________________
(Signature above line & Title below line)

(Source: Old Illustration C repealed at 11 Ill. Reg. 19027, effective November 15, 1987;
new Illustration C adopted at 29 Ill. Reg. _____, effective __________)
Section 1535. APPENDIX B  Drawings

Section 1535. ILLUSTRATION A  Reflectorized Crossbuck Signs (50 degrees) (Repealed)

ALTERNATE BLADE SIZE 9" X 48"

FIGURE 1

REFLECTORIZED CROSSBUCK SIGNS

(Source: Repealed at 29 Ill. Reg. ______, effective _____________)

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Section 1535.APPENDIX B  Drawings

Section 1535.ILLUSTRATION B  Reflectorized Crossbuck Signs (90 degrees) (Repealed)

FIGURE 2

REFLECTORIZED CROSSBUCK SIGNS

(Source: Repealed at 29 Ill. Reg. ______, effective ____________)
ILLINOIS COMMERCe COMMISSION

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Section 1535. APPENDIX B  Drawings

Section 1535. ILLUSTRATION C  Advance Warning Sign (Repealed)

FIGURE 3

ADVANCE WARNING SIGN

(Source: Repealed at 29 Ill. Reg. _____, effective ___________)
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Section 1535. APPENDIX B  Drawings

Section 1535. ILLUSTRATION D  Reflectorized "Watchman Off Duty" Sign (Repealed)

FIGURE 4

REFLECTORIZED "WATCHMAN OFF DUTY" SIGN

(Source: Repealed at 29 Ill. Reg. ______, effective ____________)
Section 1535. APPENDIX B  Drawings

Section 1535. ILLUSTRATION G  "No Right Turn" or "No Left Turn" Signal  (Repealed)

FIGURE 7

"NO RIGHT TURN" OR "NO LEFT TURN" SIGNAL

(Source: Repealed at 29 Ill. Reg. _____, effective ____________)
Section 1535. APPENDIX B  Drawings

Section 1535. ILLUSTRATION H  Reflectorized "Gates Not Working" Sign (Repealed)

FIGURE 8

REFLECTORIZED "GATES NOT WORKING" SIGN

(Source: Repealed at 29 Ill. Reg. ______, effective ____________)
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NOTICE OF PROPOSED REPEALER

1) **Heading of the Part:** Staggers Act

2) **Code Citation:** 92 Ill. Adm. Code 1565

3) **Section Number:** 1565.10  
   **Proposed Action:** Repeal

4) **Statutory Authority:** Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved:** This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) Will this proposed repealer replace any emergency amendments currently in effect? No

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

8) **Does this proposed repealer contain incorporations by reference?** No

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives:** This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **Time, Place and Manner in which interested persons may comment on this proposed repealer:** Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* with:

    Steven L. Matrisch  
    Office of Transportation Counsel  
    Transportation Division  
    Illinois Commerce Commission  
    527 East Capitol Avenue  
    Springfield, IL  62701  
    (217) 782-6447  
    smatrisch@icc.state.il.us

12) **Initial Regulatory Flexibility Analysis:**
ILLINOIS COMMERCe COMMISSION

NOTICE OF PROPOSED REPEALER

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

13) Regulatory Agenda on which this rulemaking was summarized: This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Repealer begin on the next page:
Section 1565.10  Staggers Act Rules

AUTHORITY: Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

SOURCE: Adopted at 11 Ill. Reg. 15069, effective October 1, 1987; repealed at 29 Ill. Reg. ______, effective ______________.

Section 1565.10  Staggers Act Rules

a) The followingParts of 92 Ill. Adm. Code: Chapter III, Subchapter c, Rail Carriers have been adopted in accord with the Staggers Rail Act of 1980 (49 U.S.C. 10101 et seq.):

92 Ill. Adm. Code 1570
92 Ill. Adm. Code 1575
92 Ill. Adm. Code 1580
92 Ill. Adm. Code 1585
92 Ill. Adm. Code 1590
92 Ill. Adm. Code 1595
92 Ill. Adm. Code 1600

b) Where a provision in a Part listed in subsection (a) conflicts with the provisions of any other Part of 92 Ill. Adm. Code: Chapter III (Illinois Commerce Commission), the provisions of the Part listed in subsection (a) shall govern.
ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

1) **Heading of the Part**: Rail Carrier Rates

2) **Code Citation**: 92 Ill. Adm. Code 1570

3) **Section Numbers**: Proposed Action:
   - 1570.10 Repeal
   - 1570.20 Repeal

4) **Statutory Authority**: Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved**: This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) **Will this proposed repealer replace any emergency amendments currently in effect?** No

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

8) **Does this proposed repealer contain incorporations by reference?** No

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives**: This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **Time, Place and Manner in which interested persons may comment on this proposed repealer**: Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* with:

    Steven L. Matrisch
    Office of Transportation Counsel
    Transportation Division
    Illinois Commerce Commission
    527 East Capitol Avenue
    Springfield IL  62701
    (217) 782-6447
    smatrisc@icc.state.il.us

12) **Initial Regulatory Flexibility Analysis:**
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ILLINOIS COMMERCE COMMISSION

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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

13) Regulatory Agenda on which this rulemaking was summarized: This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Repealer begin on the next page:
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TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1570
RAIL CARRIER RATES (REPEALED)

Section 1570.10 Policy
a) Public Law 96-448, "The Staggers Rail Act of 1980", requires the states which wish to retain jurisdiction to bring their standards and procedures for regulating railroad rates, classifications, rules and practices into conformity with the Interstate Commerce Act. It is the intent of Congress that railroad companies receive adequate revenues through regulatory encouragement of modal competition, rate flexibility, and relaxed rate reasonableness standards.

b) Mindful of this Commission's obligations to safeguard the public's interests, it shall henceforth be the policy of the Illinois Commerce Commission to regulate railroad matters in a manner consistent with the standards and procedures set forth by Congress in the Interstate Commerce Act.

Section 1570.20 Standards and Procedures
a) The Staggers Act requires the states to adopt uniform standards and procedures for regulating railroad rates, rules and practices which are in accord with the provisions of the Act. This and the following General Orders constitute Illinois'
revised approach to railroad regulation. The standards and procedures included in 92 Ill. Adm. Code 1570, 1575, 1580, 1585, 1590, 1595 and 1600 (General Orders 219 through 225) supersede any previous rules or regulations to the extent that the previous rules or regulations might be in conflict with them.

b) Illinois shall not exercise jurisdiction over general rate increases, inflation-based rate increases, and fuel adjustment surcharges. Further, Illinois shall not require prejudication of rate increases. These points are treated in 92 Ill. Adm. Code 1580 and 1590 (General Orders 221 and 223).

c) The timing for rail rate changes shall be 10 days and 20 days for decreases and increases, respectively. These points are covered in 92 Ill. Adm. Code 1575 (General Order 220).

d) Illinois shall complete investigation and suspension cases within five months, although a three month extension may be applied for in each case. Illinois shall not suspend rates on its own motion, and shall not suspend a proposed rate change unless a protestant shows that he is substantially likely to prevail on the merits of his case; that without suspension the proposed rate will cause him substantial injury; and that an investigation with a refund and keep account provision will afford him insufficient protection. Illinois shall handle refund requirements in accordance with the provisions of 49 U.S.C. 10707. These points are treated in 92 Ill. Adm. Code 1580 (General Order 221).

e) In approaching the issue of rate reasonableness Illinois shall first consider, within 90 days, whether or not the traffic in question is subject to market dominance. Standards for market dominance determinations are treated in 92 Ill. Adm. Code 1585 (General Order 222). A finding that no market dominance exists shall be conclusive evidence that the rate is reasonable. Should market dominance be found, a reasonableness determination shall be made based on the principle of railroad revenue adequacy, an evaluation of revenue to variable cost for the traffic involved, the revenue contribution of the traffic to the railroad's revenue base, and national energy and transportation goals. These procedures are treated in 92 Ill. Adm. Code 1580 (General Order 221).

f) Railroad rates may be altered in accordance with the zone of rate flexibility provisions of 49 U.S.C. 10707a. These provisions are incorporated in 92 Ill. Adm. Code 1580 and 1590 (General Orders 221 and 223).

g) To encourage shipper and railroad planning, Illinois shall regulate intrastate
contract rates in accordance with 49 U.S.C. 10713. These points are treated in 92 Ill. Adm. Code 1595 (General Order 224).

h) Illinois adopts the applicable provisions of 49 U.S.C. 10741 on discrimination. Illinois shall not make a finding of discrimination if differences in rates, classifications, rules and practices result from differences in service provided.

i) Discrimination shall not be found to apply to the following sections of 49 U.S.C.:
   1) Sec. 10713 – Contract rates, other than as provided for in subsection (d)(2)(B);
   2) Sec. 10705a – Surcharges or cancellations;
   3) Sec. 10728 – Separate rates for distinct rail services;
   4) Rail rates applicable to different routes; or
   5) Sec. 10751 – Business entertainment expenses.

j) Exemptions of persons, classes of persons, transactions or services from regulation are the subject of 92 Ill. Adm. Code 1600 (General Order 225). In addition to exemptions which Illinois is required to recognize under federal law, if any, Illinois may undertake an exemption proceeding either on its own motion or upon petition from any interested party.

k) Illinois shall regulate two special classes of rates, limited liability rates and rates on recyclable materials, in a manner consistent with federal law, specifically 49 U.S.C. 10730, and 49 U.S.C. 10731, respectively. Recyclable materials shall be transported at a revenue to variable cost ratio of no more than 146%. Railroads are free to publish rates under which the liability of the carrier is limited to a value established by the written declaration of the shipper or by written agreement between the shipper and railroad. These points are treated in 92 Ill. Adm. Code 1580 (General Order 221).

l) To further clarify the regulatory approach which Illinois will employ, the Illinois Commerce Commission hereby adopts the following sections of the Interstate Commerce Act as amended by Staggers Rail Act of 1980.

   Section 10505 – Exemption
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1) Heading of the Part: Filing Rail Carrier Rates

2) Code Citation: 92 Ill. Adm. Code 1575

3) Section Numbers: Proposed Action:
   1575.10      Repeal
   1575.20      Repeal
   1575.30      Repeal
   1575.40      Repeal

4) Statutory Authority: Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

5) A Complete Description of the Subjects and Issues Involved: This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) Will this proposed repealer replace any emergency amendments currently in effect? No

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

8) Does this proposed repealer contain incorporations by reference? No

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

10) Statement of Statewide Policy Objectives: This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) Time, Place and Manner in which interested persons may comment on this proposed repealer: Comments should be filed, within 45 days after the date of this issue of the Illinois Register with:

    Steven L. Matrisch  
    Office of Transportation Counsel  
    Transportation Division  
    Illinois Commerce Commission  
    527 East Capitol Avenue  
    Springfield, IL  62701  
    (217) 782-6447  
    smatriscc@icc.state.il.us
ILLINOIS COMMERCE COMMISSION
NOTICE OF PROPOSED REPEALER

12) **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

13) **Regulatory Agenda on which this rulemaking was summarized:** This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

*The full text of the Proposed Repealer begins on the next page:*
Section 
1575.10  Notice Period for Filing Rail Carrier Tariffs  
1575.20  Content of Notice  
1575.30  Consequence of Defect in Notice  
1575.40  Repeal of Previous Special Permission 

AUTHORITY: Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ICLS 5/18c-7301 and 18c-1202].

SOURCE: Peremptory rule adopted at 6 Ill. Reg. 3885, effective March 25, 1982; emergency repealer, emergency rule at 6 Ill. Reg. 6784, effective May 21, 1982, for a maximum of 150 days; rule repealed, new rule adopted at 6 Ill. Reg. 13266, effective October 15, 1982; emergency amendment at 7 Ill. Reg. 8164, effective June 28, 1983, for a maximum of 150 days; amended and codified at 7 Ill. Reg. 16388, effective November 24, 1983; Part recodified at 10 Ill. Reg. 17997; repealed at 29 Ill. Reg. ______, effective ____________.

Section 1575.10  Notice Period for Filing Rail Carrier Tariffs

The provisions of Illinois Commerce Commission Freight Tariff Circular Number 3 (to be codified as 92 Ill. Adm. Code 1215), notwithstanding and except as otherwise provided in paragraphs (c), (d) and (f), the notice period for filing railroad tariffs with the Illinois Commerce Commission which contain new or changed rates, classifications, rules, practices or other provisions shall be as follows:

a) The tariff shall be on file with this Commission at least 20 days prior to its effective date for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service.

b) The tariff shall be on file with this Commission at least 10 days prior to its effective date for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions.

c) The tariff shall be on file with this Commission at least 45 days prior to its
NOTICE OF PROPOSED REPEALER

effective date for joint rate surcharges and cancellations filed pursuant to the provisions of 49 U.S.C. 10705a.

d) A railroad or its publishing agent may file an application pursuant to Rule 36 of Illinois Commerce Commission Freight Tariff Circular Number 3 (to be codified as 92 Ill. Adm. Code 1215.360) to depart from the provisions of this Part 1575.

e) A railroad or its publishing agent will not be required to comply with the provisions of Rule 31 of Illinois Commerce Commission Freight Tariff Circular Number 3 (to be codified as 92 Ill. Adm. Code 1215.310).

f) Railroad contracts shall be filed with this Commission pursuant to the provisions of 92 Ill. Adm. Code 1595 (General Order 224).

Section 1575.20 Content of Notice

Each rate publication filed with the Commission shall be on forms prescribed by the Commission and shall contain such information as the Commission may require, including but not limited to:

a) a tariff containing all relevant and material provisions relating to the rate and its application. The tariff shall comply with Freight Tariff Circular Number 3 (to be codified as 92 Ill. Adm. Code 1215), with regard to tariff specifications, except as otherwise provided in this Section.

b) a statement of the effect which the rate shall have on the carrier's revenue (increase, decrease, no change).

Section 1575.30 Consequence of Defect in Notice

No rate shall be considered published under the provisions of the Staggers Act unless notice has been given in compliance with this Section. However, if a tariff is filed and becomes effective despite some defect, the rates, charges, fares, classifications, rules, etc., in that tariff are in effect and will be applied until cancelled or amended or until they are stricken from the files by the Illinois Commerce Commission.

Section 1575.40 Repeal of Previous Special Permission

This Part supersedes and rescinds Special Permission number R-18293 (amended), granted by this Commission on May 6, 1981.
NOTICE OF PROPOSED REPEALER

1) **Heading of the Part:** Investigation and Suspension of Rail Carrier Rates

2) **Code Citation:** 92 Ill. Adm. Code 1580

3) **Section Numbers:**

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4) **Statutory Authority:** Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved:** This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) **Will this proposed repealer replace any emergency amendments currently in effect?** No

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

8) **Does this proposed repealer contain incorporations by reference?** No

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives:** This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **Time, Place and Manner in which interested persons may comment on this proposed repealer:** Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* with:

    Steven L. Matirsch
Office of Transportation Counsel
Transportation Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL  62701
(217) 782-6447
smatris@icc.state.il.us

12) **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

13) **Regulatory Agenda on which this rulemaking was summarized:** This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Repealer begin on the next page:
Section 1580.10  Commencement of Proceedings
1580.20  Duration of Suspension Period
1580.30  Grounds for Suspension
1580.40  Market Dominance
1580.50  Reasonableness
1580.60  Burden of Proof
1580.70  Zone of Rate Flexibility
1580.80  Monetary Adjustments for Suspension Actions
1580.90  Filing Procedures
1580.100   Refund or Collection of Freight Charges Based Upon Commission Findings

AUTHORITY: Implementing Section 18c-7301 and 18c-1202 authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

SOURCE: Peremptory rule at 6 Ill. Reg. 3885, effective March 29, 1982; emergency repealer, emergency rule at 6 Ill. Reg. 6784, effective May 21, 1982, for a maximum of 150 days; rule repealed, new rule adopted at 6 Ill. Reg. 13266, effective October 15, 1982; codified at 8 Ill. Reg. 863; Part recodified at 10 Ill. Reg. 17999; repealed at 29 Ill. Reg. _____, effective ________.

Section 1580.10  Commencement of Proceedings

a) When a new individual or joint rate (except general rate increases, inflation-based increases, or fuel adjustment surcharges filed under the provisions of 49 U.S.C. 11501(b)(6) over which the Illinois Commerce Commission has no jurisdiction) or an individual or joint classification, rule or practice related to a rate is filed with the Illinois Commerce Commission by a rail carrier, the Commission may:

1) on its own initiative, commence an investigation proceeding, or

2) upon protest of an interested party, commence an investigation
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proceeding, or

3) upon protest of an interested party, commence an investigation and suspension proceeding

to determine whether the proposed rate, classification, rule or practice is discriminatory, unreasonable, or in any other way violates applicable law.

b) Rates based on limited carrier liability may be published and filed with the Commission, without prior approval, pursuant to 49 U.S.C. 10730. However, such rates will be subject to protest on grounds such as unreasonableness or nonconformance with the tariff publication requirements found in 49 CFR 1300.4(i)(11).

c) The Commission shall give reasonable notice to interested parties before beginning a proceeding. However, the Commission may begin the proceeding without allowing an interested party to file an answer.

Section 1580.20 Duration of Suspension Period

a) The Commission shall complete a proceeding commenced under Section 1580.10(a) (1) or (2) or (3) of this Part within five months from the effective date of the proposed rate, classification, rule or practice except that, if the Commission reports to the Interstate Commerce Commission that it cannot make a final decision within that time and explains the reason for the delay, it may then take an additional three months to complete the proceeding and make a final decision.

b) If the Commission does not render a final decision within the applicable time period, the rate, classification, rule or practice shall become effective immediately or, if already in effect, shall remain in effect.

c) However, if a railroad makes a tariff filing to adjust an intrastate rate, rule or practice under 49 U.S.C. 11501(d) to that of similar traffic moving in interstate commerce, and the Commission investigates or suspends such tariff filing, the carrier may apply to the Interstate Commerce Commission to review the matter if the Illinois Commerce Commission has not acted with finality by the 120th day after the tariff was filed. If the carrier elects not to refer the matter to the Interstate Commerce Commission, the Illinois Commerce Commission may decide the issue within five months, as provided for in this Section.
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Section 1580.30 Grounds for Suspension

The Commission may not suspend a proposed rate, classification, rule or practice unless it appears from the specific facts shown by the verified statement of a person that:

a) it is substantially likely that the protestant will prevail on the merits;

b) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

c) because of the peculiar economic circumstances of the protestant, the provisions of Section 1580.80 of this Part do not protect the protestant.

Section 1580.40 Market Dominance

a) When the new individual or joint rate is alleged to be unreasonably high, the Commission, within 90 days after the start of a proceeding under this Part, shall determine whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies.

b) If the Commission finds that:

1) The railroad proposing the rate has market dominance over the transportation to which the rate applies, it shall then proceed to determine whether or not the proposed rate exceeds a maximum reasonable level for that transportation.

2) The railroad proposing the rate does not have market dominance over the transportation to which the rate applies, it shall not make a determination on the issue of reasonableness.

c) A finding by the Commission that the proposed rate has a revenue-variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. 10709(d)(2) does not establish a presumption that:

1) the railroad has or does not have market dominance over such transportation, or

2) the proposed rate exceeds or does not exceed a reasonable maximum level.
d) Evidentiary guidelines for the determination of whether or not the railroad has market dominance over the transportation to which the rate applies shall be found in 92 Ill. Adm. Code 1585, Market Dominance by Rail Carriers.

Section 1580.50 Reasonableness

a) Except for nonferrous recyclables, the Commission shall evaluate the reasonableness of a rate only after market dominance has been established. In determining whether a rate is reasonable, the Commission shall consider, among other factors, evidence of the following:

1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

b) Pursuant to the Interstate Commerce Commission's decision in Ex Parte 394, a rate on nonferrous recyclable material is presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than 146%.

Section 1580.60 Burden of Proof

a) General – The burden shall be on the protestant to prove the matters described in Section 1580.30(a)-(c) of this Part.

b) Market Dominance:

1) Jurisdiction – The respondent railroad shall bear the burden of showing that the Commission lacks jurisdiction to review the proposed rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. 10709(d)(2). The railroad may meet its burden of proof by showing the revenue-variable cost percentage for that transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. 10709(d)(2). The protestant may rebut the
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railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. 10709(d)(2).

2) Intramodal and intermodal competition – The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applies. Respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.

3) Product and geographic competition – If intramodal and intermodal competition is shown not to exist, the respondent railroad shall have the burden of proving that either product or geographic competition for the involved transportation does exist. The protestant shall then have the burden of proving that such competition is not effective.

c) Reasonableness:

1) Rate Increases:

A) Protestant's burden of proof – A party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if such rate:

i) is authorized under 49 U.S.C. 10707a; and

ii) results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. 10707a(e)(2)(A).

B) Respondent's burden of proof – The respondent railroad shall bear the burden of demonstrating the reasonableness of a rate increase if such rate:

i) is greater than that authorized under 49 U.S.C. 10707a; or

ii) results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the lesser of the percentages described in
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clauses (i) and (ii) of 49 U.S.C. 10707a(e)(2)(A); and

iii) the Commission initiates an investigation under 49 U.S.C. 10707.

2) Rate Decreases – A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the railroad, and is therefore unreasonably low. A party may meet its burden by making a showing that the rate is less than the variable cost for the transportation to which the rate applies.

Section 1580.70 Zone of Rate Flexibility

a) A rail carrier may raise any rate pursuant to the limitations described in 49 U.S.C. 10707a. Base rates increased by the quarterly rail cost adjustment factor will not be investigated or suspended. In addition, a railroad may increase any rate by 6% per annum (to a maximum of 18%) over the four-year period following enactment of the Staggers Act. Thereafter, railroads not earning adequate revenues, as defined by the Interstate Commerce Commission, may raise rates 4% per year. Neither the 6% nor 4% increase shall be suspended. If the increase results in a revenue to variable cost ratio that equals or exceeds 185% (190% after October, 1982), the Commission may investigate the rate either on its own motion or on complaint of an interested party.

b) In determining whether or not to investigate the rate, this Commission shall consider:

1) the amount of traffic which the railroad transports at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

2) the amount of traffic which contributes only marginally to fixed costs and the extent to which rates on such traffic can be changed to maximize the revenues from such traffic;

3) the impact of the challenged rate on national energy goals;

4) state and national transportation policy; and

5) the revenue adequacy goals incorporated in the Interstate Commerce Act
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(49 U.S.C. Chapter 107).

Section 1580.80 Monetary Adjustments for Suspension Actions

a) Rate Increases with No Suspensions – In the event the Commission does not suspend but investigates a proposed rate increase under Section 1580.30 of this Part, the Commission shall require the rail carrier to account for all amounts received under the increase until the Commission completes its proceedings under Section 1580.20. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date that the "Statement of Monetary Adjustment" is filed -- see Appendix A) of marketable securities of the United State Government having a duration of 90 days.

b) Rate Increases with Suspension – If a rate is suspended under Section 1580.30 of this Part and any portion of such rate is later found to be reasonable, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date that the "Statement of Monetary Adjustment" is filed – see Appendix A) of marketable securities of the United States Government having a duration of 90 days.

c) Rate Decreases with Suspension – In the event the Commission suspends a proposed rate decrease under Section 1580.30 which is later found to be reasonable, the rail carrier may refund any part of the decrease found to be reasonable if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.

Section 1580.90 Filing Procedures

The following rules shall apply in connection with the filing of a protest against a proposed rail rate, classification, rule or practice and the reply thereto:

a) Rule 1 – Liberal Construction.
These rules shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented.
b) Rule 2 – Definitions.

1) "Proceeding" – an investigation instituted by the Commission.

2) "Protestant" means a person opposed to any tariff or schedule becoming effective.

3) "Respondent" means the railroad and/or their agent against whom the protest is filed or any other person designated by the Commission to participate in the proceeding.

4) "Party" shall include the "Protestant" and "Respondent" or other permitted or directed by the Commission to participate in the proceeding.

5) "Pleading" means a protest, reply to protest, a motion or any other written comment relating to the proceeding.

6) "Person" shall include individuals as well as corporations, companies, associations, firms, partnerships, co-partnerships, societies, joint stock companies, or a trustee, receiver, assignee, or personal representative of another individual.

c) Rule 3 – Communications.

1) The protest, reply and any other pleadings relating to the proceeding will not be considered unless made in writing and filed with the Commission.

2) The protest, reply, "Statement of Monetary Adjustment" and other pleadings shall be addressed to:

   Illinois Commerce Commission

   Transportation Division

   Rail Rate and Tariff Section

   527 East Capitol Avenue

   Springfield, Illinois  62706
3) The protest, reply or other pleadings relating to the proceeding must be received for filing at the Commission's office in Springfield, Illinois, within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails is determinative.

4) If, after examination, the Commission finds that the protest, reply, "Statement of Monetary Adjustment" or other pleadings relative to the proceeding are not in substantial compliance with the provisions of this Part:

A) the Commission may decline to accept the documents and may return them unfiled, or

B) the Commission may accept the documents for filing and advise the party tendering it of the deficiencies and require that they be corrected.

d) Rule 4 – Signature and Verification.

1) The protest, reply or other pleadings relating to the proceeding shall be signed in ink and the signer's address shall be stated.

2) The facts alleged in a protest, reply or other pleadings shall be verified by the person on whose behalf it is filed. If a protest, reply or other pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization.

e) Rule 5 – Copies and Service of Documents.

1) Copies:

A) Protest – The original and two copies shall be filed with the Commission and one copy shall be simultaneously served upon the publishing railroad or its publishing agent and upon other parties known by the protestant to be interested in the proceeding.

B) Reply to Protest – The original and two copies shall be filed with the Commission and one copy shall be simultaneously served upon the protestant and upon the other parties named in the protest.
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C) Pleadings – The original and two copies shall be filed with the Commission and one copy shall be simultaneously served upon all parties to the proceeding.

2) Certificate of Service:

A) When a protest, reply or pleading is filed with the Commission, it shall include a certificate showing simultaneous service upon all parties to the proceeding.

B) Such service shall be made by delivery in person, or by first-class mail, certified mail, registered mail, or by express or equivalent parcel delivery service, properly addressed with charges prepaid, one copy to each party. Service upon the parties shall be by the same means of communication and class of service employed in making delivery to the Commission; provided, however, that when delivery is made to the Commission in person, and it is not feasible to serve the other parties in person, service shall be made by first-class or express mail.

C) A certificate of service shall be in the following form:

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by (here state the precise manner of making service).

Dated at ______, this _____ day of ____________, 19____.

______________________________
(Signature)

f) Rule 6 – Content and Timing.

1) Protest Content:

A) Identification – The protested tariff should be identified by making reference to the name of the railroad or its publishing agent, to the Illinois Commerce Commission number, to the specific items or particular provisions protested and to the effective date of the
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protested publication. Reference should also be made to the tariff and specific provisions thereof that are proposed to be superseded.

B) Grounds for Suspension – The protest shall incorporate sufficient facts to:

i) meet the criteria for suspension as set forth in Section 1580.30; and

ii) to sustain the applicable burdens of proof as set forth in Section 1580.60 of this Part. Further, the protest should include any additional information that would support suspension of the proposed rate.

2) Protest Timing:

A protest against and a request for suspension of a tariff filed by a railroad or its publishing agent shall be received by the Commission at least:

A) ten days prior to the effective date, when the proposed change is to become effective upon not less than 20 days' notice;

B) five days prior to the effective date, when the proposed change is to become effective upon not less than 10 days' notice.

3) Reply to Protest:

A) Content – The reply should adequately identify the protested tariff. Further, it shall contain sufficient facts to rebut the allegations made in the protest and to sustain the applicable burdens of proof as set forth in Section 1580.60 of this Part.

B) Timing – A reply to a protest must be received by the Commission not later than:

i) the fourth working day prior to the effective date when the proposed change is to become effective upon not less than 20 days' notice;

ii) the second working day prior to the effective date when the
proposed change is to become effective upon not less than 10 days' notice.

4) Emergency Protests and Replies:

In emergencies, telegraphic protests and replies are acceptable provided that the provisions of subsections (c), (e)(1) – only the telegram and the original signed verified copy need be filed with the Commission, (f)(1) and (f)(2) of this Section are complied with. The telegrams shall include statements to the effect that they are copies of original protests or replies which have been signed, verified and mailed to the Commission. The telegrams shall also indicate the method of verification (e.g., by statements sworn to before a notary public). The telegrams shall also include a certification that copies either have been, or will be immediately, telegraphed to the proponent carriers or their publishing agents in the case of protests, or to the protestants in case of replies.

5) Nonsuspension or Investigation:

Should a protestant desire to proceed further against a tariff which is not suspended or investigated, or which has been suspended and the suspension vacated and the investigation discontinued, a separate later complaint should be filed.

Section 1580.100 Refund or Collection of Freight Charges Based Upon Commission Findings

a) Refund or Collection:

1) Except as otherwise provided in paragraph (b) of this Section, when the Commission finds, pursuant to Section 1580.80 of this Part, that a railroad shall make refunds on freight charges collected or that the railroad is entitled to collect additional freight charges, but the amount cannot be ascertained upon the record before it, the party entitled to the refund or the railroad entitled to collect additional monies, as the case may be, shall immediately prepare a statement showing details of the shipments involved in the proceeding, in accordance with Appendix A (Statement of Monetary Adjustment). The statement shall not include any shipment not covered by the Commission's findings.
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2) If the shipments moved over more than one route, a separate statement shall be prepared for each route and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes.

3) The party entitled to the refund shall submit its statement, together with the paid freight bills on the shipments, or true copies thereof, to the carrier which collected the charges, for verification and certification as to its accuracy.

4) If the railroads are entitled to additional monies, the carrier collecting the initial freight charges shall prepare the statement for and on behalf of the involved carriers.

5) All discrepancies, duplications or other errors in the statements shall be adjusted by the parties and corrected, agreed statements submitted to the Commission.

6) The certificate shall be signed in ink by a general accounting officer of the carrier and shall cover all of the information shown in the statement.

7) If the carrier which collected the charges is not a respondent to the proceeding, its certificate shall be concurred in by like signature on behalf of a carrier named as a respondent in the proceeding.

8) Statements so prepared and certified shall be filed with the Commission whereupon it shall consider entry of an order awarding refunds or collection of additional freight charges, as the case may be.

b) Waiver of Monies Due to Railroad:

1) Communications – All communications shall be in writing and shall be addressed to:

   The Chief Clerk

   Illinois Commerce Commission

   527 East Capitol Avenue
Illinois Commerce Commission

Notice of Proposed Repealer

Springfield, Illinois 62706

2) Freight Charges in Excess of $2,000.00

A) Petition to waive collection of insignificant amounts – If a railroad wishes to waive collection of amounts due pursuant to Section 1580.80(b) of this Part, when such amounts are more than $2,000.00, a petition for appropriate authority may be filed by the railroad, with the Commission, in the form of a Letter of Intent to Waive Insignificant Amounts. The petition should contain the following information:

i) the name and address of the customer for whom the railroad wishes to waive collection;

ii) the names and addresses of the railroads involved in the intended waiver and a statement certifying that all railroads concur in the action;

iii) the amount intended to be waived;

iv) the number of the investigation and suspension docket involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information;

v) the points of origin and destination of the shipments and the routes of movement, if relevant;

vi) a brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted; and

vii) when certification is necessary pursuant to (ii) above, it should be in the following format:

The (name of petitioning railroad) hereby certifies that it holds the written concurrence of all of the railroads named in this petition.

By its ______________________ (petitioner's title) ________________.
Illinois Commerce Commission

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Dated at ____________, this ____ day of ________, 19 ___.

______________________________
(petitioner's signature)

B) Public Notice – Petitions to waive collection of insignificant amounts will be made available by the Commission for public inspection on date of receipt, in the Chief Clerk's office.

C) Contested Petitions –

i) Any interested person (as defined in Section 1580.90(b)(6) of this Part) may protest the waiver of monies due and such protest shall be filed with the Commission within 30 days of the Commission's receipt of the railroad's Letter of Intent to Waive Insignificant Amounts. If the protest is not filed within the 30-day period, it will not be considered as being timely filed.

ii) The protest should be in the form of a Letter of Objection and shall identify the investigation and suspension docket number, shall clearly state the reasons for objection and shall certify (according to Section 1580.90(e)(2) of this Part) that a copy of the Letter of Objection has been served on all parties named in the Letter of Intent to Waive Insignificant Amounts.

iii) Replies to a Letter of Objection shall be filed no later than the 45th day after the Commission's receipt of the Letter of Intent to Waive Insignificant Amounts. If the reply to the protest is not filed within the 45-day period, it will not be considered as being timely filed.

iv) If the Letter of Objection is timely filed, the Commission will consider the Letter of Intent to Waive Insignificant Amounts as being contested. The Commission will notify all parties to the proceeding that the petition is contested and the railroad shall not be allowed to take any further action until the Commission makes its findings and enters
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an appropriate order granting or denying the petition to waive monies due. Further, the filing of a Letter of Disposition with the Commission will not be required.

D) Uncontested Petitions – A Letter of Intent to Waive Insignificant Amounts which is not contested shall be considered an order of the Commission authorizing the action contemplated in the petition 45 days after the Commission's receipt of the petition. Within 30 days after the expiration of the 45-day period, the railroad filing the petition shall file a Letter of Disposition informing the Commission of the action taken, the date of the action and the amount of monies waived.

3) Freight Charges $2,000.00 or Less:

A) If the amount to be waived is $2,000.00 or less, no petition need be filed prior to waiver of monies due, provided that this exemption may be invoked by the railroad only once for any person (as defined in Section 1580.90(b)(6) of this Part) who uses the original rate during the suspension period.

B) However, a Letter of Disposition informing the Commission of the investigation and suspension docket number, the action taken, the date of the action and the amount of monies due that were waived shall be submitted to the Commission within 30 days of the waiver.
### Section 1580. APPENDIX A  Statement of Monetary Adjustment

Claim of ____________________________, under decision of the Illinois Commerce Commission in Docket No. ______________.

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Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for refund (or monies due) previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof).

__________________________

(Claimant)

By ____________________________

SUBCHAPTER c

__________________________

(Address)

__________________________

(Date)
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Total amount of refund (or monies due) $______________. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date _______________ concurred² in: _______________ Company ___________ Company.

Defendant Collecting Carrier, Defendant³ ________________.

By ________________, Auditor. By ________________, Auditor.

¹ Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in other capacity.

² For concurring certificate in case the collecting carrier is not a defendant.

³ If not a defendant, strike out the word "defendant."
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1) **Heading of the Part:** Market Dominance by Rail Carriers

2) **Code Citation:** 92 Ill. Adm. Code 1585

3) **Section Numbers:**

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4) **Statutory Authority:** Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved:** This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) **Will this proposed repealer replace any emergency amendments currently in effect?** No

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

8) **Does this proposed repealer contain incorporations by reference?** No

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives:** This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **Time, Place and Manner in which interested persons may comment on this proposed repealer:** Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* with:

    Steven L. Matrisch  
    Office of Transportation Counsel  
    Transportation Division  
    Illinois Commerce Commission  
    527 East Capitol Avenue  
    Springfield, IL 62701  
    (217) 782-6447  
    smatris@icc.state.il.us
12) 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

13) Regulatory Agenda on which this rulemaking was summarized: This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Repealer begin on the next page:
LLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1585
MARKET DOMINANCE BY RAIL CARRIERS (REPEALED)

Section 1585.10 Intramodal Competition
1585.20 Intermodal Competition
1585.30 Geographic Competition
1585.40 Product Competition

AUTHORITY: Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

SOURCE: Peremptory rule adopted at 6 Ill. Reg. 3885, effective March 29, 1982; emergency repealer, emergency rule at 6 Ill. Reg. 6784, effective May 21, 1982 for a maximum of 150 days; rule repealed, new rule adopted at 6 Ill. Reg. 13266, effective October 15, 1982; codified at 8 Ill. Reg. 865; Part recodified at 10 Ill. Reg. 18000; repealed at 29 Ill. Reg. _______, effective ____________.

Section 1585.10 Intramodal Competition

a) Intramodal competition refers to competition between two or more railroads transporting the same commodity between the same origin and destination. A shipper has rail alternatives when, for a given purpose, he can be served by more than one railroad or combination of different railroads. The degree to which these alternatives compete with one another depends on such factors as:

1) the number of rail alternatives;

2) the feasibility of each alternative as evidenced by:

   A) physical characteristics of the route associated with each alternative that are indicative of the feasibility of using that alternative for the traffic in question (e.g., circuitry, track conditions, etc.); and

   B) the direct access of both the shipper and the receiver to each of the
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rail alternatives as evidenced by individual rail sidings, neutral terminal companies or reciprocal switching; or if direct access is not available, then the feasibility of using local trucking to transport the commodity to or from terminals;

3) the transportation costs associated with each alternative (to determine if actual use of alternatives is due to excessive rates charged by the rail carrier in question);

4) collective ratemaking among the railroads in question as evidenced by rate bureau involvement; and

5) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

b) These factors should be considered in connection with the preparation and submission of evidence pertaining to the presence or absence of effective intramodal competition. This list is neither exhaustive nor mandatory but provides a general indication of the type of evidence that would be appropriate.

Section 1585.20 Intermodal Competition

Intermodal competition refers to competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination. Motor and water carriage are the main sources of intermodal competition for railroads.

a) Water Carriage –

1) Water carriage is restricted to certain geographic areas and is generally used for commodities moving in bulk. The evidence required to demonstrate effective competition between rail and water alternatives is in many respects similar to that required for intramodal competition among rail carriers. Parties in a rate case should provide evidence along the following lines:

A) the number of alternatives involving different carriers;

B) the feasibility of each alternative as evidenced by:
NOTICE OF PROPOSED REPEALER

i) pertinent physical characteristics, for the product in question, of the transportation or routing associated with each alternative;

ii) the access of both the shipper and receiver to each alternative; and

C) the transportation costs of each alternative.

2) Again, these factors are not exhaustive.

b) Motor Carriage –

1) Unlike rail or water alternatives, the availability of many motor carrier alternatives for transportation services between two points can, in most instances, be taken for granted. Therefore, the feasibility of using motor carriage as an alternative to rail may be viewed as depending exclusively on the nature of the product and the needs of the shipper or receiver. Effective competition from motor carriage may be deduced from the following types of evidence:

A) the amount of the product in question that is transported by motor carrier where rail alternatives are available;

B) the amount of the product that is transported by motor carrier under transportation circumstances (e.g., shipment size and distance) similar to rail;

C) physical characteristics of the product in question that may preclude transportation by motor carrier; and

D) the transportation costs of the rail and motor carrier alternatives.

2) Other types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail will also be considered.

Section 1585.30 Geographic Competition

a) Geographic competition may be described as a restraint on rail pricing stemming from a shipper's or receiver's ability to get the product to which the rate applies
from another source, or ship it to another destination. Because shippers and receivers can do this, the railroad must compete with the railroad serving the alternate source or destination. Geographic competition among rail carriers is nontrivial for commodities in which transportation costs account for a substantial portion of the delivered price. To establish the potential for geographic competition, evidence should be submitted concerning the following:

1) the number of alternative geographical sources of supply or alternative destinations available to the shipper or receiver for the product in question;

2) the number of these alternative sources or destinations served by different carriers; and

3) that the product available from each source or required by each destination is the same.

b) Such evidence is sufficient only to indicate whether effective geographic competition is possible. To determine whether effective geographic competition actually exists, evidence showing the feasibility of each source or destination and the likelihood of competition should be presented. This evidence may be as follows:

1) the distance associated with each alternative source or destination;

2) relevant physical characteristics of the route associated with each alternative;

3) the access of the shipper or receiver to each transportation alternative;

4) the capacity of each source to supply the product in question or the capacity of each destination to absorb the product in question;

5) the transportation costs associated with each alternative;

6) collective ratemaking among the railroads in question as evidenced by rate bureaus; and

7) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to
c) It is to be emphasized that these guidelines are not intended to encompass all pertinent evidence.

Section 1585.40 Product Competition

a) Product competition occurs when a receiver or shipper can use a substitute(s) for the product covered by the rail rate. In that case, the railroad must compete with the railroad or other mode which carries that other product and, again, must keep its rate competitive if it wants the traffic. Evidence as to the existence of product competition should reflect the availability to the shipper or receiver of feasible substitutes and show that these substitutes can be obtained through the use of other carriers or modes without substantially greater cost, transportation or otherwise. To demonstrate whether a feasible substitute exists, the following types of evidence, among others, may be submitted:

1) use of a substitute product(s) by the receiver or shipper in question or by others with similar needs and under similar conditions;

2) the prices of the substitute product(s) relative to the product in question;

3) the efficiency of the substitute product(s) relative to the product in question; and

4) the explicit and implicit transportation costs of the substitute product(s) and the product in question.

b) The above factors are not intended to be exhaustive.
ILLINOIS REGISTER

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

1) **Heading of the Part**: Complaints Against Rail Carrier Rates

2) **Code Citation**: 92 Ill. Adm. Code 1590

3) **Section Numbers**: Proposed Action:
   - 1590.10 Repeal
   - 1590.20 Repeal
   - 1590.30 Repeal
   - 1590.40 Repeal
   - 1590.50 Repeal
   - 1590.60 Repeal
   - 1590.70 Repeal
   - 1590.80 Repeal
   - 1590.90 Repeal
   - 1590.100 Repeal
   - 1590.110 Repeal
   - 1590.120 Repeal
   - 1590.130 Repeal
   - 1590.140 Repeal
   - 1590.150 Repeal
   - 1590.160 Repeal
   - 1590.APPENDIX A Repeal

4) **Statutory Authority**: Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved**: This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) **Will this proposed repealer replace any emergency amendments currently in effect?** No

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

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ILLINOIS REGISTER

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NOTICE OF PROPOSED REPEALER

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12) 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

13) Regulatory Agenda on which this rulemaking was summarized: This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

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NOTICE OF PROPOSED REPEALER

TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1590
COMPLAINTS AGAINST RAIL CARRIER RATES (REPEALED)

Section
1590.10  Formal Complaints – General Allegations
1590.20  Formal Complaints – When Damages Sought
1590.30  Formal Complaints – Copies
1590.40  Formal Complaints – Tariff or Schedule References
1590.50  Formal Complaints – Prayers for Relief
1590.60  Amended and Supplemental Formal Complaints
1590.70  Answers and Cross Complaints to Formal Complaints
1590.80  Satisfaction of Complaint
1590.90  Signature and Verification
1590.100 Certificate of Service
1590.110 Statements of Claimed Damage Based on Commission Findings
1590.120 Zone of Rate Flexibility
1590.130 Market Dominance
1590.140 Reasonable Rates
1590.150 Burden of Proof
1590.160 Nonapplicability
1590.APPENDIX A  Reparation Statement

AUTHORITY:  Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].


Section 1590.10  Formal Complaints – General Allegations

A formal complaint shall be so drawn as to fully and completely advise the parties defendant and the Commission in what respects the provisions of the Act have been or are being violated or will be violated, and shall set forth briefly and in plain language the facts claimed to constitute
such violations. If two or more sections or subsections of the Act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute violation of one section, subsection or requirement shall be stated separately from those claimed to constitute a violation of another section, subsection or requirement when that can be done by reference or otherwise without undue repetition.

Section 1590.20 Formal Complaints – When Damages Sought

a) A formal complaint seeking damages, when permitted under the Act, shall be filed within the statutory period, and shall contain such data as will serve to identify with reasonable definiteness the shipments or transportation services in respect of which damages are sought. Such complaint shall state:

1) that complainant makes claim for damages;

2) the name of each individual seeking damages;

3) the names of defendants against which claim is made;

4) the commodities, the rate applied, the date when the charges were paid, by whom paid, and by whom borne;

5) the period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery;

6) the points of origin and destination, either specifically or, where they are numerous, by definite indication of a defined territorial or rate group of the points of origin and destination and, if known, the routes of movement; and

7) the nature and amount of the injury sustained by each claimant.

b) If a complaint seeking the award of damages contains a claim on any shipment which has been the subject of a previous informal or formal complaint to the Commission, reference to such complaint shall be given.

Section 1590.30 Formal Complaints – Copies

The original of each formal complaint, amended or supplemental formal complaint, or cross
complaint, shall be accompanied by copies in sufficient number to enable the Commission to serve one upon each defendant, including each receiver or trustee, and retain two copies in addition to the original.

Section 1590.40 Formal Complaints – Tariff or Schedule References

The several rates, charges, schedules, classifications, regulations or practices on which complaint is made shall be set out by specific reference to the tariffs or schedules in which they appear, whenever that is feasible.

Section 1590.50 Formal Complaints – Prayers for Relief

a) Generally – A formal complaint in which relief for the future is sought should contain a detailed statement of the relief desired. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should be broader than those to which the complainant's evidence is to be directed at the hearing.

b) Specific Prayer for Damages – Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically prayed for, or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding.

Section 1590.60 Amended and Supplemental Formal Complaints

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have occurred within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants.

Section 1590.70 Answers and Cross Complaints to Formal Complaints

a) Generally – An answer may simultaneously be responsive to a formal complaint and to any amendment or supplement thereof. It shall be drawn so as to fully and completely advise the parties and the Commission of the nature of the defense and shall admit or deny specifically and in detail each material allegation of the pleading answered. An answer may embrace a detailed statement of any counterproposal which a defendant may desire to submit. Unless the issue is such that separate answers are required, answer for all defendants may be filed on their behalf by one defendant in one document, in which event the answer must show
clearly the names of all defendants joining therein, and their concurrence.

b) Cross Complaints – A cross complaint, alleging that other persons, parties to the proceeding, having violated the Act or requirements established pursuant thereto, or seeking relief against them under the Act, may be tendered for filing by a defendant with its answer.

c) Time for Filing Copies – Unless otherwise directed by the Commission, an answer to a complaint shall be filed within 20 days after the day on which the complaint was served. The original and two copies of an answer shall be filed with the Commission.

d) When Issue Joined – If any defendant answers or fails to file and serve an answer within the period specified in paragraph (c) above, issue thereby is joined as to such defendant.

Section 1590.80  Satisfaction of Complaint

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties shall be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

Section 1590.90  Signature and Verification

a) The complaint, answer and other pleadings relating to a complaint proceeding shall be signed in ink and the signer's address shall be stated.

b) The facts alleged in a complaint, answer or other pleading shall be verified by the person on whose behalf it is filed. If a complaint, answer or other pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization.

Section 1590.100  Certificate of Service

Proof of service of any paper shall be by certificate of attorney, affidavit or acknowledgement. A certificate of service shall be in the following form:

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by (here state the precise manner of making service).
Section 1590.110  Statements of Claimed Damage Based on Commission Findings

a) When the Commission finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with Appendix A.

b) The statement shall not include any shipment not covered by the Commission's findings, or any shipment on which complaint was not filed with the Commission within the statutory period.

c) The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint.

d) If the shipments moved over more than one route, a separate statement shall be prepared for each route, and separately numbered, except that shipments, as to which the collecting carrier is in each instance the same, may be listed in a single statement if grouped according to routes.

e) The statement, together with the paid freight bills on the shipments, or true copies thereof, shall then be forwarded to the carrier which collected the charges, for verification and certification as to its accuracy. All discrepancies, duplications or other errors in the statements shall be adjusted by the parties and corrected, agreed statements submitted to the Commission.

f) The certificate shall be signed in ink by a general accounting officer of the carrier and shall cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate shall be concurred in by like signature on behalf of a carrier defendant.

g) Statements so prepared and certified shall be filed with the Commission whereupon it will consider entry of an order awarding damages.

Section 1590.120  Zone of Rate Flexibility
Base rates increased by the quarterly rail cost adjustment factor may not be found to exceed a reasonable maximum for the transportation involved. Complaints against rate increases effected under subsections (c) and (d) of 49 U.S.C. 10707a shall be considered pursuant to provisions of subsection (e) of said Section.

**Section 1590.130 Market Dominance**

a) The Commission shall determine within 90 days of the start of a complaint proceeding whether the carrier has market dominance over the transportation to which the rate applies. If the Commission finds that the carrier has market dominance, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. In making a determination of market dominance, the Commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applied if the rail carrier proves that the rate charged results in a revenue-variable cost percentage which is less than that stated in 49 U.S.C. 10709(d)(2).

b) Evidentiary guidelines for the determination of whether or not the railroad has market dominance over the transportation to which the rate applies shall be found in 92 Ill. Adm. Code 1585, Market Dominance by Rail Carriers.

c) If the Commission determines that a rail carrier does not have market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation shall be reasonable.

**Section 1590.140 Reasonable Rates**

a) Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for such carrier is presumed to be not reasonable.

b) Rail rates which equal or exceed the variable cost of providing the transportation are conclusively presumed to contribute to the going concern value of that rail carrier, and are therefore presumed not to be below a reasonable minimum.

c) In determining whether a rate is reasonable, the Commission shall consider the policy that railroads earn adequate revenues as well as evidence of the following:

1) the amount of traffic which is transported at revenues which do not
contribute to going concern value and efforts made to minimize such traffic;

2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

Section 1590.150  Burden of Proof

a) Jurisdiction – The defendant railroad shall bear the burden of showing that the Commission lacks jurisdiction to review a rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. 10709(d)(2). The railroad shall meet its burden of proof by showing the revenue-variable cost percentage for the transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. 10709(d)(2). A complainant may rebut the railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the threshold percentage cited in 49 U.S.C. 10709(d)(2).

b) Reasonableness of Existing Rates:

1) a party complaining that an existing rate is unreasonably high shall bear the burden of proving that such rate is not reasonable;

2) a party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and is therefore unreasonably low.

3) Savings Provisions –

A) Any interested party may file a complaint alleging that an intrastate railroad rate which was in effect on the effective date of the Staggers Act (October 1, 1980) is subject to market dominance under the provisions of 49 U.S.C. 10709 and is not reasonable under the provisions of 49 U.S.C. 10701a. Such complaint must have been filed with the Illinois Commerce Commission within 180 days of the effective date of the Staggers Act, i.e., by March
ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

30, 1981.

B) Any rate which is not challenged in a complaint filed by March 30, 1981, or which is challenged in such a complaint but

i) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or

ii) the rate is found to be reasonable,

shall be deemed to be lawful and may not thereafter be challenged in the Commission or in any court other than an appeal from a decision of the Commission.

C) These provisions shall not apply to any rate under which the volume of traffic transported during the twelve-month period immediately preceding the effective date of the Staggers Act did not exceed 500 net tons and has increased tenfold within the three-year period immediately preceding the bringing of a challenge to the reasonableness of such rate.

D) The complainant shall bear the burden of proving that a rate in effect on October 1, 1980, as described in this Section, is unreasonable.

Section 1590.160 Nonapplicability

Complaints shall not be entertained by the Commission to the extent that they challenge the reasonableness of the following rate adjustments:

a) general rate increases;

b) inflation-based rate increases; or

c) fuel adjustment surcharges.
Section 1590. APPENDIX A  Reparation Statement

Claim of ________________________, under decision of the Illinois Commerce Commission in Docket No. ____________.

______________________  Date of shipment.
______________________  Date of delivery or tender of delivery.
______________________  Date charges were paid.
______________________  Car initials.
______________________  Car number.
______________________  Origin.
______________________  Destination.
______________________  Route.
______________________  Commodity.
______________________  Weight.
______________________  Rate.
______________________  Amount.
______________________  Rate.
______________________  Amount.
______________________  Reparation on basis of Commission's decision.
______________________  Charges paid by 1.

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof).

_____________________________________________(Claimant)

By ____________________________________________

_____________________________________________(Address)

_____________________________________________(Date)
NOTICE OF PROPOSED REPEALER

Total amount of reparation $ __________. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date ___________ Concurred\(^2\) in: _______________ Company
_______________ Company. Defendant Collecting Carrier, Defendant\(^3\) _______________.

By ______________________, Auditor. By ______________________, Auditor.

\(^1\) Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

\(^2\) For concurring certificate in case collecting carrier is not a defendant.

\(^3\) If not a defendant, strike the word "defendant."
NOTICE OF PROPOSED REPEALER

1) **Heading of the Part:** Rail Carrier Contract Rates

2) **Code Citation:** 92 Ill. Adm. Code 1595

3) **Section Numbers:**

<table>
<thead>
<tr>
<th>Section Numbers</th>
<th>Proposed Action</th>
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<tbody>
<tr>
<td>1595.1</td>
<td>Repeal</td>
</tr>
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<td>Repeal</td>
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4) **Statutory Authority:** Implementing Section 18c-7301 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7301 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved:** This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

6) **Will this proposed repealer replace any emergency amendments currently in effect?** No

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

8) **Does this proposed repealer contain incorporations by reference?** No

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives:** This proposed repealer neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **Time, Place and Manner in which interested persons may comment on this proposed repealer:** Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* with:

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ILLINOIS REGISTER

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NOTICE OF PROPOSED REPEALER

12) 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

13) Regulatory Agenda on which this rulemaking was summarized: This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

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ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1595
RAIL CARRIER CONTRACT RATES (REPEALED)

Section
1595.1  Adoption of 49 CFR 1313 by Reference
1595.2  Jurisdiction; contract approval/disapproval
1595.7  Contract filing, title pages, and numbering
1595.8  Contract and contract summary availability


Section 1595.1  Adoption of 49 CFR 1313 by Reference

The Illinois Commerce Commission ("Commission") adopts 49 CFR 1313, as of December 1, 1988, as its rules on rail carrier contract rates, subject to the exceptions set forth in this Part. No incorporation in this Part includes any later amendment or edition.

Section 1595.2  Jurisdiction; contract approval/disapproval

In Section 1313.2(a)(1), delete "49 U.S.C. 10713" and substitute "49 U.S.C. 11501(b)(1)."

Section 1595.7  Contract filing, title pages, and numbering

a) In Section 1313.7(a)(1), delete the last sentence. There is no fee for the filing of contracts with the Commission pursuant to this Part.
In Section 1313.7(a)(5), delete "Interstate Commerce Commission, Section of Tariffs, Washington, DC 20423" and substitute Illinois Commerce Commission
Transportation Division
Rail Rate and Tariff Section
527 East Capitol Avenue
Springfield, Illinois 67206

In Section 1313.7(c), delete "ICC" and substitute "IllCC."

Section 1595.8 Contract and contract summary availability

In Section 1313.8(b)(1), delete "Bureau of Traffic and Contract Advisory Service" and insert "Transportation Division."
ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

1) **Heading of the Part:** Exemption of Rail Carrier Transportation

2) **Code Citation:** 92 Ill. Adm. Code 1600

3) **Proposed Action:**
   - 1600.10 Repeal
   - 1600.20 Repeal

4) **Statutory Authority:** Implementing Section 18c-7101 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7101 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved:** This Part is being repealed because Federal law preempts State jurisdiction over the subject matter.

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    smatris@icc.state.il.us

12) **Initial Regulatory Flexibility Analysis:**
NOTICE OF PROPOSED REPEALER

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

13) Regulatory Agenda on which this rulemaking was summarized: This repealer was not included on either of the 2 most recent regulatory agendas because: the Commission did not anticipate the need at that time.

The full text of the Proposed Repealer begin on the next page:
ILLINOIS REGISTER

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED REPEALER

TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1600
EXEMPTION OF RAIL CARRIER TRANSPORTATION (REPEALED)

Section
1600.10 Exemptions Granted by the Interstate Commerce Commission
1600.20 Exemption Proceedings Initiated by Illinois


Section 1600.10 Exemptions Granted by the Interstate Commerce Commission

Exemptions granted by the Interstate Commerce Commission as to rates, classifications, rules, and practices are standards from which states cannot deviate, pursuant to Illinois Commerce Commission v. Interstate Commerce Commission, 749 F.2d 875 (D.C. Cir., 1984).

Section 1600.20 Exemption Proceedings Initiated by Illinois

a) The Illinois Commerce Commission ("Commission") may conduct exemption proceedings, initiated either upon its own motion or pursuant to a petition, to consider the exemption of a person, class of persons, or a transaction or service.

b) The process for considering exemptions shall be through notice and hearing as provided for in Section 18c-2102 of the Illinois Commercial Transportation Law (Ill. Rev. Stat. 1985, ch. 95½, par. 18c-2102). If, after a hearing or hearings on a proposed exemption, the Commission decides the issue warrants further study, it shall initiate rulemaking in accordance with Section 5.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1005.01).
c) The Illinois Commerce Commission shall exempt a person, class of persons, or a transaction or service when it finds that further regulation:
   1) is not necessary to carry out state and national transportation policy; and
   2) either
      A) the transaction or service is of limited scope, or
      B) further regulation is not needed to protect shippers from the abuse of market power.

d) The Commission shall revoke entirely or in part an exemption which it has previously granted if it determines that such action is necessary to carry out state and national transportation policy.
ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

1) **Heading of the Part**: Hazardous Materials

2) **Code Citation**: 92 Ill. Adm. Code 1605

3) **Section Numbers**: Proposed Action:
   - 1605.10 Amendment

4) **Statutory Authority**: Implementing Section 18c-7404 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7404 and 18c-1202].

5) **A Complete Description of the Subjects and Issues Involved**: These changes are being proposed to update references to federal rules governing the transport of hazardous materials by rail.

6) **Will this proposed amendment replace emergency amendments currently in effect?** No

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

8) **Does this proposed amendment contain incorporations by reference?** Yes

9) **Are there any other proposed amendments pending on this Part?** No

10) **Statement of Statewide Policy Objectives**: This proposed amendment neither creates nor expands any State mandate on units of local government, school districts, or community college districts.

11) **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* with:

    Steven L. Matrisch  
    Office of Transportation Counsel  
    Transportation Division  
    Illinois Commerce Commission  
    527 East Capitol Avenue  
    Springfield IL  62701  
    (217) 782-6447  
    smatrisc@icc.state.il.us

12) **Initial Regulatory Flexibility Analysis**:
ILLINOIS COMMERCES COMMISSION

NOTICE OF PROPOSED AMENDMENTS

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

13)  Regulatory Agenda on which this rulemaking was summarized:  This rulemaking was not included on either of the 2 most recent regulatory agendas because:  the Commission did not anticipate the need at that time.

The full text of the Proposed Amendment begin on the next page:
ILLINOIS COMMERCe COMMISSION

NOTICE OF PROPOSED AMENDMENTS

TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCe COMMISSION
SUBCHAPTER c: RAIL CARRIERS

PART 1605
HAZARDOUS MATERIALS

Section 1605.10  Adoption of Federal Regulations by Reference

AUTHORITY: Implementing Section 18c-7404 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-7404 and 18c-1202].


Section 1605.10  Adoption of Federal Regulations by Reference

a) The following parts of 49 CFR, as of October 1, 2001, are adopted by reference as regulations of the Illinois Commerce Commission for the transportation of hazardous materials by rail carriers.

1) Part 171 (except sections 15 and 16);

2) Part 172;

3) Part 173 (except sections 27 and 33)(except that all references to "small arms," "small arms primers," "rifle grenades," "percussion caps," "cartridge cases," and other terms relating to firearms or ammunition for personal use are omitted);

4) Part 174;

5) Part 177.817c;

6) Part 178 (except subpart J); and

7) Part 179; and

8) Part 180 (except subpart E).
b) No incorporation in this Part of the Code of Federal Regulations involves any later amendment or edition.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)
POLLUTION CONTROL BOARD

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


3) Section numbers: Proposed Action:
   720.111 Amend
   720.122 Amend

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

5) A complete description of the subjects and issues involved: The following briefly describes the subjects and issues involved in the docket R05-2 rulemaking of which the amendments to Part 720 are a single segment. Also affected are 35 Ill. Adm. Code 722, 724, and 725, each of which is covered by a separate notice in this issue of the Illinois Register. A comprehensive description is contained in the Board’s opinion and order of December 16, 2004, proposing amendments in docket R05-2 for public comment, which opinion and order is available from the address below. As is explained in that opinion, the Board will receive public comment on the proposed amendments for 45 days from the date they appear in the Illinois Register before proceeding to adopt amendments based on this proposal.

This proceeding would update the Illinois RCRA Subtitle C hazardous waste rules to correspond with amendments adopted by the United States Environmental Protection Agency (USEPA) that appeared in the Federal Register during a single update period. The docket and time period that is involved in this proceeding is the following:

|--------|--------------------------------------------------------------------------------------------------|

The R05-2 docket amends rules in Parts 720, 722, 724, and 725. Prior to discussing the specific changes made to this Part, the Board will describe the docket as a whole, since amendments to various Parts may be inter-related. The following table briefly summarizes the federal actions in the update period:

| April 22, 2004 (69 Fed. Reg. 21737) | USEPA issued rules that allow members of the National Environmental Performance Track Program to accumulate hazardous waste for an extended time before becoming subject to the hazardous waste treatment, storage, and disposal facility standards. |
USEPA adopted national emission standards for hazardous air pollutants (NESHAP) applicable to automobile and light duty truck surface coating operations. Two limited segments of the amendments exclude purged coatings and solvents from operations subject to the NESHAP from the hazardous waste air emission standards applicable to equipment leaks at hazardous waste treatment, storage, and disposal facilities.

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

USEPA adopted a direct final rule that corrected its April 22, 2004 National Environmental Performance Track Program amendments.

Thus, the Board is acting in this consolidated R05-2 docket on the following USEPA amendments:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 22, 2004</td>
<td>Extension of the hazardous waste accumulation time for members of the National Environmental Performance Track Program.</td>
</tr>
<tr>
<td>April 26, 2004</td>
<td>Exclusion of purged coatings and solvents from operations subject to the NESHAP from the hazardous waste air emission standards.</td>
</tr>
<tr>
<td>October 25, 2004</td>
<td>Correction to the April 22, 2004 amendments.</td>
</tr>
</tbody>
</table>

Specifically, the amendments to Part 720 implement segments of the federal amendments of April 22, 2004 and April 26, 2004. The amendments update the version of 40 CFR 63 incorporated by reference to include both sets of amendments.

Tables appear in the Board’s opinion and order of December 16, 2004 in docket R05-2 that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the December 16, 2004 opinion and order in docket R05-2.
POLLUTION CONTROL BOARD

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

6) Will these proposed amendments replace any emergency amendments currently in effect? No

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

8) Do these proposed amendments contain incorporations by reference? Yes. Section 720.111 is the centralized location for the incorporations by reference for all of the hazardous waste and underground injection control regulations (Parts 702 through 705, 720 through 726, 728, 730, 733, 738, and 739). The amendments to Part 720.111 update the versions of the Code of Federal Regulations incorporated by reference to the latest version available. This action embraces the federal amendments of April 22, 2004 and April 26, 2004, which are in the 2004 edition of the CFR. The Board further used this opportunity to review many of the incorporations in this Section, which has resulted in updating the source information and the versions of certain documents published by the Organisation for Economic Co-operation and Development (OECD). Second, incorporations were added for U.S. Department of Transportation regulations formerly cited in 35 Ill. Adm. Code 722 without incorporation. Third, the amendments move the incorporations of various federal regulations by reference into Section 720.111 that formerly appeared in Parts 722, 724, and 725. Finally, the amendments update the version of two federal statutes incorporated by reference to the latest edition available.


<table>
<thead>
<tr>
<th>Section numbers</th>
<th>Proposed action</th>
<th>Illinois Register citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>720.110</td>
<td>Amend</td>
<td>28 Ill. Reg. 15038, November 19, 2004</td>
</tr>
</tbody>
</table>
 NOTICE OF PROPOSED AMENDMENTS

10) **Statement of statewide policy objectives:** These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

11) **Time, place and manner in which interested persons may comment on this proposed rulemaking:** The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R05-2 and be addressed to:

   Ms. Dorothy M. Gunn, Clerk
   Illinois Pollution Control Board
   State of Illinois Center, Suite 11-500
   100 W. Randolph St.
   Chicago IL 60601

   Please direct inquiries to the following person and reference Docket R05-2:

   Michael J. McCambridge
   Staff Attorney
   Illinois Pollution Control Board
   100 W. Randolph 11-500
   Chicago IL 60601
   Phone: 312-814-6924
   E-mail: mccambm@ipcb.state.il.us

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

12) **Initial regulatory flexibility analysis:**

   A) **Types of small businesses, small municipalities, and not-for-profit corporations affected:** This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste. These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

   B) **Reporting, bookkeeping or other procedures required for compliance:** The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports,
POLLUTION CONTROL BOARD

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waste analyses and maintenance of operating records. These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2002)].

13) Regulatory agenda on which this rulemaking was summarized: July 2004

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

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 720
HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

SUBPART A: GENERAL PROVISIONS

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

SUBPART B: DEFINITIONS AND REFERENCES

Section 720.110 Definitions
Section 720.111 References

SUBPART C: RULEMAKING PETITIONS AND OTHER PROCEDURES

Section 720.120 Rulemaking
Section 720.121 Alternative Equivalent Testing Methods
Section 720.122 Waste Delisting
Section 720.123 Petitions for Regulation as Universal Waste
Section 720.130 Procedures for Solid Waste Determinations
Section 720.131 Solid Waste Determinations
Section 720.132 Boiler Determinations
Section 720.133 Procedures for Determinations
Section 720.140 Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis
Section 720.141 Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities

720.APPENDIX A Overview of 40 CFR, Subtitle C Regulations

AUTHORITY: Implementing Sections 7.2, 13, and 22.4 and authorized by Section 27 of the...
NOTICE OF PROPOSED AMENDMENTS

Environmental Protection Act [415 ILCS 5/7.2, 13, 22.4, and 27].


SUBPART B: DEFINITIONS AND REFERENCES

Section 720.111 References

The following documents are incorporated by reference for the purposes of this Part and 35 Ill.
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Adm. Code 703 through 705, 721 through 726, 728, 730, 733, 738, and 739:

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

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


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

ANSI B31.3 and B31.4. See ASME/ANSI B31.3 and B31.4.

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


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

"Chemical Plant and Petroleum Refinery Piping," ASME/ANSI B31.3-1987, as supplemented by B31.3a-1988 and B31.3b-1988. Also available from ANSI.
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"Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols," ASME/ANSI B31.4-1986, as supplemented by B31.4a-1987. Also available from ANSI.

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


ASTM D 2267-88, Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography, approved
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MICE. Methods Information Communication Exchange Service, 703-821-4690:


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


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


NTIS. Available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, 703-605-6000 or 800-553-6847:

APTI Course 415: Control of Gaseous Emissions, PB80-208895, December 1981.


"Guideline on Air Quality Models," Revised 1986 (document number PB86-245-248 (Guideline) and PB88-150-958 (Supplement), also set forth at 40 CFR 51, Appendix W).

"Method 164, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry" (document number PB99-121949).


Table 2.B of the Annex of OECD Council Decision C(88)90(Final) (May 27, 1988), amended by C(94)152(Final) (July 28, 1994), "Decision of the
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS


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

"Standard for Dual Wall Underground Steel Storage Tanks" (1986).

USDOD. Available from the United States Department of Defense:

"DOD Ammunition and Explosives Safety Standards" (DOD 6055.9-STD), as in effect in July 1999.

The Motor Vehicle Inspection Report (DD Form 626), as in effect on November 8, 1995.

Requisition Tracking Form (DD Form 1348), as in effect on November 8, 1995.

The Signature and Tally Record (DD Form 1907), as in effect on November 8, 1995.

Special Instructions for Motor Vehicle Drivers (DD Form 836), as in effect on November 8, 1995.

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


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


POLLUTION CONTROL BOARD

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Table 2.B of the Annex of OECD Council Decision C(88)90(Final) (May 27, 1988).

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


USGSA. Available from the United States Government Services Administration:

Government Bill of Lading (GBL) (GSA Standard Form 1109), as in effect on November 8, 1995.


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40 CFR 51.100(ii) *(2004)(2002)*


40 CFR 52.741, Appendix B *(2004)(2002)*

40 CFR 60 *(2004)(2002)*

40 CFR 61, Subpart V *(2004)(2002)*


40 CFR 142 *(2004)(2002)*


40 CFR 232.2 *(2004)(2002)*


40 CFR 262.53 through 262.57 and Appendix *(2004)*


40 CFR 265, Appendices I and III through V *(2004)*


40 CFR 270.5 *(2004)(2002)*


40 CFR 423, appendix A *(2004)(2002)*

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c) Federal Statutes:

Sections 201(v), 201(w), and 360b(j) of the Federal Food, Drug, and Cosmetic Act (FFDCA; 21 USC 321(v), 321(w), and 512(j)), as amended through January 2, 2001 October 25, 1994.


d) This Section incorporates no later editions or amendments.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART C: RULEMAKING PETITIONS AND OTHER PROCEDURES

Section 720.122 Waste Delisting

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

1) The petitioner demonstrates that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or acute hazardous waste; and

2) If the Board determines that there is a reasonable basis to believe that
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

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

c) Ignitable, corrosive, reactive and toxicity characteristic wastes. If the waste is listed in codes "I," "C," "R_2," or "E" in Subpart D of 35 Ill. Adm. Code 721:

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

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

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

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

   A) It does not contain the constituent or constituents (as defined in Appendix G of 35 Ill. Adm. Code 721) that caused USEPA to list the waste, using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW-846, as incorporated by reference in Section 720.111(a); or

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

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

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

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

e) Acute hazardous waste. If the waste is listed with the code "H" in Subpart D of 35 Ill. Adm. Code 721:
NOTICE OF PROPOSED AMENDMENTS

1) The petitioner must demonstrate that the waste does not meet the criterion of 35 Ill. Adm. Code 111(a)(2); and

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

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

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

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

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

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

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

1) The name and address of the laboratory facility performing the sampling or tests of the waste;

2) The names and qualifications of the persons sampling and testing the waste;
3) The dates of sampling and testing;

4) The location of the generating facility;

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

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

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

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

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

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

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

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

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.
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j) After receiving a petition, the Board may request any additional information that the Board needs to evaluate the petition.

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

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


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

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

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

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

USEPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

2) The Board will mail copies of all opinions and orders to USEPA at the above addresses.

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

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

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

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

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

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
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1) **Heading of the Part:** Standards Applicable to Generators of Hazardous Waste

2) **Code Citation:** 35 Ill. Adm. Code 722

3) **Section Numbers** | **Proposed Action:**
--- | ---
722.110 | Amend
722.111 | Amend
722.112 | Amend
722.120 | Amend
722.121 | Amend
722.123 | Amend
722.130 | Amend
722.131 | Amend
722.132 | Amend
722.133 | Amend
722.134 | Amend
722.140 | Amend
722.141 | Amend
722.142 | Amend
722.143 | Amend
722.144 | Amend
722.150 | Amend
722.151 | Amend
722.152 | Amend
722.153 | Amend
722.154 | Amend
722.155 | Amend
722.156 | Amend
722.157 | Amend
722.158 | Amend
722.160 | Amend
722.170 | Amend
722.180 | Amend
722.181 | Amend
722.182 | Amend
722.183 | Amend
722.184 | Amend
722.185 | Amend
722.186 | Amend
722.187 | Amend
NOTICE OF PROPOSED AMENDMENTS

722.189 Amend
722.APPENDIX A Amend

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

5) A Complete Description of the Subjects and Issues Involved: The amendments to Part 722 are a single segment of the docket R05-2 rulemaking that also affects 35 Ill. Adm. Code 720, 724, and 725, each of which is covered by a separate notice in this issue of the Illinois Register. To save space, a more detailed description of the subjects and issues involved in the docket R05-2 rulemaking in this Illinois Register only in the answer to question 5 in the Notice of Proposed Amendments for 35 Ill. Adm. Code 720. A comprehensive description is contained in the Board’s opinion and order of December 16, 2004, proposing amendments in docket R05-2 for public comment, which opinion and order is available from the address below. As is explained in that opinion, the Board will receive public comment on the proposed amendments for 45 days from the date they appear in the Illinois Register before proceeding to adopt amendments based on this proposal.

Specifically, the amendments to Part 722 implement segments of the federal April 22, 2004 extension of the hazardous waste accumulation time for members of the National Environmental Performance Track Program.

Tables appear in the Board’s opinion and order of December 16, 2004 in docket R05-2 that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the December 16, 2004 opinion and order in docket R05-2.

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

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

7) Does this rulemaking contain an automatic repeal date? No
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8) Does this rulemaking contain incorporations by reference? Yes. The amendments add incorporation language to the citations to the U.S Department of Transportation regulations formerly only cited at Sections 722.130 through 722.134. The amendments also move the incorporations of 40 CFR 262.53 through 262.57 and the Appendix to 40 CFR 262 that formerly appeared at corresponding Sections 722.153 through 722.157 and Appendix A to Part 722 to the centralized incorporations provision at 35 Ill. Adm. Code 720.111. Finally, the additions of definitions of “amber-list waste,” amber-list controls,” “green-list waste,” green-list controls,” “red-list waste,” and “red-list controls” to Section 722.181 and the citation to the source for the red, amber, and red lists in Section 722.184(a)(4) involved adding references to their incorporation by reference in 35 Ill. Adm. Code 720.111.

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

10) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R05-2 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference Docket R05-2:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601
Phone: 312-814-6924
E-mail: mccambm@ipcb.state.il.us
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Request copies of the Board’s opinion and order at 312-814-3620, or download a copy from the Board’s Website at http:\www.ipcb.state.il.us.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

13) Regulatory Agenda on which this rulemaking was summarized: July 2004

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722.APPENDIX A Hazardous Waste Manifest

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


SUBPART A: GENERAL

Section 722.110 Purpose, Scope and Applicability

a) This Part establishes These regulations establish standards for generators of hazardous waste.

b) A generator must use 35 Ill. Adm. Code 721.105(c) and (d) must be used to determine the applicability of provisions of this Part that are dependent on calculations of the quantity of hazardous waste generated per month.

c) A generator that treats, stores or disposes of a hazardous waste on-site must only comply only with the following Sections of this Part with respect to that waste: Section 722.111, for determining whether or not the generator has a hazardous
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waste; Section 722.112, for obtaining an USEPA identification number; Section 722.140(c) and (d), for recordkeeping; Section 722.143, for additional reporting; and, if applicable, Section 722.170, for farmers, if applicable.

d) Any person that exports or imports hazardous waste that is subject to the hazardous waste manifesting requirements of this Part or subject to the universal waste management standards of 35 Ill. Adm. Code 733, to or from countries listed in Section 722.158(a)(1) for recovery, must comply with Subpart H of this Part.

e) Any person that imports hazardous waste must comply with the generator standards of this Part. This subsection corresponds with 40 CFR 262.10(e), a federal provision imposing the generator standards on a person importing hazardous waste into the United States. The regulation of international trade is a matter within the exclusive authority of the federal government. This statement maintains structural consistency with USEPA rules.

f) A farmer that generates waste pesticides that are hazardous waste and that complies with all of the requirements of Section 722.170 is not required to comply with other standards in this Part, or 35 Ill. Adm. Code 702, 703, 724, 725, or 728 with respect to such pesticides.

g) A person that generates a hazardous waste, as defined by 35 Ill. Adm. Code 721, is subject to the compliance requirements and penalties prescribed in Title VIII and XII of the Environmental Protection Act if he does not comply with the requirements of this Part.

h) An owner or operator that initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this Part.

i) A person responding to an explosives or munitions emergency in accordance with 35 Ill. Adm. Code 724.101(g)(8)(A)(iv) or (g)(8)(D) or 35 Ill. Adm. Code 725.101(c)(11)(A)(iv) or (c)(11)(D) and 35 Ill. Adm. Code 703.121(a)(4) or (c) is not required to comply with the standards of this Part.

BOARD NOTE: The provisions of Section 722.134 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section 722.134 only apply to owners or operators that are shipping hazardous waste which they generated at that facility. A generator that treats, stores or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in 35...
Section 722.111 Hazardous Waste Determination

A person that generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, must determine if that waste is a hazardous waste using the following method:

a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.

b) The person should then determine if the waste is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.Subpart D.

BOARD NOTE: Even if a waste is listed as a hazardous waste, the generator still has an opportunity under 35 Ill. Code 720.122 and 40 CFR 260.22 (1986) to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721.Subpart D, the generator shall then determine whether the waste is identified in Subpart C of 35 Ill. Adm. Code 721.Subpart C by either of the following methods:

1) Testing the waste according to the methods set forth in Subpart C of 35 Ill. Adm. Code 721.Subpart C, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or

2) Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.

d) If the generator determines that the waste is hazardous, the generator shall refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
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a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received a USEPA identification number from USEPA the Administrator.

b) A generator that has not received a USEPA identification number may obtain one by applying to the Administrator using USEPA form 8700-12. Upon receiving the request USEPA the Administrator will assign an USEPA identification number to the generator.

c) A generator must not offer his hazardous waste to transporters or to treatment, storage or disposal facilities that have not received a USEPA identification number.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART B: THE MANIFEST

Section 722.120 General Requirements

a) A generator that transports hazardous waste, or offers hazardous waste for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site.

b) A generator must designate on the manifest one receiving facility that is permitted to handle the waste described on the manifest.

c) A generator may also designate on the manifest one alternate receiving facility that is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

d) If the transporter is unable to deliver the hazardous waste to the designated receiving facility or the alternate facility, the generator must either designate another receiving facility or instruct the transporter to return the waste.

e) The requirements of this Subpart B do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1,000 kg in a calendar month where the following conditions are fulfilled:

1) The waste is reclaimed under a contractual agreement that specifies the type of waste and frequency of shipments; pursuant to which:
A) The type of waste and frequency of shipments are specified in the agreement:

2B) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

32) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

f) The requirements of this Subpart B and Section 722.132(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 35 Ill. Adm. Code 723.110(a), the generator or transporter must comply with the requirements for transporters set forth in 35 Ill. Adm. Code 723.130 and 723.131 in the event of a discharge of hazardous waste on a public or private right-of-way.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.121 Acquisition of Manifests

a) If the State of Illinois is the state to which the shipment is manifested (designated receiving consignment state), the generator must use the manifest supplied by the Agency.

b) If the State of Illinois is not the designated receiving consignment state, the generator must use the manifest required by the designated receiving consignment state. If the designated receiving consignment state does not supply and require the manifest, then the generator must use the manifest supplied by the Agency.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.123 Use of the Manifest

a) The generator shall do the following:
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1) Sign the manifest certification by hand; and

2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

3) Retain one copy, in accordance with Section 722.140(a); and

4) Send one copy of the manifest to the Agency within two working days.

b) The generator **must** give the transporter the remaining copies of the manifest.

c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator **must** send three copies of the manifest dated and signed in accordance with this Section to the owner or operator of the designated receiving facility, if that facility is in the United States, or to the last water (bulk shipment) transporter to handle the waste in the United States, if the waste is exported by water. Copies of the manifest are not required for each transporter.

d) For rail shipments of hazardous waste within the United States that originate at the site of generation, the generator **must** send at least three copies of the manifest dated and signed in accordance with this Section to the following persons:

1) The next non-rail transporter, if any; or

2) The designated receiving facility, if the waste is transported solely by rail; or

3) The last rail transporter to handle the waste in the United States, if the waste is exported by rail.

BOARD NOTE: See Section 723.120(e) and (f) for special provisions for rail or water (bulk shipment) transporters.

e) For shipments of hazardous waste to a designated receiving facility in an authorized state that has not yet obtained authorization to regulate that particular waste as hazardous, the generator **must** assure that the designated receiving facility agrees to sign and return the manifest to the generator, and that


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any out-of-state transporter signs and forwards the manifest to the designated receiving facility.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART C: PRE-TRANSPORT REQUIREMENTS

Section 722.130 Packaging

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable U.S. Department of Transportation (USDOT) regulations on packaging under 49 CFR Parts 173, 178, and 179, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 722.131 Labeling

Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable USDOT Department of Transportation regulations on hazardous materials under 49 CFR Part 172, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 722.132 Marking

a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable USDOT Department of Transportation regulations on hazardous materials under 49 CFR Part 172, incorporated by reference in 35 Ill. Adm. Code 720.111(b);

b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 416 liters (110 gallons) or less that is used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304, incorporated by reference in 35 Ill. Adm. Code 720.111(b):

HAZARDOUS WASTE – Federal Law Prohibits Improper Disposal. If found,
Section 722.133 Placarding

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under subpart F of 49 CFR Part 172, incorporated by reference in 35 Ill. Adm. Code 720.111(b), Subpart E.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.134 Accumulation Time

a) Except as provided in subsection (d), (e), (f), (g), (h), or (i) of this Section, a generator is exempt from all the requirements in Subparts G and H of 35 Ill. Adm. Code 725, except for 35 Ill. Adm. Code 725.211 and 725.214, and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the following conditions are fulfilled:

1) The waste is placed in or on one of the following types of units, and the generator complies with the applicable requirements:


   C) On drip pads, and the generator complies with Subpart W of 35 Ill. Adm. Code 725, Subpart W and maintains the following records at the facility:

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

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contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address ____________________________.

Manifest Document Number ____________________________.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
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i) A description of the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days;

and

ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; or

D) In containment buildings, and the generator complies with Subpart DD of 35 Ill. Adm. Code 725. Subpart DD (has placed its Professional Engineer (PE) certification that the building complies with the design standards specified in 35 Ill. Adm. Code 725.1101 in the facility's operating record prior to the date of initial operation of the unit). The owner or operator must maintain the following records at the facility:

i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respect to the 90 day limit, and documentation that the procedures are complied with; or

ii) Documentation that the unit is emptied at least once every 90 days;

BOARD NOTE: The Board placed the "in addition" hanging subsection that appears in the Federal rules after 40 CFR 262.34(a)(1)(iv)(B) in the introduction to subsection (a) of this Section.

2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

b) A generator that accumulates hazardous waste for more than 90 days is an operator of a storage facility. Such a generator is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 702, 703, and 705, unless the generator has been granted an extension of the 90-day period. If hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances, the generator may seek an extension of up to 30 days by means of a variance or provisional variance, pursuant to Sections 35(b), 36(c), and 37(b) of the Environmental Protection Act [415 ILCS 5/35(b), 36(c), and 37(b)] and 35 Ill. Adm. Code 180 (Agency procedural regulations).

c) Accumulation near the point of generation.

1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in containers at or near any point of generation where wastes initially accumulate that is under the control of the operator of the process generating the waste without a permit or interim status and without complying with subsection (a) of this Section, provided the generator does the following:

A) The generator complies with 35 Ill. Adm. Code 725.271, 725.272, and 725.273(a); and

B) The generator marks the generator's containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

2) A generator that accumulates either hazardous waste or acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in excess of the amounts listed in subsection (c)(1) of this Section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this Section or other applicable provisions of this Chapter. During the three day period the generator must continue to comply with subsection (c)(1) of this Section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

d) A generator that generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste per month.
kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the following conditions are fulfilled:

1) The quantity of waste accumulated on-site never exceeds 6,000 kilograms;

2) The generator complies with the requirements of Subpart I of 35 Ill. Adm. Code 725. Subpart I (except 35 Ill. Adm. Code 725.276 and 725.278);

3) The generator complies with the requirements of 35 Ill. Adm. Code 725.301;

4) The generator complies with the requirements of subsections (a)(2) and (a)(3) of this Section, Subpart C of 35 Ill. Adm. Code 725. Subpart C, and 35 Ill. Adm. Code 728.107(a)(5); and

5) The generator complies with the following requirements:

A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subsection (d)(5)(D) of this Section. The employee is the emergency coordinator.

B) The generator must post the following information next to the telephone:

i) The name and telephone number of the emergency coordinator;

ii) Location of fire extinguishers and spill control material and, if present, fire alarm; and

iii) The telephone number of the fire department, unless the facility has a direct alarm.

C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures,
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relevant to their responsibilities during normal facility operations and emergencies.

D) The emergency coordinator or designee must respond to any emergencies that arise. The following are applicable responses as follows:

i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

ii) In the event of a spill, contain the flow of hazardous waste to the extent possible and, as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil; and

iii) In the event of a fire, explosion, or other release that could threaten human health outside the facility, or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number 800-424-8802). The report must include the following information: the name, address, and USEPA identification number (Section 722.112 of this Part) of the generator; the date, time, and type of incident (e.g., spill or fire); the quantity and type of hazardous waste involved in the incident; the extent of injuries, if any; and the estimated quantity and disposition of recoverable materials, if any.

E) A report to the National Response Center pursuant to subsection (d)(5)(D)(iii) of this Section must include the following information:

i) The name, address, and USEPA identification number (Section 722.112 of this Part) of the generator;

ii) The date, time, and type of incident (e.g., spill or fire);

iii) The quantity and type of hazardous waste involved in the incident; the extent of injuries, if any; and
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iv) The estimated quantity and disposition of recoverable materials, if any.


e) A generator that generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and that must transport the waste or offer the waste for transportation over a distance of 200 miles or more for off-site treatment, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that the generator complies with the requirements of subsection (d) of this Section.

f) A generator that generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and that accumulates hazardous waste in quantities exceeding 6,000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if the generator must transport the waste or offer the waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 703, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period. If hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances, the generator may seek an extension of up to 30 days by means of variance or provisional variance pursuant to Sections 35(b), 36(c), and 37(b) of the Environmental Protection Act [415 ILCS 5/35(b), 36(c), and 37(b)].

g) A generator that generates 1,000 kilograms or greater of hazardous waste per calendar month which also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days, without a permit or without having interim status provided that the generator fulfills the following conditions:

1) The generator has implemented pollution prevention practices that reduce
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the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

2) The F006 waste is legitimately recycled through metals recovery;

3) No more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

4) The F006 waste is managed in accordance with the following conditions:

A) The F006 waste is placed in one of the following containing devices:

i) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of 35 Ill. Adm. Code 725. Subparts I, AA, BB, and CC;

ii) In tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of 35 Ill. Adm. Code 725. Subparts J, AA, BB, and CC, except 35 Ill. Adm. Code 725.297(c) and 725.300; or

iii) In containment buildings, and the generator complies with Subpart DD of 35 Ill. Adm. Code 725. Subpart DD and has placed its professional engineer certification that the building complies with the design standards specified in 35 Ill. Adm. Code 725.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the records listed in subsection (g)(4)(F) of this Section at the facility.

B) In addition, such a generator is exempt from all the requirements in Subparts G and H of 35 Ill. Adm. Code 725. Subparts G and H, except for 35 Ill. Adm. Code 725.211 and 725.214;

C) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

D) While being accumulated on-site, each container and tank is
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labeled or marked clearly with the words, "Hazardous Waste"; and


F) Required records for a containment building:

i) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

ii) Documentation that the unit is emptied at least once every 180 days.

BOARD NOTE: The Board has codified 40 CFR 262.34(g)(4)(iA)(iiiC)(I) and (g)(4)(iA)(Ciii)(2) as subsections (g)(4)(F)(i) and (g)(4)(F)(ii) because Illinois Administrative Code codification requirements do not allow the use of a fifth level of subsection indents.

h) A generator that generates 1,000 kilograms or greater of hazardous waste per calendar month, which also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, and which must transport this waste or offer this waste for transportation over a distance of 200 miles or more for off-site metals recovery may accumulate F006 waste on-site for more than 90 days, but not more than 270 days, without a permit or without having interim status if the generator complies with the requirements of subsections paragraphs (g) and (h) of this Section.

i) A generator accumulating F006 in accordance with subsections paragraphs (g) and (h) of this Section that accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste or offer this waste for transportation over a distance of 200 miles or more), or which accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a
storage facility, and such a generator is subject to the requirements of 35 Ill. Adm. Code 724 and 725 and the permit requirements of 35 Ill. Adm. Code 702 and 703, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit.

1) On a case-by-case basis, the Agency must grant a provisional variance that allows an extension of the accumulation time up to an additional 30 days pursuant to Sections 35(b), 36(c), and 37(b) of the Act [415 ILCS 5/35(b), 36(c), and 37(b)] if it finds that the F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances.

2) On a case-by-case basis, the Agency must grant a provisional variance pursuant to Sections 35(b), 36(c), and 37(b) of the Act [415 ILCS 5/35(b), 36(c), and 37(b)] that allows an exception to the 20,000 kilogram accumulation limit if the Agency finds that more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances.

3) A generator must follow the procedure of 35 Ill. Adm. Code 180 (Agency procedural rules) when seeking a provisional variance under subsection (i)(1) or (i)(2) of this Section.

i) A member of the federal National Environmental Performance Track program that generates 1,000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that the following conditions are fulfilled:

1) The generator accumulates the hazardous waste for no more than 180 days, or for no more than 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility;

2) The generator first notifies USEPA Region 5 and the Agency in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this Section. Such advance notice must include the following information:
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A) The name and USEPA ID number of the facility and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this Section;

B) A description of the types of hazardous wastes that will be accumulated for extended periods of time and the units that will be used for such extended accumulation;

C) A statement that the facility has made all changes to its operations; procedures, including emergency preparedness procedures; and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

D) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under 35 Ill. Adm. Code 702 and 703, 40 CFR 270, or the corresponding regulations of a sister state to receive these wastes is not available within 200 miles of the generating facility;

3) The waste is managed in the following types of units:


B) Tanks, in accordance with the requirements of Subparts J, AA, BB, and CC of 35 Ill. Adm. Code 725, except for Sections 725.297(c) and Section 725.300;

C) Drip pads, in accordance with Subpart W of 35 Ill. Adm. Code 725; or

D) Containment buildings, in accordance with Subpart DD of 35 Ill. Adm. Code 725;

4) The quantity of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg;
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5) The generator maintains the following records at the facility for each unit used for extended accumulation times:
   
   A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable), a description of the waste generation and management practices at the facility showing that they are consistent with the extended accumulation time limit, and documentation that the procedures are complied with; or
   
   B) Documentation that the unit is emptied at least once every 180 days (or 270 days, if applicable);

6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words "Hazardous Waste," and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection;


8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and

9) The generator includes the following information with its federal National Environmental Performance Track Annual Performance Report, which must be submitted to the USEPA Region 5 and the Agency:
   
   A) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods;
   
   B) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were
managed at the destination facilities (e.g., recycling, treatment, storage, or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this Section:

C) Information for the previous year on any hazardous waste spills or accidents occurring at extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

D) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that a facility that is permitted (or operating under interim status) under 35 Ill. Adm. Code 702 and 703, 40 CFR 270, or the corresponding regulations of a sister state to receive these wastes is not available within 200 miles of the generating facility.

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

k) If the Agency finds that hazardous wastes must remain on-site at a federal National Environmental Performance Track member facility for longer than the 180 days (or 270 days, if applicable) allowed under subsection (j) of this Section due to unforeseen, temporary, and uncontrollable circumstances, it must grant an extension to the extended accumulation time period of up to 30 days on a case-by-case basis by a provisional variance pursuant to Sections 35(b), 36(c), and 37(b) of the Act [415 ILCS 5/35(b), 36(c), and 37(b)].

l) If a generator that is a member of the federal National Environmental Performance Track program withdraws from the National Environmental Performance Track program or if USEPA Region 5 terminates a generator’s membership, the generator must return to compliance with all otherwise applicable hazardous waste regulations as soon as possible, but no later than six months after the date of withdrawal or termination.
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(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART D: RECORDKEEPING AND REPORTING

Section 722.140 Recordkeeping

a) A generator must keep a copy of each manifest signed in accordance with Section 722.123(a) for three years or until the receives a signed copy from the designated facility that received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

b) A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1).

c) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with Section 722.111 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

d) The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Agency Director.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 722.141 Annual Reporting

a) A generator that ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of an annual report to the Agency by March 1 for the preceding calendar year. The annual report must be submitted on a form supplied by the Agency, and must cover generator activities during the previous calendar year, and must include the following information:

1) The USEPA identification number, name, and address of the generator;

2) The calendar year covered by the report;

3) The USEPA identification number, name, and address for each off-site
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treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

4) The name and USEPA identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;

5) A description, USEPA hazardous waste number (from Subpart C or D of 35 Ill. Adm. Code 721), USDOTDOT hazard class and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the United States. This information must be listed by USEPA identification number of each off-site facility to which waste was shipped;

6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and;

8) The certification signed by the generator or the generator's authorized representative.

b) Any generator that treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with the provisions of 35 Ill. Adm. Code 702, 703, 724, 725, and 726. Reporting for exports of hazardous waste is not required on the annual report form. A separate annual report requirement is set forth at Section 722.156.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.142 Exception Reporting

a) Generators of greater than 1,000 kilograms of hazardous waste in a calendar month.

1) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month that does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility.
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within 35 days of the date the waste was accepted by the initial transporter must contact the transporter or the owner or operator of the designated facility to determine the status of the hazardous waste.

2) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month must submit an Exception Report to the Agency if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include the following documents:

A) A legible copy of the manifest for which the generator does not have a confirmation of delivery; and

B) A cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the result of those efforts.

b) A generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days after the date the waste was accepted by the initial transporter must submit a legible copy of the manifest to the Agency, with some indication that the generator has not received confirmation of delivery to the Agency.

(BOARD NOTE: The submission need be only a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the returned copy was not received.)

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.143 Additional Reporting

The Agency Director, as it deems necessary under Section 4 of the Illinois Environmental Protection Act [415 ILCS 5/4], may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in Part 721.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
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Section 722.144  Special Requirements for Generators of between 100 and 1,000 kilograms per month

Of the requirements in this Subpart D, a generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is subject to only the following requirements:

a) Section 722.140(a), (c), and (d), recordkeeping;

b) Section 722.142(b), exception reporting; and

c) Section 722.143, additional reporting.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART E: EXPORTS OF HAZARDOUS WASTE

Section 722.150  Applicability

This Subpart E establishes requirements applicable to exports of hazardous waste. Except to the extent Section 722.158 provides otherwise, a primary exporter of hazardous waste must comply with the special requirements of this Subpart E and a transporter transporting hazardous waste for export must comply with applicable requirements of 35 Ill. Adm. Code 723. Section 722.158 sets forth the requirements of international agreements between the United States and receiving countries that establish different notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.151  Definitions

In addition to the definitions set forth at 35 Ill. Adm. Code 720.110, the following definitions apply to this Subpart E:

"Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

"Primary Exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Subpart B of this...
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Part that which specifies a treatment, storage or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

"USEPA Acknowledgment of Consent" means the cable sent to USEPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.152 General Requirements

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this Subpart E and 35 Ill. Adm. Code 723. Exports of hazardous waste are prohibited unless the following conditions are fulfilled:

a) Notification in accordance with Section 722.153 has been provided;

b) The receiving country has consented to accept the hazardous waste;

c) A copy of the USEPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)); and-

d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the USEPA Acknowledgment of Consent.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.153 Notification of Intent to Export

a) The Board incorporates by reference 40 CFR 262.53 (1996). This Part
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incorporates no future editions or amendments.


be) The primary exporter must send the Agency a copy of each notice sent to USEPA pursuant to subsection (b) of this Section.

(Source: Amended at 29 Ill. Reg. _____, effective _____________)

Section 722.154 Special Manifest Requirements


ab) A primary exporter must comply with the manifest requirements as specified in 40 CFR 262.54, incorporated by reference in 35 Ill.Adm. Code 720 111(b).

be) The primary exporter must send a copy of the manifest to the Agency.

(Source: Amended at 29 Ill. Reg. _____, effective _____________)

Section 722.155 Exception Report


ab) In lieu of the requirements of Section 722.142, a primary exporter must file an exception report with USEPA as provided by 40 CFR 262.55, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

be) The primary exporter must send a copy of the exception report to the Agency.

(Source: Amended at 29 Ill. Reg. _____, effective _____________)

Section 722.156 Annual Reports

a) The Board incorporates by reference 40 CFR 262.56 (1996). This Part
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...incorporates no future editions or amendments.


b) The primary exporter must send the Agency a copy of each report sent to USEPA.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.157 Recordkeeping


b) For all exports a primary exporter must comply with the recordkeeping requirements of 40 CFR 262.57, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.158 International Agreements

a) Any person that exports or imports hazardous waste subject to either the manifest requirements of this Part or the universal waste management standards of 35 Ill. Adm. Code 733 which is shipped to or from designated member countries of the Organisation for Economic Co-operation and Development (OECD), as defined in subsection (a)(1) of this Section, for purposes of recovery is subject to the requirements of Subpart H of this Part. The requirements of Subparts E and F of this Part do not apply where Subpart H of this Part applies.

1) For the purposes of this Subpart E, the designated OECD countries are Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

2) Only for the purposes of transit under this Subpart E, Canada and Mexico are considered OECD member countries.
b) Any person that exports hazardous waste to or imports hazardous waste from any designated OECD member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of Subparts E and F of this Part.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART F: IMPORTS OF HAZARDOUS WASTE

Section 722.160 Imports of Hazardous Waste

a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this Part and the special requirements of this Subpart F.

b) When importing hazardous waste, a person must meet all the requirements of Section 722.120(a) for the manifest, except that the following information items are substituted:

   1) In place of the generator's name, address, and USEPA identification number, the name and address of the foreign generator and the importer's name, address, and USEPA identification number must be used.

   2) In place of the generator's signature on the certification statement, the United States importer or the importer's agent shall sign and date the certification and obtain the signature of the initial transporter.

c) A person who imports hazardous waste must obtain the manifest form as provided in Section 722.121.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART G: FARMERS

Section 722.170 Farmers

A farmer disposing of waste pesticides from the farmer's own use that are hazardous wastes is not required to comply with the standards in this Part or other standards in 35 Ill. Adm. Code 702, 703, 724, 725, or 728 for those wastes, provided the farmer triple rinses each emptied
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pesticide container in accordance with 35 Ill. Adm. Code 721.107(b)(3) and disposes of the pesticide residues on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

subpart h: transfrontier shipments of hazardous waste for recovery within the oecd

section 722.180 applicability

a) The requirements of this Subpart H apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and which are destined for recovery operations in any of the countries listed in Section 722.158(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the definition of hazardous waste in 35 Ill. Adm. Code 721.103 and it is subject to either the manifesting requirements in Subpart B of this Part or to the universal waste management standards of 35 Ill. Adm. Code 733.

b) Any person (notifier, consignee, or recovery facility operator) that mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under this Subchapter c and any notifier duties under this Subpart H, as applicable.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

section 722.181 definitions

The following definitions apply to this Subpart H:


"Competent authorities" means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

"Concerned countries" means the exporting and importing OECD member countries and any OECD member countries of transit.

"Consignee" means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.

"Country of transit" means any designated OECD country in Section 722.158(a)(1) and (a)(2) other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

"Exporting country" means any designated OECD member country in Section 722.158(a)(1) from which a transfrontier movement of wastes is planned or has commenced.


"Importing country" means any designated OECD country in Section 722.158(a)(1) to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

"Notifier" means the person under the jurisdiction of the exporting country that has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and that proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the exporting country, notifier is interpreted to mean a person domiciled in the U.S.

"OECD area" means all land or marine areas under the national jurisdiction of any designated OECD member country in Section 722.158. When the regulations
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refer to shipments to or from an OECD country, this means OECD area.

"Recognized trader" means a person that, with appropriate authorization of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.

"Recovery facility" means an entity under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

"Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct re-use, or alternative uses, as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, incorporated by reference in 35 Ill. Adm. Code 720.111(a), which include the following activities:

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<thead>
<tr>
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<th>Description</th>
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<tbody>
<tr>
<td>R1</td>
<td>Use as a fuel (other than in direct incineration) or other means to generate energy,</td>
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<td>R2</td>
<td>Solvent reclamation or regeneration,</td>
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<tr>
<td>R3</td>
<td>Recycling or reclamation of organic substances that are not used as solvents,</td>
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<tr>
<td>R4</td>
<td>Recycling or reclamation of metals and metal compounds,</td>
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<td>R5</td>
<td>Recycling or reclamation of other inorganic materials,</td>
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<td>R6</td>
<td>Regeneration of acids or bases,</td>
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<td>R7</td>
<td>Recovery of components used for pollution control,</td>
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<td>R8</td>
<td>Recovery of components from catalysts,</td>
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<td>R9</td>
<td>Used oil re-refining or other reuses of previously used oil,</td>
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<tr>
<td>R10</td>
<td>Land treatment resulting in benefit to agriculture or ecological improvement,</td>
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R11 Uses of residual materials obtained from any of the operations numbered R1 through R10,

R12 Exchange of wastes for submission to any of the operations numbered R1 through R11, and

R13 Accumulation of material intended for any operation in Table 2.B.


"Transfrontier movement" means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.182 General Conditions

a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to a green, amber, or red list and by U.S. national procedures, as defined in Section 722.180(a). The green, amber, and red lists are incorporated by reference in 35 Ill. Adm. Code 720.111(a).

1) Green-list wastes are subject to existing controls normally applied to commercial transactions, except as provided below:

A) Green-list wastes that are considered hazardous under U.S. national procedures are subject to amber-list controls.

B) Green-list wastes that are sufficiently contaminated or mixed with amber-list wastes, such that the waste or waste mixture is considered hazardous under U.S. national procedures, are subject to amber-list controls.
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C) Green-list wastes that are sufficiently contaminated or mixed with other wastes subject to red-list controls, such that the waste or waste mixture is considered hazardous under U.S. national procedures, must be handled in accordance with the red-list controls.

2) Amber-list wastes on the amber list that are considered hazardous under U.S. national procedures, as defined in Section 722.180(a), are subject to the amber-list controls of this Subpart H. If amber-list waste is sufficiently contaminated or mixed with other wastes subject to red-list controls, such that the waste or waste mixture is considered hazardous under U.S. national procedures, the wastes must be handled in accordance with the red-list controls.

3) Red-list wastes on the red list that are considered hazardous under U.S. national procedures, as defined in Section 722.180(a), are subject to the red-list controls of this Subpart H.

BOARD NOTE: Some amber-list wastes or red-list wastes are not listed or otherwise identified as hazardous under RCRA (e.g., polychlorinated biphenyls) and therefore are not subject to the amber-list or red-list controls of this Subpart H. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the Toxic Substances Control Act) may restrict certain waste imports or exports. Such restrictions continue to apply without regard to this Subpart H.

4) Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:

A) If such waste is considered hazardous under U.S. national procedures, as defined in Section 722.180(a), these wastes are subject to the red-list controls; or

B) If such waste is not considered hazardous under U.S. national procedures, as defined in Section 722.180(a), such waste may move as though it were a green-list waste.

b) General conditions applicable to transfrontier movements of hazardous waste.
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1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

2) The transfrontier movement must be in compliance with applicable international transport agreements; and


3) Any transit of waste through a non-OECD member country must be conducted in compliance with all applicable international and national laws and regulations.

c) Provisions relating to re-export for recovery to a third country.

1) Re-export of waste subject to the amber-list controls system from the U.S., as the importing country, to a third country listed in Section 722.158(a)(1) may occur only after a notifier in the U.S. provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification must comply with the notice and consent procedures in Section 722.183 for all concerned countries and the original exporting country. The competent authorities of the original exporting country, as well as the competent authorities of all other concerned countries, have 30 days to object to the proposed movement.

A) The 30-day period begins once the competent authorities of both the initial exporting country and new importing country issue Acknowledgments of Receipt of the notification.

B) The transfrontier movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

2) Re-export of waste subject to the red-list controls system
from the original importing country to a third country listed in Section 722.158(a)(1) may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with Section 722.183. The transfrontier movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

3) In the case of re-export of amber-list waste or red-list wastes to a country other than those in Section 722.158(a)(1), notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in subsections (c)(1) and (c)(2) of this Section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 722.183 Notification and Consent

a) Applicability. Consent must be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subpart H. Hazardous wastes subject to amber-list controls are subject to the requirements of subsection (b) of this Section; hazardous wastes subject to red-list controls are subject to the requirements of subsection (c) of this Section; and wastes not identified on any list are subject to the requirements of subsection (d) of this Section.

b) Amber-list wastes. The export from the U.S. of hazardous waste, as described in Section 722.180(a), that is amber-list waste on the amber list is prohibited unless the notification and consent requirements of subsection (b)(1) or subsection (b)(2) of this Section are met.

1) Transactions requiring specific consent:

A) Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to
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the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, and the Illinois Environmental Protection Agency, Bureau of Land, Division of Land Pollution Control, P.O. Box 19276, Springfield, IL 62794-9276, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in subsection (e) of this Section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same USEPA hazardousRCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

B) Tacit consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to subsection (b)(1)(A) of this Section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement may commence. Tacit consent expires one calendar year after the close of the 30-day period; renotification and renewal of all consents is required for exports after that date.

C) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

2) Shipments to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery.

A) The notifier must provide USEPA and the Agency the information identified in subsection (e) of this Section in English, at least 10
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days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in subsection (b)(1)(A) of this Section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and the Illinois Environmental Protection Agency, Bureau of Land, Division of Land Pollution Control, P.O. Box 19276, Springfield, IL 62794-9276, with the words "OECD Export Notification–Pre-approved Facility" prominently displayed on the envelope.

B) Shipments may commence after the notification required in subsection (b)(1)(A) of this Section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

c) Red-list wastes. The export from the U.S. of hazardous wastes, as described in Section 722.180(a), that appear on the red list is prohibited unless notice is given pursuant to subsection (b)(1)(A) of this Section and the notifier receives written consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

d) Unlisted wastes. Waste that is not green-list waste, amber-list waste, or red-list waste that is considered hazardous under U.S. national procedures, as defined in Section 722.180(a), are subject to the notification and consent requirements established for red-list wastes in accordance with subsection (c) of this Section. Unlisted wastes that are not considered hazardous under U.S. national procedures, as defined in Section 722.180(a), are not subject to amber-list or red-list controls when exported or imported.

e) Notification information. Notifications submitted under this Section must include the following information:

1) Serial number or other accepted identifier of the notification form;
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2) Notifier name and USEPA identification number (if applicable), address, and telephone and telefax numbers;

3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;

4) Consignee name (if not the owner or operator of the recovery facility), address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility; and identification of recovery operations to be employed at the final recovery facility;

5) Intended transporters or their agents;

6) Country of export and relevant competent authority and point of departure;

7) Countries of transit and relevant competent authorities and points of entry and departure;

8) Country of import and relevant competent authority and point of entry;

9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

10) Date foreseen for commencement of transfrontier movement;

11) Designation of waste type(s) from the appropriate list (e.g., amber-list waste or red-list waste and waste list code), descriptions of each waste type, estimated total quantity of each, USEPA hazardous waste code, and United Nations number for each waste type; and

12) Certification/Declaration signed by the notifier that states as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement."
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Name:  
Signature:  
Date:  

BOARD NOTE: The U.S. does not currently require financial assurance; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(Source: Amended at 29 Ill. Reg. ______, effective __________)

Section 722.184 Tracking Document

a) All U.S. parties subject to the contract provisions of Section 722.185 must ensure that a tracking document meeting the conditions of subsection (b) of this Section accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in this subsection (a).

1) For shipments of hazardous waste within the U.S. solely by water (bulk shipments only), the generator must forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the U.S. if exported by water (in accordance with the manifest routing procedures at Section 722.123(c)).

2) For rail shipments of hazardous waste within the U.S. that originate at the site of generation, the generator must forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in Section 722.123(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the U.S. if exported by rail.

b) The tracking document must include all information required under Section 722.183 (for notification) and the following information:

1) The date shipment commenced;

2) The name (if not notifier), address, and telephone and telefax numbers of
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primary exporter;

3) The company name and USEPA identification number of all transporters;

4) Identification (license, registered name, or registration number) of means of transport, including types of packaging;

5) Any special precautions to be taken by transporters;

6) A certification or declaration signed by notifier that no objection to the shipment has been lodged as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or must shall be in force covering the transfrontier movement, and that:"

"1. All necessary consents have been received;" OR "2. The shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period;" OR "3. The shipment is directed at a recovery facility pre-authorized for that type of waste within the OECD area, such an authorization has not been revoked, and no objection has been received from any of the concerned countries."

(delete sentences that are not applicable)

"Name: ____________________________________________
Signature: __________________________________________
Date: ____________________________________________"

7) The appropriate signatures for each custody transfer (e.g., transporter, consignee, and owner or operator of the recovery facility).

c) Notifiers also must comply with the special manifest requirements of Section
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722.154(a), (b), (c), (e), and (i) and consignees must comply with the import requirements of Subpart F of this Part.

d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the tracking document (e.g., transporter, consignee, and owner or operator of the recovery facility).

e) Within three working days after the receipt of imports subject to this Subpart H, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 722.185 Contracts

a) Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the notifier and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this Section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

b) Contracts or equivalent arrangements must specify the following names and USEPA identification numbers, where available:

1) The generator of each type of waste;

2) Each person that will have physical custody of the wastes;

3) Each person that will have legal control of the wastes; and
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4) The recovery facility.

c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify the following:

1) That the person having actual possession or physical control over the wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

2) That the person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

d) Contracts must specify that the consignee will provide the notification required in Section 722.182(c) prior to re-export of controlled wastes to a third country.

e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

BOARD NOTE: Financial guarantees so required are intended to provide for alternative recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The U.S. does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this Subpart H.

g) Upon request by USEPA or the Agency, U.S. notifiers, consignees, or recovery facilities must submit to USEPA and the Agency copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in
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the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 35 Ill. Adm. Code 120 will be treated as confidential and will be disclosed by the Agency only as provided in 35 Ill. Adm. Code 120.

BOARD NOTE: Although the U.S. does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, USEPA or the Agency will request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 722.186 Provisions Relating to Recognized Traders

a) A recognized trader that takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable federal laws.

b) A recognized trader acting as a notifier or consignee for transfrontier shipments of waste must comply with all the notifier or consignee requirements of this Subpart H.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 722.187 Reporting and Recordkeeping

a) Annual reports. For all waste movements subject to this Subpart H, persons (e.g., notifiers, recognized traders) that meet the definition of primary exporter in Section 722.151 must file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460 and the Illinois Environmental Protection Agency, Bureau of Land, Division of Land Pollution Control, P.O. Box 19276, Springfield, IL 62794, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subpart H, .)
the person filing may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate Section. Such reports must include the following information:

1) The USEPA identification number, name, and mailing and site address of the notifier filing the report;

2) The calendar year covered by the report;

3) The name and site address of each final recovery facility;

4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the USEPA hazardous waste number (from Subpart C or Subpart D), the designation of waste type(s) from the OECD waste list and applicable waste code from the OECD lists, as described in OECD Council Decision C(88)90/FINAL, incorporated by reference in 35 Ill. Adm. Code 720.111(a), USDOT DOT hazard class; the name and USEPA identification number (where applicable) for each transporter used; the total amount of hazardous waste shipped pursuant to this Subpart H; and number of shipments pursuant to each notification;

5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kilograms (kg) but less than 1,000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to Section 722.141:

   A) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

   B) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

6) A certification signed by the person acting as primary exporter that states as follows:
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"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

b) Exception reports. Any person that meets the definition of primary exporter in Section 722.151 shall file with USEPA and the Agency an exception report in lieu of the requirements of Section 722.142 if any of the following occurs:

1) The person has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States within 45 days from the date it was accepted by the initial transporter;

2) Within 90 days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received; or

3) The waste is returned to the United States.

c) Recordkeeping.

1) Persons that meet the definition of primary exporter in Section 722.151 must keep the following records:

A) A copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries, for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

B) A copy of each annual report, for a period of at least three years from the due date of the report; and

C) A copy of any exception reports and a copy of each confirmation of delivery (i.e., tracking documentation) sent by the recovery facility to the notifier, for at least three years from the date the hazardous waste was accepted by the initial transporter or received
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by the recovery facility, whichever is applicable.

2) The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by USEPA or the Agency.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 722.189 OECD Waste Lists

a) General. For the purposes of this Subpart H, a waste is considered hazardous under U.S. national procedures, and hence subject to this Subpart H, if the following is true of the waste:

1) The waste meets the federal definition of hazardous waste in 35 Ill. Adm. Code 721.103; and

2) The waste is subject to either the hazardous waste manifesting requirements of Subpart B of this Part or the universal waste management standards of 35 Ill. Adm. Code 733.

b) If a waste is hazardous under subsection (a) of this Section and it is amber-list waste or red-list waste, it is subject to either the amber-list or red-list controls requirements, as appropriate.

c) If a waste is hazardous under subsection (a) of this Section and it is not amber-list or red-list waste, it does not appear on either the amber or red list, it is subject to the red-list controls requirements.

d) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Section 722.182.

e) This subsection (e) corresponds with 40 CFR 262.89(e), which incorporates the OECD amber, green, and red lists by reference. This statement maintains structural consistency with the corresponding federal regulations. The OECD Green List of Wastes (revised May 1994), Amber List of Wastes (revised May 1993), and Red List of Wastes (revised May 1993), as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), incorporated by reference in 35 Ill. Adm.
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Code 720.111.

(Source: Amended at 29 Ill. Reg. ______, effective _____________.)
Section 722. APPENDIX A   Hazardous Waste Manifest


(Source: Amended at 29 Ill. Reg. _____, effective ____________)
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1) **Heading of the Part:** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

2) **Code citation:** 35 Ill. Adm. Code 724

3) **Section numbers:**

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<tr>
<th>Proposed Action:</th>
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<tbody>
<tr>
<td>724.251 Amend</td>
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<tr>
<td>724.297 Amend</td>
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<tr>
<td>724.936 Amend</td>
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<td>724.950 Amend</td>
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<td>724.965 Amend</td>
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<tr>
<td>724.1101 Amend</td>
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<tr>
<td>APPENDIX A Amend</td>
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4) **Statutory authority:** 415 ILCS 5/7.2, 22.4, and 27.

5) **A complete description of the subjects and issues involved:** The amendments to Part 724 are a single segment of the docket R05-2 rulemaking that also affects 35 Ill. Adm. Code 720, 722, and 725, each of which is covered by a separate notice in this issue of the Illinois Register. To save space, a more detailed description of the subjects and issues involved in the docket R05-2 rulemaking in this Illinois Register only in the answer to question 5 in the Notice of Proposed Amendments for 35 Ill. Adm. Code 720. A comprehensive description is contained in the Board’s opinion and order of December 16, 2004, proposing amendments in docket R05-2 for public comment, which opinion and order is available from the address below. As is explained in that opinion, the Board will receive public comment on the proposed amendments for 45 days from the date they appear in the Illinois Register before proceeding to adopt amendments based on this proposal.

Specifically, the amendments to Part 724 incorporate the April 26, 2004 exclusion of purged coatings and solvents from operations subject to the NESHAP from the hazardous waste air emission standards.

Tables appear in the Board’s opinion and order of December 16, 2004 in docket R05-2 that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the December 16, 2004 opinion and order in docket R05-2.
Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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

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

8) Does this rulemaking contain incorporations by reference? Yes. The amendments move the incorporation of 40 CFR 264.151 and Appendix I to 40 CFR 264 that formerly appeared at corresponding Section 724.251 and Appendix A to Part 724 to the centralized incorporations provision at 35 Ill. Adm. Code 720.111. The amendments also add a reference to the incorporation of Subpart III of 40 CFR 63 by reference to Section 724.950(h).


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<tr>
<th>Section numbers</th>
<th>Proposed action</th>
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<tr>
<td>724.101</td>
<td>Amend</td>
<td>28 Ill. Reg. 15074, November 19, 2004</td>
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10) **Statement of statewide policy objective**: These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

11) **Time, place and manner in which interested persons may comment on this proposed rulemaking**: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R05-2 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
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100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference Docket R05-2:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph  11-500
Chicago, IL  60601
Phone:  312-814-6924
E-mail:  mccambm@ipcb.state.il.us

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

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected:  This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.  These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

B) Reporting, bookkeeping or other procedures required for compliance:  The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records.  These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

C) Types of professional skills necessary for compliance:  Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.  These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

13) Regulatory agenda on which this rulemaking was summarized:  July, 2004
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The full text of the Proposed Amendments begins on the next page:
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NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE G: WASTE DISPOSAL

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 724

STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

SUBPART A: GENERAL PROVISIONS

Section
724.101 Purpose, Scope, and Applicability
724.103 Relationship to Interim Status Standards

SUBPART B: GENERAL FACILITY STANDARDS

Section
724.110 Applicability
724.111 USEPA Identification Number
724.112 Required Notices
724.113 General Waste Analysis
724.114 Security
724.115 General Inspection Requirements
724.116 Personnel Training
724.117 General Requirements for Ignitable, Reactive, or Incompatible Wastes
724.118 Location Standards
724.119 Construction Quality Assurance Program

SUBPART C: PREPAREDNESS AND PREVENTION

Section
724.130 Applicability
724.131 Design and Operation of Facility
724.132 Required Equipment
724.133 Testing and Maintenance of Equipment
724.134 Access to Communications or Alarm System
724.135 Required Aisle Space
724.137 Arrangements with Local Authorities
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SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section
724.150 Applicability
724.151 Purpose and Implementation of Contingency Plan
724.152 Content of Contingency Plan
724.153 Copies of Contingency Plan
724.154 Amendment of Contingency Plan
724.155 Emergency Coordinator
724.156 Emergency Procedures

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

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724.171 Use of Manifest System
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724.173 Operating Record
724.174 Availability, Retention, and Disposition of Records
724.175 Annual Report
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SUBPART F: RELEASES FROM SOLID WASTE MANAGEMENT UNITS

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724.193 Hazardous Constituents
724.194 Concentration Limits
724.195 Point of Compliance
724.196 Compliance Period
724.197 General Groundwater Monitoring Requirements
724.198 Detection Monitoring Program
724.199 Compliance Monitoring Program
724.200 Corrective Action Program
724.201 Corrective Action for Solid Waste Management Units

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Section
724.210 Applicability
724.211 Closure Performance Standard
724.212 Closure Plan; Amendment of Plan
724.213 Closure; Time Allowed For Closure
724.214 Disposal or Decontamination of Equipment, Structures, and Soils
724.215 Certification of Closure
724.216 Survey Plat
724.217 Post-Closure Care and Use of Property
724.218 Post-Closure Care Plan; Amendment of Plan
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SUBPART H: FINANCIAL REQUIREMENTS

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

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SUBPART H: FINANCIAL REQUIREMENTS

Section 724.251 Wording of the Instruments

The Board incorporates by reference 40 CFR 264.151 (2002). This incorporation includes no later amendments or editions. The Agency must promulgate standardized forms based on 40 CFR 264.151, incorporated by reference in 35 Ill. Adm. Code 720.111(b), with such changes in wording as are necessary under Illinois law. Any owner or operator required to establish financial assurance under this Subpart H must do so only upon the standardized forms promulgated by the Agency. The Agency must reject any financial assurance document that is not submitted on such standardized forms.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART J: TANK SYSTEMS

Section 724.297 Closure and Post-Closure Care

a) At closure of a tank system, the owner or operator must remove or decontaminate
all waste residues, contaminated containment system components (liners, etc.), contaminated soils and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure and financial responsibility for tank systems must meet all of the requirements specified in Subparts G and H of this Part.

b) If the owner or operator demonstrates to the Agency by way of permit application that not all contaminated soils can be practicably removed or decontaminated, as required in subsection (a) of this Section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (Section 724.410). In addition, for the purposes of closure, post-closure and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subparts G and H of this Part.

c) If an owner or operator has a tank system that does not have secondary containment which meets the requirements of Section 724.193(b) through (f), and the owner and operator has not been granted alternative design and operating practices for secondary containment requirements in accordance with Section 724.293(g), then the following apply:

1) The closure plan for the tank system must include both a plan for complying with subsection (a) of this Section and a contingent plan for complying with subsection (b) of this Section.

2) A contingent post-closure plan for complying with subsection (b) of this Section must be prepared and submitted as part of the permit application.

3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (a) of this Section.

4) Financial assurance must be based on the cost estimates in subsection (c)(3) of this Section.

5) For the purposes of the contingent closure and post-closure plans, such a
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tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under Subparts G and H of this Part.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART AA: AIR EMISSION STANDARDS FOR PROCESS VENTS

Section 724.936 Reporting Requirements

a) A semiannual report must be submitted by owners and operators subject to the requirements of this Subpart AA to the Agency by dates specified in the RCRA permit. The report must include the following information:

1) The USEPA identification number (35 Ill. Adm. Code 722.112), name, and address of the facility.

2) For each month during the semiannual reporting period the following:

A) Dates when the control device did the following:
   i) Exceeded or operated outside of the design specifications, as defined in Section 724.935(c)(4); and
   ii) Such exceedences were not corrected within 24 hours, or that a flare operated with visible emissions, as defined by Method 22 monitoring;

B) The duration and cause of each exceedence or visible emissions; and

C) Any corrective measures taken.

b) If during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications, as defined in Section 724.935(c)(4), for more than 24 hours or a flare does not operate with visible emissions, as defined in Section 724.933(d), a report to the Agency is not required.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
Section 724.950 Applicability

a) The regulations in this Subpart BB apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 724.101).

b) Except as provided in Section 724.964(k), this Subpart BB applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

1) A unit that is subject to the RCRA permitting requirements of 35 Ill. Adm. Code 702, 703, and 705,

2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 35 Ill. Adm. Code 722.134(a) (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705, or

3) A unit that is exempt from permitting under the provisions of 35 Ill. Adm. Code 722.134(a) (i.e., a "90-day" tank or container) and which is not a recycling unit under the provisions of 35 Ill. Adm. Code 721.106.

c) For the owner or operator of a facility subject to this Subpart BB that received a final permit under 35 Ill. Adm. Code 702, 703, and 705 prior to December 6, 1996, the requirements of this Subpart BB must be incorporated into the permit when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705. Until such date when the owner or operator receives a final permit incorporating the requirements of this Subpart BB, the owner or operator is subject to the requirements of Subpart BB of 35 Ill. Adm. Code 725.

d) Each piece of equipment to which this Subpart BB applies must be marked in such a manner that it can be distinguished readily from other pieces of equipment.

e) Equipment that is in vacuum service is excluded from the requirements of Sections 724.952 to 724.960, if it is identified as required in Section
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724.964(g)(5).

f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of Sections 724.952 through 724.960 if it is identified as required in Section 724.964(g)(6).

This subsection (g) corresponds with 40 CFR 264.1050(g), which relates exclusively to a facility outside Illinois. This statement maintains structural consistency with the corresponding federal regulations.

h) Purged coatings and solvents from surface coating operations subject to the federal national emission standards for hazardous air pollutants (NESHAPs) for the surface coating of automobiles and light-duty trucks at Subpart III of 40 CFR 63, incorporated by reference in 35 Ill. Adm. Code 720.111(b), are not subject to the requirements of this Subpart BB.

BOARD NOTE: The requirements of Sections 724.952 through 724.965 apply to equipment associated with hazardous waste recycling units previously exempt under 35 Ill. Adm. Code 721.106(c)(1). Other exemptions under 35 Ill. Adm. Code 721.104 and 724.101(g) are not affected by these requirements.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 724.965  Reporting Requirements

a) A semiannual report must be submitted by owners and operators subject to the requirements of this Subpart BB to the Agency by dates specified in the RCRA permit. The report must include the following information:

1) The USEPA identification number (35 Ill. Adm. Code 722.112), name, and address of the facility.

2) For each month during the semiannual reporting period, the following:

A) The equipment identification number of each valve for which a leak was not repaired, as required in Section 724.957(d).

B) The equipment identification number of each pump for which a leak was not repaired, as required in Section 724.952(c) and
C) The equipment identification number of each compressor for which a leak was not repaired, as required in Section 724.953(g).

3) Dates of hazardous waste management unit shutdowns that occurred within the semiannual reporting period.

4) For each month during the semiannual reporting period, dates when the control device installed as required by Sections 724.952, 724.953, 724.954, or 724.955, exceeded or operated outside of the design specifications, as defined in Section 724.964(e) and as indicated by the control device monitoring required by Section 724.960 and was not corrected within 24 hours, the duration and cause of each exceedance, and any corrective measures taken.

b) If, during the semiannual reporting period, leaks from valves, pumps, and compressors are repaired as required in Sections 724.957(d), 724.952(c) and (d)(6), and 724.953(g), respectively, and the control device does not exceed or operate outside of the design specifications, as defined in Section 724.964(e) for more than 24 hours, a report to the Agency is not required.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART DD: CONTAINMENT BUILDING

Section 724.1101 Design and Operating Standards

a) All containment buildings must comply with the following design and operating standards:

1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (e.g., precipitation, wind, run on) and to assure containment of managed wastes.

2) The floor and containment walls of the unit, including the secondary containment system if required under subsection (b) of this Section, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to...
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pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The containment building must meet the structural integrity requirements established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet the following criteria:

A) They provide an effective barrier against fugitive dust emissions under subsection (c)(1)(C) of this Section; and

B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include the following:

1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).

2) A liquid collection and removal system to minimize the accumulation of
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liquid on the primary barrier of the containment building, as follows:

A) The primary barrier must be sloped to drain liquids to the associated collection system; and

B) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

A) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum, as follows:

i) It is constructed with a bottom slope of 1 percent or more; and

ii) It is constructed of a granular drainage material with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5) cm or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ m$^3$/sec or more.

B) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

C) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the
building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 724.193(d)(1). In addition, the containment building must meet the requirements of Section 724.193(b) and Sections 724.193(c)(1) and (c)(2) to be an acceptable secondary containment system for a tank.)

4) For existing units other than 90-day generator units, USEPA may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this Subpart DD. In making this demonstration, the owner or operator must have done the following:

A) Provided written notice to USEPA of their request by November 16, 1992. This notification must have described the unit and its operating practices with specific reference to the performance of existing systems, and specific plans for retrofitting the unit with secondary containment;

B) Responded to any comments from USEPA on these plans within 30 days; and

C) Fulfilled the terms of the revised plans, if such plans are approved by USEPA.

c) An owner or operator of a containment building must do the following:

1) Use controls and practice to ensure containment of the hazardous waste within the unit, and at a minimum:

A) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

B) Maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

C) Take measures to prevent the tracking of hazardous waste out of
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the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

D) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR 60, Appendix A, Method 22 – Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR 60 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.


2) Obtain certification by a qualified registered professional engineer (PE) that the containment building design meets the requirements of subsections (a) through (c) of this Section. For units placed into operation prior to February 18, 1993, this certification must have been placed in the facility's operating record (on-site files for generators that are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification has been required prior to operation of the unit.

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly. In addition, however the following is required:

A) Upon detection of a condition that has caused to a release of
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hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must do the following:

i) Enter a record of the discovery in the facility operating record;

ii) Immediately remove the portion of the containment building affected by the condition from service;

iii) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

iv) Within seven days after the discovery of the condition, notify the Agency in writing of the condition, and within 14 working days, provide a written notice to the Agency with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

B) The Agency must review the information submitted, make a determination in accordance with Section 34 of the Act, regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

C) Upon completing all repairs and cleanup the owner and operator must notify the Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)(iv) of this Section.

4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building, to detect signs of releases of hazardous waste.
d) For containment buildings that contain areas both with and without secondary containment, the owner or operator must do the following:

1) Design and operate each area in accordance with the requirements enumerated in subsections (a) through (c) of this Section;

2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

e) Notwithstanding any other provision of this Subpart DD the Agency must not require secondary containment for a permitted containment building where the owner operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(Source: Amended at 29 Ill. Reg. _____, effective _______________)}
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Section 724. APPENDIX A  Recordkeeping Instructions


(Source: Amended at 29 Ill. Reg. ______, effective _____________)
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1) **Heading of the Part:** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

2) **Code Citation:** 35 Ill. Adm. Code 725

3) | **Section Numbers:** | **Proposed Action:** |
---|---|---|
725.101, 725.104, 725.110 | Amend |
725.111, 725.112, 725.113 | Amend |
725.114, 725.115, 725.116 | Amend |
725.117, 725.118, 725.119 | Amend |
725.130, 725.131, 725.132 | Amend |
725.133, 725.134, 725.135 | Amend |
725.137, 725.150, 725.151 | Amend |
725.152, 725.153, 725.154 | Amend |
725.155, 725.156, 725.170 | Amend |
725.171, 725.172, 725.173 | Amend |
725.174, 725.175, 725.176 | Amend |
725.177, 725.190, 725.191 | Amend |
725.192, 725.193, 725.194 | Amend |
725.210, 725.211, 725.212 | Amend |
725.213, 725.214, 725.215 | Amend |
725.216, 725.217, 725.218 | Amend |
725.219, 725.220, 725.221 | Amend |
725.240, 725.241, 725.242 | Amend |
725.243, 725.244, 725.245 | Amend |
725.246, 725.247, 725.248 | Amend |
725.270, 725.271, 725.272 | Amend |
725.273, 725.274, 725.276 | Amend |
725.277, 725.278, 725.290 | Amend |
725.291, 725.292, 725.293 | Amend |
725.294, 725.295, 725.296 | Amend |
725.297, 725.298, 725.299 | Amend |
725.300, 725.301, 725.302 | Amend |
725.320, 725.321, 725.322 | Amend |
725.323, 725.324, 725.325 | Amend |
725.326, 725.328, 725.329 | Amend |
725.330, 725.331, 725.350 | Amend |
725.351, 725.352, 725.353 | Amend |
725.354, 725.355, 725.356 | Amend |
725.357, 725.358, 725.359 | Amend |
725.360, 725.370, 725.372 | Amend |
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725.373, 725.376, 725.378  Amend
725.380, 725.381, 725.382  Amend
725.400, 725.401, 725.402  Amend
725.403, 725.404, 725.410  Amend
725.412, 725.413, 725.414  Amend
725.415, 725.416, 725.440  Amend
725.441, 725.445, 725.447  Amend
725.451, 725.452, 725.470  Amend
725.473, 725.475, 725.477  Amend
725.481, 725.482, 725.483  Amend
725.500, 725.501, 725.502  Amend
725.503, 725.505, 725.506  Amend
725.530, 725.540, 725.541  Amend
725.542, 725.543, 725.544  Amend
725.545, 725.930, 725.931  Amend
725.932, 725.933, 725.934  Amend
725.935, 725.950, 725.951  Amend
725.952, 725.953, 725.954  Amend
725.956, 725.957, 725.958  Amend
725.959, 725.960, 725.961  Amend
725.962, 725.963, 725.964  Amend
725.980, 725.981, 725.982  Amend
725.983, 725.984, 725.985  Amend
725.986, 725.987, 725.988  Amend
725.989, 725.990, 725.1100 Amend
725.1101, 725.1102, 725.1200 Amend
725.1201, 725.1202, 725.App. A Amend
725.App. F Amend

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

5) A Complete Description of the Subjects and Issues Involved: The amendments to Part 725 are a single segment of the docket R05-2 rulemaking that also affects 35 Ill. Adm. Code 720, 722, and 724, each of which is covered by a separate notice in this issue of the Illinois Register. To save space, a more detailed description of the subjects and issues involved in the docket R05-2 rulemaking in this Illinois Register only in the answer to question 5 is in the Notice of Proposed Amendments for 35 Ill. Adm. Code 720. A comprehensive description is contained in the Board’s opinion and order of December 16, 2004, proposing amendments in docket R05-2 for public comment, which opinion and order is available from the address below. As is explained in that opinion, the Board
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will receive public comment on the proposed amendments for 45 days from the date they appear in the Illinois Register before proceeding to adopt amendments based on this proposal.

Specifically, the amendments to Part 725 incorporate the April 26, 2004 exclusion of purged coatings and solvents from operations subject to the NESHAP from the hazardous waste air emission standards.

Tables appear in the Board’s opinion and order of December 16, 2004 in docket R05-2 that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the December 16, 2004 opinion and order in docket R05-2.

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

6) Will these proposed amendments replace emergency amendments currently in effect? No

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

8) Do these proposed amendments contain incorporations by reference? Yes. The amendments move the incorporation of Appendices I, III, IV, and V to 40 CFR 265 that formerly appeared at corresponding Appendices A, C, D, E to Part 725 to the centralized incorporations provision at 35 Ill. Adm. Code 720.111. The amendments add incorporation language to the citation to the U.S Department of Transportation regulations formerly only cited at the Board note attached to Section 725.273 and to 725.416(b); to Appendix V to 40 CFR 265 that was only cited at Sections 725.277, 725.330, 725.357, 725.382, 725.413; to 40 CFR 60 that was only cited at Sections 725.934(c)(1)(A), (c)(1)(B), and (c)(1)(D), 725.980(b)(7), and 725.981 (“point of waste origination”); to 40 C.F.R. 61 that was formerly only cited at Sections 725.933(m)(1)(C), 725.980(b)(7), and 725.981 (“point of waste origination”); to 40 C.F.R. 63 that was formerly only cited at Sections 725.933(m)(1)(C), 725.980(b)(7), and 725.981 (“point of waste origination”); and 40 CFR 302, which was formerly only cited at the Board note attached to Section 725.295(a). Finally, the amendments add a reference to the incorporation of Subpart III of 40 CFR 63 by reference to Section 725.950(g).
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9) Are there any other amendments pending on this Part?


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<tr>
<td>725.101</td>
<td>Amend</td>
<td>28 Ill. Reg. 15093; 11/19/04</td>
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10) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R05-2 and be addressed to:

    Ms. Dorothy M. Gunn, Clerk
    Illinois Pollution Control Board
    State of Illinois Center, Suite 11-500
    100 W. Randolph St.
    Chicago, IL 60601

Please direct inquiries to the following person and reference Docket R05-2:

    Michael J. McCambridge
    Staff Attorney
    Illinois Pollution Control Board
    100 W. Randolph 11-500
    Chicago, IL 60601
    Phone: 312-814-6924
    E-mail: mccambm@ipcb.state.il.us

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

12) Initial Regulatory Flexibility Analysis:
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A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste. These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records. These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2002)].

13) Regulatory agenda on which this rulemaking was summarized: July 2004

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

PART 725
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

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725.APPENDIX F Compounds with Henry's Law Constant Less Than 0.1 Y/X (at 25°C)

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

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SUBPART A: GENERAL PROVISIONS

Section 725.101 Purpose, Scope, and Applicability

a) The purpose of this Part is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure care requirements, until post-closure care responsibilities are fulfilled.

b) Except as provided in Section 725.980(b), the standards in this Part and 35 Ill. Adm. Code 724.652 through 724.654 apply to owners and operators of facilities that treat, store, or dispose of hazardous waste and which have fully complied with the requirements for interim status under Section 3005(e) of the Resource Conservation and Recovery Act (RCRA) (42 USC 6925(e) et seq.) and 35 Ill. Adm. Code 703, until either a permit is issued under Section 3005 of the Resource Conservation and Recovery Act (42 USC 6905) or Section 21(f) of the Environmental Protection Act [415 ILCS 5/21(f)], or until applicable closure and post-closure care responsibilities under this Part are fulfilled, to those owners and operators of facilities in existence on November 19, 1980, that have failed to provide timely notification as required by Section 3010(a) of RCRA (42 USC 6910(a)) or that have failed to file Part A of the Permit Application, as required by 40 CFR 270.10(e) and (g) or 35 Ill. Adm. Code 703.150 and 703.152. These standards apply to all treatment, storage, or disposal of hazardous waste at these facilities after November 19, 1980, except as specifically provided otherwise in this Part or in 35 Ill. Adm. Code 721.

BOARD NOTE: As stated in Section 3005(a) of RCRA (42 USC 6905(a)), after the effective date of regulations under that Section (i.e., 40 CFR 270 and 124) the treatment, storage, or disposal of hazardous waste is prohibited except in
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accordance with a permit. Section 3005(e) of RCRA (42 USC 6905(e)) provides for the continued operation of an existing facility that meets certain conditions until final administrative disposition of the owner's and operator's permit application is made. 35 Ill. Adm. Code 703.140 et seq. provide that a permit is deemed issued under Section 21(f)(1) of the Environmental Protection Act under conditions similar to federal interim status.

c) The requirements of this Part do not apply to any of the following:

1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the federal Marine Protection, Research and Sanctuaries Act (16 USC 1431-1434; 33 USC 1401 et seq.);

BOARD NOTE: This Part applies to the treatment or storage of hazardous waste before it is loaded into an ocean vessel for incineration or disposal at sea, as provided in subsection (b) of this Section.

2) This subsection (c)(2) corresponds with 40 CFR 265.1(c)(2), marked "reserved" by USEPA. This statement maintains structural consistency with USEPA rules;

3) The owner or operator of a POTW (publicly owned treatment works) that treats, stores, or disposes of hazardous waste;

BOARD NOTE: The owner or operator of a facility under subsections (c)(1) and (c)(3) is subject to the requirements of 35 Ill. Adm. Code 724 to the extent they are included in a permit by rule granted to such a person under 35 Ill. Adm. Code 702 and 703 or are required by Subpart F of 35 Ill. Adm. Code 704 Subpart F.

4) This subsection (c)(4) corresponds with 40 CFR 265.1(c)(4), which pertains exclusively to the applicability of the federal regulations in authorized states. There is no need for a parallel provision in the Illinois regulations. This statement maintains structural consistency with USEPA rules;

5) The owner or operator of a facility permitted, licensed, or registered by Illinois to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this Part by 35 Ill. Adm. Code 721.105;
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9) The owner or operator of a totally enclosed treatment facility, as defined in 35 Ill. Adm. Code 720.110;

10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit, as defined in 35 Ill. Adm. Code 720.110, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in Table T of 35 Ill. Adm. Code 728. Table T) or reactive (D003) waste in order to remove the characteristic before land disposal, the owner or operator must comply with the requirements set forth in Section 725.117(b);

11) Immediate response:

A) Except as provided in subsection (c)(11)(B) of this Section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

i) A discharge of a hazardous waste;

ii) An imminent and substantial threat of a discharge of a hazardous waste;

iii) A discharge of a material that becomes a hazardous waste when discharged; or

iv) An immediate threat to human health, public safety, property, or the environment from the known or suspected
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presence of military munitions, other explosive material, or an explosive device, as determined by an explosives or munitions emergency response specialist as defined in 35 Ill. Adm. Code 720.110.

B) An owner or operator of a facility otherwise regulated by this Part must comply with all applicable requirements of Subparts C and D of this Part.

C) Any person that is covered by subsection (c)(11)(A) of this Section that continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part and 35 Ill. Adm. Code 702, 703, and 705 for those activities;

D) In the case of an explosives or munitions emergency response, if a federal, state, or local official acting within the scope of his or her official responsibilities or an explosives or munitions emergency response specialist determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters that do not have USEPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 35 Ill. Adm. Code 722.130 at a transfer facility for a period of ten days or less;

13) The addition of absorbent material to waste in a container (as defined in 35 Ill. Adm. Code 720.110) or the addition of waste to the absorbent material in a container, provided that these actions occur at the time that the waste is first placed in the containers and Sections 725.117(b), 725.271, and 725.272 are complied with;

14) A universal waste handler or universal waste transporter (as defined in 35 Ill. Adm. Code 720.110) that handles any of the wastes listed below is
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subject to regulation under 35 Ill. Adm. Code 733 when handling the following universal wastes:

A) Batteries, as described in 35 Ill. Adm. Code 733.102;
B) Pesticides, as described in 35 Ill. Adm. Code 733.103;
C) Thermostats, as described in 35 Ill. Adm. Code 733.104; and
D) Lamps, as described in 35 Ill. Adm. Code 733.105.

d) The following hazardous wastes must not be managed at facilities subject to regulation under this Part: hazardous waste numbers F020, F021, F022, F023, F026, or F027, unless the following conditions are fulfilled:

1) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;
2) The waste is stored in tanks or containers;
3) The waste is stored or treated in waste piles that meet the requirements of 35 Ill. Adm. Code 724.350(c) and all other applicable requirements of Subpart L of this Part;
4) The waste is burned in incinerators that are certified pursuant to the standards and procedures in Section 725.452; or
5) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in Section 725.483.

e) This Part applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes referred to in 35 Ill. Adm. Code 728, and the 35 Ill. Adm. Code 728 standards are considered material conditions or requirements of the interim status standards of this Part.

f) 35 Ill. Adm. Code 726.505 identifies when the requirements of this Part apply to the storage of military munitions classified as solid waste under 35 Ill. Adm. Code 726.302. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 35 Ill. Adm. Code 702, 703, 705, 720 through 726, and 728.
Other bodies of regulations may apply to a person, facility, or activity, such as 35 Ill. Adm. Code 809 (special waste hauling), 35 Ill. Adm. Code 807 or 810 through 817 (solid waste landfills), 35 Ill. Adm. Code 848 or 849 (used and scrap tires), or 35 Ill. Adm. Code 1420 through 1422 (potentially infectious medical waste), depending on the provisions of those other regulations.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.104 Imminent Hazard Action

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Title VIII of the Illinois Environmental Protection Act [415 ILCS 5/Title VIII].

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART B: GENERAL FACILITY STANDARDS

Section 725.110 Applicability

The regulations in this Subpart B apply to owners and operators of all hazardous waste facilities, except as Section 725.101 provides otherwise.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.111 USEPA Identification Number

Every facility owner or operator must apply to USEPA for an identification number in accordance with the USEPA notification procedures (45 FR 12746).

BOARD NOTE: USEPA Form 8700-12 is the required instructions and forms for notification. The federal instructions require that an owner or operator file notice for an Illinois facility with the Agency, Bureau of Land (telephone: 217-782-6762).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.112 Required Notices

a) Receipt from a foreign source.

1) The owner or operator of a facility that has arranged to receive hazardous
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waste from a foreign source must notify the Agency and USEPA Region 5 in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years.

b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this Part and 35 Ill. Adm. Code 702 and 703 (also see 35 Ill. Adm. Code 703.155).

BOARD NOTE: An owner's or operator's failure to notify the new owner or operator of the requirements of this Part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.113 General Waste Analysis

a) Waste analysis:

1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under Section 725.213(d), the owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information that must be known to treat, store, or dispose of the waste in accordance with this Part and 35 Ill. Adm. Code 728.
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2) The analysis may include data developed under 35 Ill. Adm. Code 721 and existing published or documented data on the hazardous waste or on waste generated from similar processes.

BOARD NOTE: For example, the facility's record of analyses performed on the waste before the effective date of these regulations or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility may be included in the data base required to comply with subsection (a)(1) of this Section, except as otherwise specified in 35 Ill. Adm. Code 728.107(b) and (c). The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by subsection (a)(1) of this Section. If the generator does not supply the information and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this Section.

3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated as follows:

A) When the owner or operator is notified or has reason to believe that the process or operation generating the hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), has changed; and

B) For off-site facilities, when the results of the inspection required in subsection (a)(4) of this Section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

b) The owner or operator shall develop and follow a written waste analysis plan that describes the procedures that the owner or operator will carry out to comply with subsection (a) of this Section. The owner or operator shall keep this plan at the facility. At a minimum, the plan must specify the following:

1) The parameters for which each hazardous waste, or non-hazardous waste
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if applicable under Section 725.213(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a) of this Section).

2) The test methods that will be used to test for these parameters.

3) The sampling method that will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either of the following methods:

   A) One of the sampling methods described in Appendix A to 35 Ill. Adm. Code 721 or Appendix A, or

   B) An equivalent sampling method.

BOARD NOTE: See 35 Ill. Adm. Code 720.120(c) for related discussion.

4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.

5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.

6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods, as specified in Sections 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475, 725.502, 725.934(d), 725.963(d), and 725.984, and 35 Ill. Adm. Code 728.107.

7) For surface impoundments exempted from land disposal restrictions under 35 Ill. Adm. Code 728.104(a), the procedures and schedules for the following:

   A) The sampling of impoundment contents;

   B) The analysis of test data; and

   C) The annual removal of residues that are not delisted under 35 Ill. Adm. Code 720.122 or that exhibit a characteristic of hazardous waste and either of the following is true:
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i) The waste residues do not meet the applicable treatment standards of Subpart D of 35 Ill. Adm. Code 728 Subpart D, or

ii) Where no treatment standards have been established, the waste—Such residues are prohibited from land disposal under 35 Ill. Adm. Code 728.132 or 728.139.

8) For an owner or operator seeking an exemption to the air emission standards of Subpart CC of 35 Ill. Adm. Code 724 Subpart CC in accordance with Section 725.983:

A) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.

B) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator, or by the generator of the waste if the waste is received from off-site, that is used as the basis for knowledge of the waste.

c) For off-site facilities, the waste analysis plan required in subsection (b) of this Section must also specify the procedures that will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe the following:

1) The procedures that will be used to determine the identity of each movement of waste managed at the facility;

2) The sampling method that will be used to obtain a representative sample of the waste to be identified if the identification method includes sampling; and

3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

(Source: Amended at 29 Ill. Reg. ______, effective ___________)
Section 725.114  Security

a) The owner or operator must prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of his facility, unless the following are true:

1) Physical contact with the waste, structures, or equipment of the active portion of the facility will not injure unknowing or unauthorized persons or livestock that may enter the active portion of the facility; and

2) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility will not cause a violation of the requirements of this Part.

b) Unless exempt under subsections (a)(1) and (a)(2) of this Section above, a facility must have the following:

1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry into the active portion of the facility; or

2) Controlled access, including the following minimum elements:
   A) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and
   B) A means to control entry at all times through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

BOARD NOTE: The requirements of subsection (b) of this Section above are satisfied if the facility or plant within which the active portion is located itself has a surveillance system or a barrier and a means to control entry that complies with the requirements of subsection (b)(1) or (b)(2) of this Section.

c) Unless exempt under subsection (a)(1) or (a)(2) of this Section above, a sign with the legend, "Danger – Unauthorized Personnel Keep Out," must be posted at each entrance to the active portion of a facility and at other locations in sufficient
numbers to be seen from any approach to this active portion. The sign must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger – Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and that entry onto the active portion can be dangerous.

BOARD NOTE: See Section 725.217(b) for discussion of security requirements at disposal facilities during the post-closure care period.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.115 General Inspection Requirements

a) The owner or operator **must** inspect the facility for malfunctions and deterioration, operator errors and discharges that may be causing – or may lead to – the conditions listed below. The owner or operator **must** conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

1) Release of hazardous waste constituents to the environment, or

2) A threat to human health.

b) Written schedule.

1) The owner or operator **must** develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

2) The owner or operator **must** keep this schedule at the facility.

3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) that are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes
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undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in Sections 725.274, 725.293, 725.295, 725.326, 725.360, 725.378, 725.404, 725.447, 725.477, 725.503, 725.933, 725.952, 725.953, 725.958, and 725.984 through 725.990, where applicable.

c) The owner or operator must remedy any deterioration or malfunction of equipment or structure that the inspection reveals on a schedule that ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

d) The owner or operator must record inspections in an inspection log or summary. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made and the date, and nature of any repairs or other remedial actions.

(Source: Amended at 29 Ill. Reg. _____, effective ______________)

Section 725.116 Personnel Training

a) Personnel training program.

1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under subsection paragraph (d)(3) of this Section.

2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by
familiarizing them with emergency procedures, emergency equipment and emergency systems, including the following where applicable:

A) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment;

B) Key parameters for automatic waste feed cut-off systems;

C) Communications or alarm systems;

D) Response to fires or explosions;

E) Response to groundwater contamination incidents; and

F) Shutdown of operations.

b) Facility personnel must successfully complete the program required in subsection paragraph (a) of this Section upon the effective date of these regulations or six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of subsection paragraph (a) of this Section.

c) Facility personnel must take part in an annual review of the initial training required in subsection paragraph (a) of this Section.

d) The owner or operator must maintain the following documents and records at the facility:

1) The job title for each position at the facility related to hazardous waste management and the name of the employee filling each job;

2) A written job description for each position listed under subsection paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications and duties of facility personnel assigned to each position;

3) A written description of the type and amount of both introductory and
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continuing training that will be given to each person filling a position listed under subsection paragraph (d)(1) of this Section;

4) Records that document that the training or job experience required under subsection paragraphs (a), (b), and (c) of this Section has been given to and completed by facility personnel.

e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.117 General Requirements for Ignitable, Reactive, or Incompatible Wastes

a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction, including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

b) Where specifically required by other Sections of this Part, the treatment, storage, or disposal of ignitable or reactive waste and the mixture or commingling of incompatible waste or incompatible wastes and materials, must be conducted so that it does not do any of the following:

1) It does not generate extreme heat or pressure, fire or explosion, or violent reaction;

2) It does not produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

3) It does not produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

4) It does not damage the structural integrity of the device or facility
containing the waste; or

5) Through other like means, it does not threaten human health or the environment.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.118 Location Standards

The placement of any hazardous waste in a salt dome, salt bed formation, underground mine, or cave is prohibited.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.119 Construction Quality Assurance Program

a) CQA program.

1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile and landfill units that are required to comply with Sections 725.321(a), 725.354, and 725.401(a). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in this Part. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

2) The CQA program must address the following physical components, where applicable:

A) Foundations;

B) Dikes;

C) Low-permeability soil liners;

D) Geomembranes (flexible membrane liners);

E) Leachate collection and removal systems and leak detection systems; and

F) Final cover systems.
b) Written CQA plan. Before construction begins on a unit subject to the CQA program under subsection (a) of this Section above, the owner or operator shall develop a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include the following:

1) Identification of applicable units and a description of how they will be constructed.

2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

3) A description of inspection and sampling activities for all unit components identified in subsection (a)(2) of this Section above, including observations and tests that will be used before, during and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under Section 725.173.

c) Contents of program.

1) The CQA program must include observations, inspections, tests and measurements sufficient to ensure the following:

A) Structural stability and integrity of all components of the unit identified in subsection (a)(2) of this Section above;

B) Proper construction of all components of the liners, leachate collection and removal system, leak detection system and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

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2) The CQA program must include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of 35 Ill. Adm. Code 724.321(c)(1), 724.351(c)(1), or 724.401(c)(1) in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of 35 Ill. Adm. Code 724.321(c)(1), 724.354(c)(1), or 724.401(c)(1) in the field.

d) Certification. The owner or operator of units subject to this Section must submit to the Agency by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of Sections 725.321(a), 725.354, or 725.401(a). The owner or operator may receive waste in the unit after 30 days from the Agency's receipt of the CQA certification unless the Agency determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification must be furnished to the Agency upon request.

e) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act [415 ILCS 5/40].

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART C: PREPAREDNESS AND PREVENTION

Section 725.130 Applicability

The regulations in this Subpart C apply to owners and operators of all hazardous waste facilities, except as Section 725.101 provides otherwise.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.131 Maintenance and Operation of Facility

Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to
air, soil, or surface water that could threaten human health or the environment.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.132 Required Equipment

All facilities must be equipped with the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

d) Water at adequate volume and pressure to supply water hose streams or foam producing equipment or automatic sprinklers or water spray systems.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.133 Testing and Maintenance of Equipment

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.134 Access to Communications or Alarm System

a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Section §725.132.
b) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Section §725.132.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.135 Required Aisle Space

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.137 Arrangements with Local Authorities

a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes;

2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority;

3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the
b) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section 725.150 Applicability

The regulations in this Subpart D apply to owners and operators of all hazardous waste facilities, except as Section 725.101 provides otherwise.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.151 Purpose and Implementation of Contingency Plan

a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.152 Content of Contingency Plan

a) The contingency plan must describe the actions facility personnel must take to comply with Sections 725.151 and 725.156 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

b) If the owner or operator has already prepared a federal Spill Prevention Control and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or 300, or some other emergency or contingency plan, it needs only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply
with the requirements of this Part.

c) The plan must describe arrangements agreed to by local police department, fire
departments, hospitals, contractors, and state and local emergency response teams
to coordinate emergency services, pursuant to Section 725.137.

d) The plan must list names, addresses, and phone numbers (office and home) of all
persons qualified to act as emergency coordinator (see Section 725.155), and this
list must be kept up to date. Where more than one person is listed one must be
named as primary emergency coordinator and others must be listed in the order in
which they will assume responsibility as alternates.

e) The plan must include a list of all emergency equipment at the facility [such as
fire extinguishing systems, spill control equipment, communications and alarm
systems (internal and external), and decontamination equipment] where this
equipment is required. This list must be kept up to date. In addition, the plan
must include the location and a physical description of each item on the list and a
brief outline of its capabilities.

f) The plan must include an evacuation plan for facility personnel where there is a
possibility that evacuation could be necessary. This plan must describe
signals to be used to begin evacuation, evacuation routes, and alternate
evacuation routes (in cases where the primary routes could be blocked by releases
of hazardous waste or fires).

(Source: Amended at 29 Ill. Reg. _____, effective _________)

Section 725.153 Copies of Contingency Plan

A copy of the contingency plan and all revisions to the plan must be disposed as follows:

a) They must be maintained at the facility; and

b) They must be submitted to all local police departments, fire
departments, hospitals, and state and local emergency response teams that may be
called upon to provide emergency services.

(Source: Amended at 29 Ill. Reg. _____, effective _________)

Section 725.154 Amendment of Contingency Plan
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The contingency plan must be reviewed and immediately amended, if necessary, whenever any of the following occurs:

a) Applicable regulations are revised;
b) The plan fails in an emergency;
c) The facility changes – in its design, construction, operation, maintenance, or other circumstances – in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents or changes the response necessary in an emergency;
d) The list of emergency coordinators changes; or
e) The list of emergency equipment changes.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.155 Emergency Coordinator

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: COMMENT: The emergency coordinator's responsibilities are more fully spelled out in Section § 725.156. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility and type and complexity of the facility.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.156 Emergency Procedures

a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must shall immediately do the following:
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1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

2) Notify appropriate state or local agencies with designated response roles if their help is needed.

b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He or she may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosions).

d) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health or the environment outside the facility, he or she must report his findings as follows:

1) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. He or she must be available to help appropriate officials decide whether local areas should be evacuated; and

2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area (in the applicable regional contingency plan under 40 CFR 300), or the National Response Center (using their 24-hour toll free number 800-424-8802). The report must include the following:

A) The name and telephone number of reporter;

B) The name and address of facility;

C) The time and type of incident (e.g., release, fire);

D) The name and quantity of materials involved, to the extent known;
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E) The extent of injuries, if any; and

F) The possible hazards to human health or the environment outside the facility.

e) During an emergency the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

f) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil, or surface water, or any other material that results from a release, fire, or explosion at the facility.

BOARD NOTE: Unless the owner or operator can demonstrate in accordance with 35 Ill. Adm. Code Section 721.103(d) or (e) that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code Parts 722, 723, and 725.

h) The emergency coordinator must ensure that, in the affected areas of the facility, the following occur:

1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

i) The owner or operator must notify the Agency Director and other appropriate state and local authorities that the facility is in compliance with subsection (h) of this Section above before operations are resumed in the affected areas of the facility.
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j) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, it shall submit a written report on the incident to the Agency Director. The report must include the following information:

1) The name, address, and telephone number of the owner or operator;
2) The name, address, and telephone number of the facility;
3) The date, time, and type of incident (e.g., fire, explosion, etc.);
4) The name and quantity of materials involved;
5) The extent of injuries, if any;
6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
7) The estimated quantity and disposition of recovered material that resulted from the incident.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

Section 725.170 Applicability

The regulations in this Subpart apply to owners and operators of both on-site and off-site facilities, except as Section 725.101 provides otherwise. Sections 725.171, 725.172, and 725.176 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor do they apply to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 35 Ill. Adm. Code 726.303(a).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.171 Use of Manifest System

a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator or his agent must do each of the following:
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1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

2) Note any significant discrepancies in the manifest, as defined in Section 725.172(a), on each copy of the manifest;

BOARD NOTE: An owner or operator of a facility whose procedures under Section 725.113(c) include waste analysis need not perform that analysis before signing the manifest and giving it to the transporter. Section 725.172(b), however, requires the owner or operator to report any unreconciled discrepancy discovered during later analysis.

3) Immediately give the transporter at least one copy of the signed manifest;

4) Send a copy of the manifest to the generator and the Agency within 30 days of the date of delivery; and

5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

b) If a facility receives from a rail or water (bulk shipment) transporter hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator's certification, and signatures), the owner or operator or its agent must do each of the following:

1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

2) Note any significant discrepancies, as defined in Section 725.172(a), in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

BOARD NOTE: The owner or operator of a facility whose procedures under Section 725.113(c) include waste analysis need not perform that analysis before signing the shipping paper and giving it to the transporter. Section 725.172(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.
3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

4) Send a copy of the signed and dated manifest to the generator and to the Agency within 30 days after the delivery; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or its agent, must send a copy of the shipping paper signed and dated to the generator; and

   BOARD NOTE: 35 Ill. Adm. Code 722.123(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 35 Ill. Adm. Code 722.

   BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.134 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.134 apply only to owners or operators that are shipping hazardous waste which they generated at that facility.

d) Within three working days of the receipt of a shipment subject to Subpart H of 35 Ill. Adm. Code 722, Subpart H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier; to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

   (Source: Amended at 29 Ill. Reg. ______, effective ____________
Section 725.172 Manifest Discrepancies

a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper and the quantity or type of hazardous waste a facility actually receives.

b) Significant discrepancies in quantity are defined as follows:

1) For bulk waste, variations greater than 10 percent in weight, and

2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

c) Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid or toxic constituents not reported on the manifest or shipping paper.

d) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Agency Director a letter describing the discrepancy and attempts to reconcile it and a copy of the manifest or shipping paper at issue.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.173 Operating Record

a) The owner or operator must keep a written operating record at the facility.

b) The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility:

1) A description and the quantity of each hazardous waste received and the method or methods and date or dates of its treatment, storage, or disposal at the facility, as required by Section 725. Appendix A to this Part;

2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities this information must include cross-
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references to specific manifest document numbers if the waste was accompanied by a manifest;

BOARD NOTE: See Sections 725.219, 725.379, and 725.409 for related requirements.

3) Records and results of waste analysis, waste determinations, and trial tests performed, as specified in Sections 725.113, 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475, 725.502, 725.934, 725.963, and 725.984 and 35 Ill. Adm. Code 728.104(a) and 728.107;

4) Summary reports and details of all incidents that require implementing the contingency plan, as specified in Section 725.156(j);

5) Records and results of inspections as required by Sections 725.115(d) (except these data need be kept only three years);

6) Monitoring, testing, or analytical data, where required by Subpart F of this Part or Sections 725.119, 725.190, 725.194, 725.291, 725.293, 725.295, 725.322, 725.323, 725.326, 725.355, 725.359, 725.360, 725.376, 725.378, 725.380(d)(1), 725.402 through 725.404, 725.447, 725.477, 725.934(c) through (f), 725.935, 725.963(d) through (i), 725.964, and 725.1083 through 725.990;

BOARD NOTE: As required by Section 725.194, monitoring data at disposal facilities must be kept throughout the post-closure period.

7) All closure cost estimates under Section 725.242 and, for disposal facilities, all post-closure cost estimates under Section 725.244;

8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension of the effective date of any land disposal restriction granted pursuant to 35 Ill. Adm. Code 728.105, a petition pursuant to 35 Ill. Adm. Code 728.106, or a certification under 35 Ill. Adm. Code 728.108 and the applicable notice required of a generator under 35 Ill. Adm. Code 728.107(a);

9) For an off-site treatment facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;
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10) For an on-site treatment facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

11) For an off-site land disposal facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107 or 728.108;

12) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107, except for the manifest number, and the certification and demonstration, if applicable, required under 35 Ill. Adm. Code 728.107 or 728.108;

13) For an off-site storage facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108; and

14) For an on-site storage facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.174 Availability, Retention, and Disposition of Records

a) All records, including plans, required under this Part must be furnished upon request and made available at all reasonable times for inspection by any officer, employee, or representative of the Agency that is duly designated by the Agency Director.

b) The retention period for all records required under this Part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Agency Director.

c) A copy of records of waste disposal locations and quantities under Section 725.173(b)(2) must be submitted to the Agency Director and local land authority upon closure of the facility (see Section 725.219).
Section 725.175 Annual Report

The owner and operator **must** prepare and submit a single copy of an annual report to the Agency by March 1 of each year. The report form and instructions supplied by the Agency must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

a) The USEPA identification number (Section 725.111), name and address of the facility;

b) The calendar year covered by the report;

c) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities this information must be listed by USEPA identification number of each generator;

e) The method of treatment, storage, or disposal for each hazardous waste;

f) Monitoring data under Section 725.194(a)(2)(B), (a)(2), (C) and (b)(2), where required;

g) The most recent closure cost estimate under Section 725.242 and for disposal facilities the most recent post-closure cost estimate under Section 725.244;

h) For generators that treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;

i) For generators that treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, to the extent such information is available for years prior to 1984; and
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j) The certification signed by the owner or operator of the facility or the owner or operator's authorized representative.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.176 Unmanifested Waste Report

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest or without an accompanying shipping paper, as described in 35 Ill. Adm. Code 723.120(e)(2), and, if the waste is not excluded from the manifest requirement by 35 Ill. Adm. Code 721.105, then the owner or operator must prepare and submit a single copy of a report to the Agency Director within 15 days after receiving the waste. The unmanifested waste report must be submitted on USEPA form 8700-13B. Such report must be designated "Unmanifested Waste Report" and must include the following information:

a) The USEPA identification number, name, and address of the facility;

b) The date the facility received the waste;

c) The USEPA identification number, name, and address of the generator and the transporter, if available;

d) A description and the quantity of each unmanifested hazardous waste the facility received;

e) The method of treatment, storage, or disposal for each hazardous waste;

f) The certification signed by the owner or operator of the facility or its authorized representative; and

g) A brief explanation of why the waste was unmanifested, if known.

(Board Note: Small quantities of hazardous waste are excluded from regulation under this Part and do not require a manifest. Where a facility received unmanifested hazardous waste, the Board suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the Board suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.)

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
Section 725.177 Additional Reports

In addition to submitting the annual report and unmanifested waste reports described in Sections 725.175 and 725.176, the owner or operator must also report the following information to the Agency:

a) Releases, fires, and explosions, as specified in Section 725.156(j);

b) Groundwater contamination and monitoring data, as specified in Section 725.193 and 725.194;

c) Facility closure, as specified in Section 725.215; and

d) As otherwise required by Subparts AA, BB, and CC of this Part 725 Subparts AA, BB, and CC.

(Source: Amended at 29 Ill. Reg. _____, effective ________)

SUBPART F: GROUNDWATER MONITORING

Section 725.190 Applicability

a) The owner or operator of a surface impoundment, landfill, or land treatment facility that is used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as Section 725.101 and subsection paragraph (c) of this Section provide otherwise.

b) Except as subsection paragraphs (c) and (d) of this Section provide otherwise, the owner or operator must install, operate, and maintain a groundwater monitoring system that meets the requirements of Section 725.191 and must comply with Sections 725.192 through 725.194. This groundwater monitoring program must be carried out during the active life of the facility and for disposal facilities during the post-closure care period as well.

c) All or part of the groundwater monitoring requirements of this Subpart F may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing and must be kept at the facility. This demonstration must be certified by a qualified geologist or
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genuine engineer and must establish the following:

1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer by an evaluation of the following information:
   A) A water balance of precipitation, evapotranspiration, evapotranspiration, runoff, and infiltration; and
   B) Unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to ground water); and

2) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water by an evaluation of the following information:
   A) Saturated zone characteristics (i.e., geologic materials, physical properties, and rate of groundwater flow); and
   B) The proximity of the facility to water supply wells or surface water.

d) If an owner or operator assumes (or knows) that groundwater monitoring of indicator parameters in accordance with Sections 725.191 and 725.192 would show statistically significant increases (or decreases in the case of pH) when evaluated under Section 725.193(b), it may install, operate, and maintain an alternate groundwater monitoring system (other than the one described in Sections 725.191 and 725.192). If the owner or operator decides to use an alternate groundwater monitoring system it must have done as follows:

1) By November 19, 1981, the owner or operator must have submitted to the USEPA Region 5 Regional Administrator a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of 40 CFR 265.93(d)(3) for an alternate groundwater monitoring system;

2) By November 19, 1981, the owner or operator must have initiated the determinations specified in 40 CFR 265.93(d)(4);

3) The owner or operator must have prepared and submitted a written report in accordance with Section 725.193(d)(5);
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4) The owner or operator must continue to make the determinations specified in Section 725.193(d)(4) on a quarterly basis until final closure of the facility; and

5) The owner or operator must comply with the recordkeeping and reporting requirements in Section 725.194(b).

e) The groundwater monitoring requirements of this Subpart F may be waived with respect to any surface impoundment of which the following is true:

1) The impoundment is used to neutralize wastes that which are hazardous solely because they exhibit the corrosivity characteristic under 35 Ill. Adm. Code 721.122 or which are listed as hazardous wastes in Subpart D of 35 Ill. Adm. Code 721, Subpart D only for this reason; and

2) The impoundment contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

f) A permit or enforceable document can contain alternative requirements for groundwater monitoring that replace all or part of the requirements of this Subpart F applicable to a regulated unit (as defined in 35 Ill. Adm. Code 724.190), as provided under 35 Ill. Adm. Code 703.161, where the Board has determined by an adjusted standard granted pursuant to Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 704 or Agency determines the following:

1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management units (or areas of concern) are likely to have contributed to the release; and

2) It is not necessary to apply the groundwater monitoring requirements of this Subpart F because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of 35 Ill. Adm. Code 724.201(a).
Section 725.191 Groundwater Monitoring System

a) A groundwater monitoring system must be capable of yielding groundwater samples for analysis and must consist of the following components:

1) Monitoring wells (at least one) installed hydraulically upgradient (i.e., in the direction of increasing static head) from the limit of the waste management area. Their number, locations, and depths must be sufficient to yield groundwater samples that fulfill both of the following requirements:

   A) The samples are representative of background groundwater quality in the uppermost aquifer near the facility; and

   B) The samples are not affected by the facility; and

2) Monitoring wells (at least three) installed hydraulically downgradient (i.e., in the direction of decreasing static head) at the limit of the waste management area. Their number, locations, and depths must ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

b) Separate monitoring systems for each waste management component of a facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary (perimeter).

2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by the imaginary boundary line which circumscribes the several waste management components.

3) The facility owner or operator may demonstrate that an alternate
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Hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified groundwater scientist and establish each of the following:

A) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area.

B) The selected alternate downgradient location is as close to the limit of the waste management area as practical.

C) The alternate location ensures detection as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

4D) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this subsection (b)(3).

c) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand where necessary to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed with a suitable material (e.g., cement grout or bentonite slurry) to prevent contamination of samples and the groundwater.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.192 Sampling and Analysis

a) The owner or operator must obtain and analyze samples from the installed groundwater monitoring system. The owner or operator must develop and follow a groundwater sampling and analysis plan. The owner or operator must keep this plan at the facility. The plan must include procedures and techniques for each of the following:

1) Sample collection;

2) Sample preservation and shipment;
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3) Analytical procedures; and

4) Chain of custody control.


b) The owner or operator must determine the concentration or value of the following parameters in groundwater samples in accordance with subsections (c) and (d) of this Section below:

1) Parameters characterizing the suitability of the groundwater as a drinking water supply, as specified in Section 725. Appendix C to this Part.

2) The following parameters establishing groundwater quality:

   A) Chloride,
   B) Iron,
   C) Manganese,
   D) Phenols,
   E) Sodium, and
   F) Sulfate.

BOARD NOTE: These parameters are to be used as a basis for comparison in the event a groundwater quality assessment is required under Section 725.193(d).

3) The following parameters used as indicators of groundwater contamination:

   A) pH,
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B) Specific Conductance,
C) Total Organic Carbon, and
D) Total Organic Halogen.

c) Establishing background concentrations:

1) For all monitoring wells, the owner or operator \textbf{must} establish initial background concentrations or values of all parameters specified in subsection (b) of this Section above. The owner or operator \textbf{must} do this quarterly for one year.

2) For each of the indicator parameters specified in subsection (b)(3) of this Section above, the owner or operator \textbf{must} obtain at least four replicate measurements for each sample and determine the initial background arithmetic mean and variance by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

d) After the first year, the owner or operator \textbf{must} sample all monitoring wells and analyze the samples with the following frequencies:

1) Samples collected to establish groundwater quality must be obtained and analyzed for the parameters specified in subsection (b)(2) of this Section above at least annually.

2) Samples collected to indicate groundwater contamination must be obtained and analyzed for the parameters specified in subsection (b)(3) of this Section above at least semi-annually.

e) The owner or operator \textbf{must} determine the elevation of the groundwater surface at each monitoring well each time a sample is obtained.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.193 Preparation, Evaluation and Response

a) By no later than November 19, 1981, the owner or operator must \textbf{have prepared} an outline of a groundwater quality assessment program. The outline must describe a more comprehensive groundwater monitoring program.
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(than that described in Sections 725.191 and 725.192) capable of determining each of the following:

1) Whether hazardous waste or hazardous waste constituents have entered the groundwater;

2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the groundwater; and

3) The concentrations of hazardous waste or hazardous waste constituents in the groundwater.

b) For each indicator parameter specified in Section 725.192(b)(3), the owner or operator must calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with Section 725.192(d)(2) and compare these results with its initial background arithmetic mean. The comparison must consider individually each of the wells in the monitoring system and must use the Student's t-test at the 0.01 level of significance (see Appendix D) to determine statistically significant increases (and decreases, in the case of pH) over initial background.

c) Well comparisons.

1) If the comparisons for the upgradient wells made under subsection paragraph (b) of this Section show a significant increase (or pH decrease) the owner or operator must submit this information in accordance with Section 725.194(a)(2)(B).

2) If the comparisons for downgradient wells made under subsection paragraph (b) of this Section show a significant increase (or pH decrease) the owner or operator must then immediately obtain additional groundwater samples for those downgradient wells where a significant difference was detected, split the samples in two and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

d) Notice to the Agency.

1) If the analyses performed under subsection paragraph (c)(2) of this Section confirm the significant increase (or pH decrease) the owner or operator must provide written notice to the Agency Director – within seven days
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After the date of such confirmation – that the facility may be affecting groundwater quality.

2) Within 15 days after the notification under subsection paragraph (d)(1) of this Section, the owner or operator must develop and submit to the Agency Director a specific plan, based on the outline required under subsection paragraph (a) of this Section and certified by a qualified geologist or geotechnical engineer for a groundwater quality assessment program at the facility.

3) The plan to be submitted under Section 725.190(d)(1) or subsection paragraph (d)(2) of this Section must specify all of the following:

A) The number, location, and depth of wells;
B) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;
C) Evaluation procedures, including any use of previously gathered groundwater quality information; and
D) A schedule of implementation.

4) The owner or operator must implement the groundwater quality assessment plan that satisfies the requirements of subsection paragraph (d)(3) of this Section and, at a minimum, determine each of the following:

A) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the groundwater; and
B) The concentrations of the hazardous waste or hazardous waste constituents in the groundwater.

5) The owner or operator must make his first determination under subsection paragraph (d)(4) of this Section as soon as technically feasible and, within 15 days after that determination, submit to the Agency Director a written report containing an assessment of the groundwater quality.

6) If the owner or operator determines, based on the results of the first
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determination under subsection paragraph (d)(4) of this Section, that no hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in Section 725.192 and subsection paragraph (b) of this Section. If the owner or operator reinstates the indicator evaluation program, he must so notify the AgencyDirector in the report submitted under subsection paragraph (d)(5) of this Section.

7) If the owner or operator determines, based on the first determination under subsection paragraph (d)(4) of this Section, that hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then the owner or operator must do either of the following:

A) It must continue to make the determinations required under subsection paragraph (d)(4) of this Section on a quarterly basis until final closure of the facility if the groundwater quality assessment plan was implemented prior to final closure of the facility; or

B) it may cease to make the determinations required under subsection paragraph (d)(4) of this Section if the groundwater quality assessment plan was implemented during the post-closure care period.

e) Notwithstanding any other provision of this Subpart F, any groundwater quality assessment to satisfy the requirements of subsection paragraph (d)(4) of this Section that is initiated prior to final closure of the facility must be completed and reported in accordance with subsection paragraph 725.193 (d)(5) of this Section.

f) Unless the groundwater is monitored to satisfy the requirements of subsection paragraph 725.193 (d)(4) of this Section, at least annually the owner or operator must evaluate the data on groundwater surface elevations obtained under Section 725.192(e) to determine whether the requirements under Section 725.191(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that Section 725.191(a) is no longer satisfied, the owner or operator must immediately modify the number, location or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

(Source: Amended at 29 Ill. Reg. ______, effective ___________)
Section 725.194 Recordkeeping and Reporting

a) Unless the groundwater is monitored to satisfy the requirements of Section 725.193(d)(4), the owner or operator must do the following:

1) Keep records of the analyses required in Section 725.192(c) and (d), the associated groundwater surface elevations required in Section 725.192(e), and the evaluations required in Section 725.193(b) throughout the active life of the facility and, for disposal facilities, also throughout the post-closure care period; and

2) Report the following groundwater monitoring information to the Agency:

   A) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in Section 725.192(b)(1) for each groundwater monitoring well, within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Section 725. Appendix C to this Part.

   B) Annually: concentrations or values of the parameters listed in Section 725.192(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under Section 725.193(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with Section 725.193(c)(1). During the active life of the facility, the owner or operator must submit this information as part of the annual report required under Section 725.175; and.

   C) As part of the annual report required under Section 725.175: results of the evaluation of groundwater surface elevations under Section 725.193(f) and a description of the response to the evaluation, where applicable.

b) If the groundwater is monitored to satisfy the requirements of Section 725.193(d)(4), the owner or operator must do the following: 
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1) Keep records of the analyses and evaluations specified in the plan that satisfy the requirements of Section 725.193(d)(3) throughout the active life of the facility and, for disposal facilities, also throughout the post-closure care period; and

2) Annually, until final closure of the facility, submit to the Agency a report containing the results of the groundwater quality assessment program that includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. The owner or operator must submit this report as part of the annual report required under Section 725.175.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART G: CLOSURE AND POST-CLOSURE CARE

Section 725.210 Applicability

Except as Section 725.101 provides otherwise, the following requirements apply as indicated:

a) Sections 725.211 through 725.215 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

b) Sections 725.216 through 725.220 (which concern post-closure care) apply to the owners and operators of the following:

1) All hazardous waste disposal facilities;

2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these Sections are made applicable to such facilities in Section 725.328 or 725.358; or

3) Tank systems that are required under Section 725.297 to meet requirements for landfills; or

4) Containment buildings that are required under Section 725.1102 to meet the requirement for landfills.

c) Section 725.221 applies to owners and operators of units that are subject to the requirements of 35 Ill. Adm. Code 703.161 and which are regulated under an
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enforceable document (as established pursuant to 35 Ill. Adm. Code 703.161).

d) A permit or enforceable document can contain alternative requirements that replace all or part of the closure and post-closure care requirements of this Subpart G (and the unit-specific standards in Section 725.211(c)) applying to a regulated unit (as defined in 35 Ill. Adm. Code 724.190), as provided in 35 Ill. Adm. Code 703.161, where the Board has determined by an adjusted standard granted pursuant to Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104 or Agency determines the following:

1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management units (or areas of concern) are likely to have contributed to the release; and

2) It is not necessary to apply the closure requirements of this Subpart G (and those referenced herein) because the alternative requirements will protect human health and the environment, and will satisfy the closure performance standard of Section 725.211(a) and (b).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.211 Closure Performance Standard

The owner or operator must comply with the closure requirements of this Part, including, but not limited to, the requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.212 Closure Plan; Amendment of Plan
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a) Written plan. Within six months after the effective date of the rule that first subjects a facility to provisions of this Section, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215, a copy of the most current plan must be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the day of inspection to any officer, employee, or representative of the Agency.

b) Content of plan. The plan must identify the steps necessary to perform partial or final closure of the facility at any point during its active life. The closure plan must include the following minimal information, at least:

1) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 725.211;

2) A description of how final closure of the facility will be conducted in accordance with Section 725.211. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility;

3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing, or disposing of all hazardous waste, and identification of and the type(s) of off-site hazardous waste management units to be used, if applicable;

4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard;

5) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and runon and runoff control;
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6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.);

7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under Section 725.243 or 725.245 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans; and

8) For a facility where alternative requirements are established at a regulated unit under Section 725.190(f), 725.210(d), or 725.240(d), as provided under 35 Ill. Adm. Code 703.161, either the alternative requirements applying to the regulated unit or a reference to the enforceable document containing those alternative requirements.

c) Amendment of plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan shall submit a written request to the Agency to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Agency.

1) The owner or operator shall amend the closure plan, whenever any of the following occurs:

A) Changes in the operating plans or facility design affect the closure plan;

B) Whenever there is a change in the expected year of closure, if applicable;

C) In conducting partial or final closure activities, unexpected events require a modification of the closure plan; or

D) The owner or operator requests the establishment of alternative requirements, as provided under 35 Ill. Adm. Code 703.161, to a
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regulated unit under Section 725.190(f), 725.210(c), or 725.240(d).

2) The owner or operator must amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles that intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with Section 725.410.

3) An owner or operator with an approved closure plan must submit the modified plan to the Agency at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred that has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles that intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with Section 725.410. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280, the modification to the plan must be approved according to the procedures in subsection (d)(4) of this Section.

4) The Agency may request modifications to the plan under the conditions described in subsection (c)(1) of this Section. An owner or operator with an approved closure plan must submit the modified plan within 60 days after the request from the Agency, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280, the modification to the plan must be approved in accordance with the procedures in subsection (d)(4) of this Section.

d) Notification of partial closure and final closure.

1) When notice is required.

A) The owner or operator must submit the closure plan to the Agency at least 180 days prior to the date on which the owner or
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operator expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final closure if it involves such a unit, whichever is earlier.

B) The owner or operator must submit the closure plan to the Agency at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace.

C) The owner or operator must submit the closure plan to the Agency at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

D) Owners or operators with an approved closure plan must notify the Agency in writing at least 60 days prior to the date on which the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit.

E) Owners or operators with an approved closure plan must notify the Agency in writing at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace.

F) Owners and operators with an approved closure plans must notify the Agency in writing at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

2) The date when the owner or operator "expects to begin closure" must be either of the following dates:

A) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the Agency
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that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that the owner or operator has taken and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Agency must approve an extension to this one-year limit; or

B) For units meeting the requirements of Section 725.213(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or, if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator demonstrates to the Agency that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and that the owner and operator have taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Agency must approve an extension to this one-year limit.

3) The owner or operator must submit the closure plan to the Agency no later than 15 days after occurrence of either of the following events:

A) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

B) Issuance of a judicial decree or Board order to cease receiving hazardous wastes or to close the facility or unit.

4) The Agency must provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan no later than 30 days from the date of the notice. The Agency also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Agency must give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments and the two notices may be combined.) The Agency must approve,
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modify, or disapprove the plan within 90 days after its receipt. If the Agency does not approve the plan, the Agency must provide the owner or operator with a detailed written statement of reasons for the refusal, and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Agency must approve or modify this plan in writing within 60 days. If the Agency modifies the plan, this modified plan becomes the approved closure plan. The Agency must assure that the approved plan is consistent with Sections 725.211 through 725.215 and the applicable requirements of Sections 725.190 et seq., 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 724.1102. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

e) Removal of wastes and decontamination or dismantling of equipment. Nothing in this Section precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.213 Closure; Time Allowed for Closure

a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all the applicable requirements of subsections (d) and (e) of this Section, below, at a hazardous waste management unit or facility, or 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Agency must approve a longer period if the owner or operator demonstrates the following:

1) The need to remain in operation by showing either of the following conditions exists:

A) The activities required to comply with this subsection (a) paragraph will, of necessity, take longer than 90 days to complete; or

B) All of the following conditions are true:
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i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes, if the owner or operator complies with subsections (d) and (e) of this Section, below;

ii) There is a reasonable likelihood that the owner or operator, or another person will recommence operation of the hazardous waste management unit or facility within one year; and

iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment including compliance with all applicable interim status requirements.

b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all applicable requirements of subsections (d) and (e) of this Section, below, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Agency must approve an extension to the closure period if the owner or operator demonstrates the following:

1) The need to remain in operation by showing either of the following conditions exists:

A) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B) All of the following conditions are true:

i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all the applicable requirements of
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subsections (d) and (e) of this Section, below; and

ii) There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year; and

iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

c) The demonstration referred to in subsections (a)(1) and (b)(1) of this Section, above, must be made as follows:

1) The demonstration in subsection (a)(1) of this Section, above, must be made at least 30 days prior to the expiration of the 90-day period in subsection (a) of this Section, above; and

2) The demonstrations in subsection (b)(1) of this Section, above, must be made at least 30 days prior to the expiration of the 180-day period in subsection (b) of this Section, above, unless the owner or operator is otherwise subject to deadlines in subsection (d) of this Section, below.

d) Continued receipt of non-hazardous waste. The Agency shall permit an owner or operator to receive non-hazardous wastes in a landfill, land treatment unit or surface impoundment unit after the final receipt of hazardous wastes at that unit if the following are true:

1) The owner or operator submits an amended Part B application, or a new Part B application if none was previously submitted, and demonstrates the following:

   A) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes; and

   B) There is a reasonable likelihood that the owner or operator or
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another person will receive non-hazardous waste in the unit within one year after the final receipt of hazardous wastes; and

C) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this Part; and

D) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

E) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

2) The Part B application includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required under 35 Ill. Adm. Code 703.186, and closure and post-closure care plans, and updated cost estimates, and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure, if applicable under Section 725.212(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

3) The Part B application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

4) The Part B application and the demonstrations referred to in subsections (d)(1) and (d) of this Section, above, are submitted to the Agency no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes, or no later than 90 days after the effective date of this Section, whichever is later.

e) Surface impoundments. In addition to the requirements in subsection (d) of this Section, above, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in Section 725.321(a) must receive non-hazardous wastes only as authorized by an adjusted standard pursuant to this subsection (e).

1) The petition for adjusted standard must include the following:
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A) A plan for removing hazardous wastes; and

B) A contingent corrective measures plan.

2) The removal plan must provide for the following:

A) Removing all hazardous liquids; and

B) Removing all hazardous sludges to the extent practicable without impairing the integrity of the liner or liners, if any; and

C) Removal of hazardous wastes no later than 90 days after the final receipt of hazardous wastes. The Board will allow a longer time, if the owner or operator demonstrates the following:

   i) That the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete; and

   ii) That an extension will not pose a threat to human health and the environment.

3) The following is required of contingent corrective measures plan:

A) It must meet the requirements of a corrective action plan under Section 724.199, based upon the assumption that a release has been detected from the unit.

B) It may be a portion of a corrective action plan previously submitted under Section 724.199.

C) It may provide for continued receipt of non-hazardous wastes at the unit following a release only if the owner or operator demonstrates that continued receipt of wastes will not impede corrective action.

D) It must provide for implementation within one year after a release, or within one year after the grant of the adjusted standard, whichever is later.

4) Release. A release is a statistically significant increase (or decrease in the
case of pH) in hazardous constituents over background levels, detected in accordance with the requirements in Subpart F of this Part.

5) In the event of a release, the owner or operator of the unit must perform the following actions:

A) Within 35 days, the owner or operator must file with the Board a petition for adjusted standard pursuant to Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104. If the Board finds that it is necessary to do so in order to protect human health and the environment, the Board will modify the adjusted standard to require the owner or operator to perform either of the following actions:

   i) Begin to implement the corrective measures plan in less than one year; or;
   
   ii) Cease the receipt of wastes until the plan has been implemented.

iii) The Board will retain jurisdiction or condition the adjusted standard so as to require the filing of a new petition to address any required closure pursuant to subsection (e)(7) of this Section below.

B) The owner or operator must implement the contingent corrective measures plan; and.

C) The owner or operator may continue to receive wastes at the unit if authorized by the approved contingent measures plan.

6) Semi-annual report. During the period of corrective action, the owner or operator shall provide semi-annual reports to the Agency which:

A) Describe the progress of the corrective action program;

B) Compile all groundwater monitoring data; and

C) Evaluate the effect of the continued receipt of non-
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hazardous wastes on the effectiveness of the corrective action.

7) Required closure. The owner or operator **must shall** commence closure of the unit in accordance with the closure plan and the requirements of this Part if the Board terminates the adjusted standard, or if the adjusted standard terminates pursuant to its terms.

A) The Board will terminate the adjusted standard if the owner or operator failed to implement corrective action measures in accordance with the approved contingent corrective measures plan.

B) The Board will terminate the adjusted standard if the owner or operator fails to make substantial progress in implementing the corrective measures plan and achieving the facility's groundwater protection standard, or background levels if the facility has not yet established a groundwater protection standard.

C) The adjusted standard will automatically terminate if the owner or operator fails to implement the removal plan.

D) The adjusted standard will automatically terminate if the owner or operator fails to timely file a required petition for adjusted standard.

8) Adjusted standard procedures. The following procedures must be used in granting, modifying or terminating an adjusted standard pursuant to this subsection.

A) Except as otherwise provided, the owner or operator **must shall** follow the procedures of Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104 to petition the Board for an adjusted standard.

B) Initial justification. The Board will grant an adjusted standard pursuant to subsection (e)(1) of this Section, above, if the owner or operator demonstrates that the removal plan and contingent corrective measures plans meet the requirements of subsections (e)(2) and (e)(3) of this Section, above.

C) The Board will include the following conditions in granting an
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adjusted standard pursuant to subsection (e)(1) of this Section, above:

i) A plan for removing hazardous wastes;

ii) A requirement that the owner or operator remove hazardous wastes in accordance with the plan;

iii) A contingent corrective measures plan;

iv) A requirement that, in the event of a release, the owner or operator must within 35 days, file with the Board a petition for adjusted standard; implement the corrective measures plan; and, file semi-annual reports with the Agency;

v) A condition that the adjusted standard will terminate if the owner or operator fails to implement the removal plan; or, timely file a required petition for adjusted standard; and,

vi) A requirement that, in the event the adjusted standard is terminated, the owner or operator must commence closure of the unit in accordance with the requirements of the closure plan and this Part.

D) Justification in the event of a release. The Board will modify or terminate the adjusted standard pursuant to a petition filed under subsection (e)(5)(A) of this Section, above, as provided in that subsection or in subsection (e)(7) of this Section, above.

9) The owner or operator may file a revised closure plan within 15 days after an adjusted standard is terminated.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.214 Disposal or Decontamination of Equipment, Structures and Soils

During the partial and final closure periods, all contaminated equipment, structures, and soil must be properly disposed of, or decontaminated unless specified otherwise in Sections 725.297, 725.328, 725.358, 725.380, or 725.410. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a
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generator of hazardous waste and shall handle that hazardous waste in accordance with all applicable requirements of 35 Ill. Adm. Code 722.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.215 Certification of Closure

Within 60 days after completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days after completion of final closure, the owner or operator shall submit to the Agency, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for closure under Section 725.243(h).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.216 Survey Plat

No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator shall submit to any local zoning authority, or authority with jurisdiction over local land use, to the County Recorder and to the Agency, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with any local zoning authority, or authority with jurisdiction over local land use, and the County Recorder must contain a note, prominently displayed, which states the owner's and operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable regulations of this Subpart G regulations.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.217 Post-Closure Care and Use of Property

a) Post-closure care.

1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections 725.217 through 725.220 must begin after completion of closure of the unit and continue for 30 years after that date.
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It must consist of at least the following:

A) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

B) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this Part.

2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Board will, by an adjusted standard granted pursuant to Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104 or by an order in some other appropriate type of proceeding (e.g., an enforcement proceeding), do the following:

A) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Board finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

B) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if the Board finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that which may be harmful to human health and the environment).

3) As provided by Section 725.218(i), the Board will utilize site-specific rulemaking to adjust the length of the post-closure care period.

b) The Agency shall require, at partial or final closure, continuation of any of the security requirements of Section 725.214 during part or all of the post-closure period when either of the following occurs:

1) Hazardous wastes may remain exposed after completion of partial or final
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closure; or

2) Access by the public or domestic livestock may pose a hazard to human health.

c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, 
liners, liner(s) or any other components of any containment system or the function of the facility’s monitoring systems, unless the Agency determines either of the following with respect to that disturbance:

1) It is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2) It is necessary to reduce a threat to human health or the environment.

d) All post-closure care activities must be performed in accordance with the provisions of the approved post-closure plan, as specified in Section 725.218.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.218 Post-Closure Care Plan; Amendment of Plan

a) Written Plan. The owner or operator of a hazardous waste disposal unit must have a written post-closure care plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a post-closure care plan and submit it to the Agency within 90 days after the date that the owner or operator or Agency determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of Sections 725.217 through 725.220.

b) Until final closure of the facility, a copy of the most current post-closure care plan must be furnished to the Agency upon request, including request by mail. In addition, for facilities without approved post-closure care plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee, or representative of the Agency. After final closure has been certified, the person or office specified in subsection (c)(3) must keep the approved post-closure care plan during the post-closure care period.

c) For each hazardous waste management unit subject to the requirements of this Section, the post-closure care plan must identify the activities that will be
carried on after closure of each disposal unit and the frequency of these activities and include the following minimal information:

1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period;

2) A description of the planned maintenance activities and frequencies at which they will be performed to ensure the following:
   A) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this Part; and
   B) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part;

3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period;

4) For a facility subject to Section 725.221, provisions that satisfy the requirements of Section 725.221(a)(1) and (a)(3); and

5) For a facility where alternative requirements are established at a regulated unit under Section 725.190(f), 725.210(d), or 725.240(d), as provided under 35 Ill. Adm. Code 703.161, either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

d) Amendment of plan. The owner or operator may amend the post-closure care plan at any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure care plan shall submit a written request to the Agency to authorize a change to the approved plan. The written request must include a copy of the amended post-closure care plan for approval by the Agency.

1) The owner or operator shall amend the post-closure care plan whenever the following occur:
   A) Changes in operating plans or facility design affect the post-
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closure care plan; or

B) Events occur during the active life of the facility, including partial and final closures, that affect the post-closure care plan; and

C) The owner or operator requests the establishment of alternative requirements to a regulated unit under Section 725.190(f), 725.210(d), or 725.240(d).

2) The owner or operator must amend the post-closure care plan at least 60 days prior to the proposed changes in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the post-closure care plan.

3) An owner or operator with an approved post-closure care plan must submit the modified plan to the Agency at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred that has affected the post-closure care plan. If an owner or operator of a surface impoundment or a waste pile that intended to remove all hazardous wastes at closure in accordance with Section 725.328(b) or 725.358(a) is required to close as a landfill in accordance with Section 725.410, the owner or operator must submit a post-closure care plan within 90 days after the determination by the owner or operator or Agency that the unit must be closed as a landfill. If the amendment to the post-closure care plan is a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280, the modification to the plan must be approved in accordance with the procedures in subsection (f) of this Section.

4) The Agency may request modifications to the plan under the conditions described in subsection (d)(1) of this Section. An owner or operator with an approved post-closure care plan must submit the modified plan no later than 60 days after the request from the Agency. If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280 the modifications to the post-closure care plan must be approved in accordance with the procedures in subsection (f) of this Section. If the Agency determines that an owner or operator of a surface impoundment or waste pile that intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure care plan for approval to the Agency within 90 days after the determination.
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e) The owner or operator of a facility with hazardous waste management units subject to these requirements shall submit the post-closure care plan to the Agency at least 180 days before the date the owner or operator expects to begin partial or final closure of the first hazardous waste disposal unit. The date when the owner or operator "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator shall submit the closure plan to the Agency no later than 15 days after either of the following:

1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

2) Issuance of a judicial decree or Board order to cease receiving wastes or close.

f) Procedures.

1) Except as provided in subsection (f)(2) of this Section, the Agency shall provide the owner or operator and the public through a newspaper notice the opportunity to submit written comments on the post-closure care plan and request modifications to the plan, no later than 30 days after the date of the notice. The Agency may also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the post-closure care plan. The Agency shall give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) The Agency shall approve, modify, or disapprove the plan within 90 days after its receipt. If the Agency determines not to approve the plan, the Agency shall provide the owner or operator with a detailed statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statements. The Agency shall approve or modify this plan in writing within 60 days. If the Agency modifies the plan, this modified plan becomes the approved post-closure care plan. Any final Agency determination shall ensure that
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the approved post-closure care plan is consistent with Sections 725.217 through 725.220. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

2) The Agency must not provide notice or the opportunity for public comment if, in a prior proceeding, the Board has ordered the modifications to the plan.

g) The post-closure care plan and length of the post-closure care period may be modified at any time prior to the end of the post-closure care period in either of the following two ways:

1) The owner or operator or any member of the public may petition to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

A) The petition must include evidence demonstrating either of the following:

i) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirements unnecessary or supports reduction of the post-closure care period specified in the current post-closure care plan (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

ii) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that may be harmful to human health and the environment).

B) These petitions must be considered only when they present new and relevant information not previously considered.
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i) Except as provided in subsection (g)(1)(B)(ii), whenever the Agency is considering a petition, it must provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days after the date of the notice. The Agency also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure care plan. The Agency must give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) After considering the comments, the Agency must issue a final determination, based upon the criteria set forth in subsection (g)(1) of this Section.

ii) The Agency must not provide notice or the opportunity for public comment if, in a prior proceeding, the Board has ordered the modifications to the plan.

C) If the Agency denies the petition, it must send the petitioner a brief written response giving a reason for the denial.

2) The Agency must tentatively decide to modify the post-closure care plan if the Agency determines that it is necessary to prevent threats to human health and the environment. The Agency may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

A) The Agency must provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days after the date of the notice and the opportunity for a public hearing as in subsection (g)(1)(B) of this Section. After considering the comments, the Agency must issue a final determination.

B) The Agency must base its final determination upon the same criteria as required for petitions under subsection (g)(1)(A) of this Section. A modification of the post-closure care plan may include,
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where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Agency would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

h) The Agency procedures described in Sections 725.212 through 725.219 are in the nature of permit amendments. Amendment of refusal to amend the plan is a permit denial for purposes of appeal pursuant to 35 Ill. Adm. Code 105. The Agency must not amend permits in such a manner so that the permit would not conform with Board regulations.

i) If any person seeks a closure or post-closure care plan that would not conform with Board regulations, such person must file a site-specific rulemaking petition pursuant to Sections 35 through 38 of the Act [415 ILCS 5/35 through 38] and Subpart B of 35 Ill. Adm. Code 104.

(Source: Amended at 29 Ill. Reg. _____, effective ___________)

Section 725.219 Post-Closure Notices

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the County Recorder and to the Agency a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the County Recorder must contain a note, prominently displayed, that states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 725.217(c). In addition, the owner or operator must submit to the Agency and to the County Recorder a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. The owner or operator must identify the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location, and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept.

a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the County Recorder, to any local zoning authority, or any authority with jurisdiction over local land use, and to the Agency, a record of the type, location, and quantity of hazardous
wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of the owner or operator's knowledge and in accordance with any records the owner or operator has kept.

b) Within 60 days after certification of closure of the first hazardous waste disposal unit and within 60 days after certification of closure of the last hazardous waste disposal unit, the owner or operator must do the following:

1) Record, in accordance with Illinois law, a notation on the deed to the facility property or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property:

A) The land has been used to manage hazardous wastes; and

B) Its use is restricted under Subpart G of 35 Ill. Adm. Code 725;

C) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Sections 725.216 and 725.219(a) have been filed with the County Recorder, any local zoning authority, or any authority with jurisdiction over local land use, and with the Agency; and

2) Submit to the Agency a certification signed by the owner or operator that the owner or operator has recorded the notation specified in subsection (b)(1) of this Section, together with a copy of the document in which the notation has been placed, to the Agency.

c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, such person must request a modification to the approved post-closure plan in accordance with the requirements of Section 725.218(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 725.217(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of
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35 Ill. Adm. Code 702, 703 and 720 through 726. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Agency approve either of the following:

1) Removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

2) Addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.220 Certification of Completion of Post-Closure Care

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Agency, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer’s certification must be furnished to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for post-closure care under Section 725.245(h).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.221 Alternative Post-Closure Care Requirements

a) An owner or operator that is subject to the requirement to obtain a post-closure care permit under Subpart B of 35 Ill. Adm. Code 703. Subpart B but which obtains an enforceable document in lieu of a post-closure permit, as provided in 35 Ill. Adm. Code 703.161, must comply with the following requirements:

1) The requirements to submit information about the facility in 35 Ill. Adm. Code 703.214;

2) The requirements for facility-wide corrective action in 35 Ill. Adm. Code 724.201; and

b) Implementation of Alternative Requirements.

1) Public notice, public comments, and public hearing.

   A) In establishing alternative requirements in an enforceable document in lieu of a permit under this Section, the Board will assure a meaningful opportunity for public involvement that, at a minimum, includes public notice and opportunity for public comment, as provided under the relevant provisions of the Act:

   i) For a site-specific rulemaking, in Sections 27 and 28 of the Act [415 ILCS 5/27 and 28].


   iii) For a variance, in Sections 35 through 38 of the Act [415 ILCS 5/35 through 38].

   iv) For an order issued pursuant to Section 33(a) of the Act [415 ILCS 5/33(a)], in Sections 31, 32, and 33 of the Act [415 ILCS 5/31, 32, and 33].

   B) When an owner or operator submits a plan to the Agency pursuant to an appropriate statutory or regulatory authority, the Agency must provide public notice and an opportunity for public hearing on the plan according to the requirements of Subparts D and E of 35 Ill. Adm. Code 705. Subparts D and E as follows:

   i) When the Agency becomes involved in remedial action at the facility under regulations or in an enforcement action;

   ii) On the proposed preferred remedy and on the assumptions on which the remedy is based, especially those relating to land use and site characterization; and

   iii) At the time of a proposed decision that remedial action is complete at the facility.

C) The requirements of subsection (b)(1)(B) of this Section must be
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met before the Agency may consider that the facility owner or operator has met the requirements of 35 Ill. Adm. Code 703.161, unless the facility qualifies for a modification to these public participation requirements under either of subsections (b)(2) or (b)(3) of this Section.

2) If the Agency determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Agency may delay compliance with the requirements of subsection (b)(1)(B) of this Section and immediately implement the remedy. However, the Agency must assure involvement of the public at the earliest opportunity and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

3) The Agency may allow a remediation initiated prior to August 6, 1999 to substitute for corrective action required under a post-closure care permit even if the public involvement requirements of subsection (b)(1)(B) of this Section have not been met, so long as the Agency assures that notice and comment on the decision that no further remediation is necessary to adequately protect human health and the environment takes place at the earliest reasonable opportunity after August 6, 1999.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART H: FINANCIAL REQUIREMENTS

Section 725.240 Applicability

a) The requirements of Sections 725.242, 725.243, and 725.247 through 725.250 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this Section or in Section 725.101.

b) The requirements of Sections 725.244 and 725.246 apply only to owners and operators of any of the following:

1) Disposal facilities;

2) Tank systems that are required under Section 725.297 to meet the requirements for landfills; or

3) Containment buildings that are required under Section 725.1102 to meet
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the requirements for landfills.

c) States and the federal government Federal Government are exempt from the requirements of this Subpart H.

d) A permit or enforceable document can contain alternative requirements that replace all or part of the financial assurance requirements of this Subpart H of this Part applying to a regulated unit, as provided in 35 Ill. Adm. Code 703.161, where the Board or Agency has done the following:

1) The Board, by an adjusted standard granted pursuant to Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104, or Agency has established alternative requirements for the regulated unit established under Section 725.190(f) or Section 724.210(d); and

2) The Board has determined or Agency determines that it is not necessary to apply the financial assurance requirements of this Subpart H of this Part because the alternative financial assurance requirements will protect human health and the environment.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.241 Definitions of Terms as Used in this Subpart H

a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 725.212.

b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Sections 725.242(a), (b), and (c).

c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with Sections 725.244(a), (b), and (c).

d) "Parent corporation" means a corporation that directly owns at least 50 percent of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of Sections 725.217 through 725.220.

f) The following terms are used in the specifications for the financial tests for
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closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" mean all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" mean cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 35 Ill. Adm. Code 704.212(a), (b), and (c).

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles, such as goodwill and rights to patents or royalties.

In the liability insurance requirements the terms "bodily injury" and "property damage" have the meanings given below. The Board intends the meanings of other terms used in the liability insurance requirements to be consistent with their
common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time. However, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.


"Environmental damage" means the injurious presence in or upon land, the atmosphere or any watercourse or body of water of solid, liquid, gaseous, or thermal contaminants, irritants, or pollutants.

BOARD NOTE: This term is used in the definition of "pollution incident."

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

"Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.

BOARD NOTE: This definition is used in the definition of "pollution incident."
"Pollution incident" means emission, discharge, release or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water, provided that such emission, discharge, release or escape results in "environmental damage." The entirety of any such emission, discharge, release or escape must be deemed to be one "pollution incident." "Waste" includes materials to be recycled, reconditioned or reclaimed. The term "pollution incident" includes an "occurrence.

BOARD NOTE: This definition is used in the definition of "property damage." 

"Property damage" means as follows:

Either of the following:

- Physical injury to, destruction of, or contamination of, tangible property, including all resulting loss of use of that property; or
- Loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a "pollution incident."

This term does not include those liabilities, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.


"Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

h) "Substantial business relationship" means that one business entity has an ownership interest in another.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.242 Cost Estimate for Closure
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a) The owner or operator **must** have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.278, 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.

1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 725.212(b)); and

2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" in Section 725.241(d).) The owner or operator may use costs for on-site disposal if the owner or operator demonstrates that on-site disposal capacity will exist at all times over the life of the facility.

3) The closure cost estimate must not incorporate any salvage value that may be realized by the sale of hazardous wastes, or non-hazardous wastes if applicable under Section 725.213(d), facility structures or equipment, land or other facility assets at the time of partial or final closure.

4) The owner or operator **must** not incorporate a zero cost for hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), that may have economic value.

b) During the active life of the facility, the owner or operator **must** adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 725.243. For **an owner or operator** owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency, as specified in Section 725.243(e)(5). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2) of this Section, below. The inflation factor is the result of dividing the
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latest published annual Deflator by the Deflator for the previous year.

1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan that increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Agency has approved the request to modify the closure plan if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (b) of this Section, above.

d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (a) and (c) of this Section, above, and, when this estimate has been adjusted in accordance with subsection (b) of this Section, above, the latest adjusted closure cost estimate.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.243  Financial Assurance for Closure

An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (e) of this Section, below.

a) Closure trust fund.

1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund which conforms to the requirements of subsection and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.

2) The wording of the trust agreement must be as specified in 35 Ill. Adm.
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Code 724.251 and the trust agreement must be accompanied by a formal certification of acknowledgment as specified in 35 Ill. Adm. Code 724.251. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator over the 20 years beginning May 19, 1981, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

A) The first payment must be made before May 19, 1981, except as provided in subsection (a)(5) of this Section, below. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section, below, divided by the number of years in the pay-in period.

B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

\[
\text{Next payment} = \frac{CE - CV}{Y}
\]

Where:

- \(CE\) is the current closure cost estimate,
- \(CV\) is the current value of the trust fund, and
- \(Y\) is the number of years remaining in the pay-in period.

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this.
5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this Section, above.

6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this Section, to cover the difference.

7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.

8) If an owner or operator substitutes other financial assurance, as specified in this Section, for all or part of the trust fund, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (a)(7) or (a)(8) of this Section, above, the Agency shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.

10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Agency shall instruct the trustee to make reimbursement in those
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amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it must withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h) of this Section, below, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide the owner or operator a detailed written statement of reasons.

11) The Agency must agree to termination of the trust when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section, below.

b) Surety bond guaranteeing payment into a closure trust fund.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.


3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in subsection (a) of this Section, above except as follows:

that which
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A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

   i) Payments into the trust fund, as specified in subsection (a);

   ii) Updating of Schedule A of the trust agreement (see 40 CFR 264.251(a)) to show current closure cost estimates;

   iii) Annual valuations, as required by the trust agreement; and

   iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will:

   A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

   B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or

   C) Provide alternate financial assurance, as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section, below.

7) Whenever the current closure cost estimate increases to an amount greater
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than the penal sum, the owner or operator, within 60 days after the increase, **shall** either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance, as specified in this Section.

c) Closure letter of credit.

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit conforming to the requirements of this subsection (c) and submitting the letter to the Agency. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.


3) An owner or operator uses a letter of credit to satisfy the requirements of this Section also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this Section, above, except as follows:

A) An original, signed duplicate of the trust agreement must be
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submitted to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a) of this Section, above;

ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment as required by the trust agreement.

4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the USEPA identification number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section, below.

7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and
submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

8) Following a final judicial determination or Board order finding that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Agency may draw on the letter of credit.

9) If the owner or operator does not establish alternate financial assurance as specified in this Section, and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance, as specified in this Section, and obtain written approval of such assurance from the Agency.

10) The Agency must return the letter of credit to the issuing institution for termination when one of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section, below.

d) Closure insurance.

1) An owner or operator may satisfy the requirements of this Section by obtaining closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the Agency. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section, below. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies.

5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Agency must instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it shall withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h) of this Section, below, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Agency does not instruct the insurer to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

6) The owner or operator shall maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in subsection (d)(10) of this Section, below.
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Failure to pay the premium, without substitution of alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that, on or before the date of expiration, one of the following occurs:

A) The Agency deems the facility abandoned; ☑

B) Interim status is terminated or revoked; ☑

C) Closure is ordered by the Board or a U.S. district court or other court of competent jurisdiction; ☑

D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or

E) The premium due is paid.

9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased
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to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

10) The Agency shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section below.

e) Financial test and corporate guarantee for closure.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of either subsection (e)(1)(A) or (e)(1)(B) of this Section below:

A) The owner or operator shall have all of the following:

i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii) Tangible net worth of at least $10 million; and
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iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator must have all of the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aa, A, or Baa, as issued by Moody's; and

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates," as used in subsection (e)(1) of this Section, above, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (40 CFR 264.151(f)) (incorporated by reference in 35 Ill. Adm. Code 724.251). The phrase "current plugging and abandonment cost estimates," as used in subsection (e)(1) of this Section, above, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)), incorporated by reference in 35 Ill. Adm. Code 704.240.

3) To demonstrate that the owner or operator meets this test, the owner or operator must submit each of the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251; and

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for
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the latest completed fiscal year; and

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

i) That the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, that no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

4) This subsection (e)(4) corresponds with 40 CFR 265.143(e)(4), a federal provision relating to an extension of the time to file the proofs of financial assurance required by this subsection (e) granted by USEPA. This statement maintains structural consistency with the corresponding federal regulations.

5) After the initial submission of items specified in subsection (e)(3) of this Section, above, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (e)(3) of this Section, above.

6) If the owner or operator no longer meets the requirements of subsection (e)(1) of this Section, above, the owner or operator must send notice to the Agency of intent to establish alternate financial assurance as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this Section, above, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this Section.
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above. If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this Section, above, the owner or operator must provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.

8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this Section, above). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this Section within 30 days after notification of the disallowance.

9) The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this Section, above, when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section, below.

10) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (e)(1) through (e)(8) of this Section, above, and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in 35 Ill. Adm. Code 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in subsection (e)(3) of this Section, above. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation
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of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide the following:

A) That, if the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a) of this Section, above, in the name of the owner or operator.

B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

C) That, if the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in subsections (a) through (d) of this Section, above, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.
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g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

h) Release of the owner or operator from the requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain financial assurance for closure of the facility, unless the Agency determines that closure has not been in accordance with the approved closure plan. The Agency must provide the owner or operator a detailed written statement of any such determination that closure has not been in accordance with the approved closure plan.

i) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board (35 Ill. Adm. Code 702.184(e)(3)):

1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit, or insurance; or

2) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.244 Cost Estimate for Post-Closure Care

a) The owner or operator of a hazardous waste disposal unit must have a
detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Section 725.217 through 725.220, 725.328, 725.358, 725.380, and 725.410.

1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See the definition of "parent corporation" in Section 725.241(d).)

2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Section 725.217.

b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 30 days after each anniversary of the date on which the first post-closure cost estimate was prepared. The adjustment must be made 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 725.245. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency as specified in Section 725.245(e)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars, or by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2) of this Section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1) The first adjustment is made by multiplying the post-closure estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate whenever a change in the post-closure plan no later than 30 days after a revision to the post-closure plan increases the cost of post-closure care. If the owner or operator has an approved post-closure plan,
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the post-closure cost estimate must be revised no later than 30 days after the Agency has approved the request to modify the plan if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subsection (b) of this Section.

d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest post-closure cost estimate prepared in accordance with subsections (a) and (c) of this Section and, when this estimate has been adjusted in accordance with subsection (b) of this Section, the latest adjusted post-closure cost estimate.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.245 Financial Assurance for Post-Closure Monitoring and Maintenance

An owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s). The owner or operator must choose from the following options:

a) Post-closure trust fund.

1) An owner or operator may satisfy the requirements of this Section by establishing a post-closure trust fund which conforms to the requirements of this subsection and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.

2) The wording of the trust agreement must be as specified in 35 Ill. Adm. Code 724.251 and the trust agreement must be accompanied by a formal certification of acknowledgment (as specified in 35 Ill. Adm. Code 724.251). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator over the 20 years beginning May 19, 1981, or over the remaining operating life of the facility as estimated in the closure plan, whichever
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The payments into the post-closure trust fund must be made as follows:

A) The first payment must have been made before May 19, 1981, except as provided in subsection (a)(5) of this Section above. The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (f) of this Section above, divided by the number of years in the pay-in period.

B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

\[
\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}
\]

Where:

- \( \text{CE} \) is the current closure cost estimate,
- \( \text{CV} \) is the current value of the trust fund, and
- \( \text{Y} \) is the number of years remaining in the pay-in period.

The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this Section above.

If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this Section above.

After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or
operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate.

8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (a)(7) or (a)(8) of this Section, above, the Agency shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.

10) During the period of post-closure care, the Agency shall approve a release of funds if the owner or operator demonstrates to the Agency that the value of the trust fund exceeds the remaining cost of post-closure care.

11) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency shall instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the trustee to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

12) The Agency shall agree to termination of a trust when either of the following occurs:
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A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section, below.

b) Surety bond guaranteeing payment into a post-closure trust fund.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.


3) The owner or operator who uses a surety bond to satisfy the requirements of this Section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in subsection (a) of this Section, above, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a) of this Section, above;

ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current post-closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and
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iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will perform the following acts:

A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or

C) Provide alternate financial assurance, as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (f) of this Section—above.

7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days
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beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Section.

c) Post-closure letter of credit.

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (c) and submitting the letter to the Agency. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.


3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this Section, above, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a) of this Section, above;

ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current post-closure cost estimates;
iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the USEPA identification number, name, and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (f) of this Section, above.

7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section to cover the increase. Whenever the current cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

8) During the period of post-closure care, the Agency shall approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.
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9) Following a final judicial determination or Board order finding that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other interim status requirements, the Agency may draw on the letter of credit.

10) If the owner or operator does not establish alternate financial assurance, as specified in this Section, and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance, as specified in this Section, and obtain written approval of such assurance from the Agency.

11) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section, below.

d) Post-closure insurance.

1) An owner or operator may satisfy the requirements of this Section by obtaining post-closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the Agency. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.


3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure estimate, except as provided in subsection
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(f) of this Section, below. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer's will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of facility whenever the post-closure period begins. The policy must also guarantee that, once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency, to such party or parties as the Agency specifies.

5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency must instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing, if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the insurer to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

6) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator, as specified in subsection (d)(11) of this Section, below. Failure to pay the premium, without substitution of alternate financial assurance, as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the
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The option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration, one of the following occurs:

A) The Agency deems the facility abandoned; or

B) Interim status is terminated or revoked; or

C) Closure is ordered by the Board or a U.S. district court or other court of competent jurisdiction; or

D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or

E) The premium due is paid.

9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.
11) The Agency must give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section, below.

e) Financial test and corporate guarantee for post-closure care.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test, as specified in this subsection (e). To pass this test the owner or operator must meet the criteria of either subsection (e)(1)(A) or (e)(1)(B) of this Section, below:

A) The owner or operator must have each of the following:

i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii) Tangible new worth of at least $10 million; and

iv) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the plugging and abandonment cost estimates.

B) The owner or operator must have each of the following:
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i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aa, A, or Baa, as issued by Moody's; and

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates," as used in subsection (e)(1) of this Section, above, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (40 CFR 264.151(f), incorporated by reference in 35 Ill. Adm. Code 724.251). The phrases "current plugging and abandonment cost estimates," as used in subsection (e)(1) of this Section, above, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)), incorporated by reference in 35 Ill. Adm. Code 704.240).

3) To demonstrate that it meets this test, the owner or operator must submit each of the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251; and

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating both of the following that:
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i) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted.

4) This subsection (e)(4) corresponds with 40 CFR 265.143(e)(4), a federal provision relating to an extension of the time to file the proofs of financial assurance required by this subsection (e) granted by USEPA. This statement maintains structural consistency with the corresponding federal regulations.

5) After the initial submission of items specified in subsection (e)(3) of this Section, the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (e)(3) of this Section.

6) If the owner or operator no longer meets the requirements of subsection (e)(1) of this Section, the owner or operator shall send notice to the Agency of intent to establish alternate financial assurance, as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this Section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this Section. If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this Section, the owner or operator shall provide alternate financial assurance, as specified in this Section, within 30 days after notification of such a finding.
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8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this Section, above). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance, as specified in this Section, within 30 days after notification of the disallowance.

9) During the period of post-closure care, the Agency must approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Agency that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10) The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this Section, above when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section, below.

11) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (e)(1) through (e)(9) of this Section, and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in 35 Ill. Adm. Code 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in subsection (e)(3) of this Section, above. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation...
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of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide as follows:

A) That, if the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a) of this Section, above, in the name of the owner or operator.

B) That the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

C) That, if the owner or operator fails to provide alternate financial assurance, as specified in this Section, and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in subsections (a) through (d) of this Section, above, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for post-closure care of the facility.
g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to provide post-closure care for all of the owner or operator's facilities. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

h) Release of the owner or operator from the requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain financial assurance for post-closure care of that unit, unless the Agency determines that post-closure care has not been in accordance with the approved post-closure plan. The Agency must provide the owner or operator a detailed written statement of any such determination that post-closure care has not been in accordance with the approved post-closure plan.

jj) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board (35 Ill. Adm. Code 702.184(e)(3)):

1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit, or insurance; or

2) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.246 Use of a Mechanism for Financial Assurance of Both Closure and Post-
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Closure

An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both Sections 725.243 and 725.245. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.247 Liability Requirements

a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated, as specified in subsections (a)(1) through (2), (3), (4), (5) and (a)(6) of this Section below:

1) An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in this subsection (a)(1).

A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be as specified in 35 Ill. Adm. Code 724.251. The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator must provide a signed duplicate original of the insurance policy.

B) Each insurance policy must be issued by an insurer that is licensed by the Illinois Department of Financial and Professional Regulation-Division of Insurance.
2) An owner or operator may meet the requirements of this Section by passing a financial test or using the guarantee for liability coverage, as specified in subsections (f) and (g) of this Section below.

3) An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage, as specified in subsection (h) of this Section below.

4) An owner or operator may meet the requirements of this Section by obtaining a surety bond for liability coverage, as specified in subsection (i) of this Section below.

5) An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage, as specified in subsection (j) of this Section below.

6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator must specify at least one such assurance as "primary" coverage, and must specify other such assurance as "excess" coverage.

7) An owner or operator must notify the Agency within 30 days whenever one of the following occurs:

A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (a)(1) through (a)(6) of this Section above.

B) A Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and
third-party claimant for liability coverage under subsections (a)(1) through (a)(6) of this Section above; or

C) A final court order establishing a judgement for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsections (a)(1) through (a)(6) of this Section above.

b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, or land treatment facility, which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator meeting the requirements of this Section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. An owner or operator that combines coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated, as specified in subsections (b)(1) through (2), (3), (4), (5) and (b)(6) of this Section below:

1) An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in this subsection (b)(1).

A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be as specified in 35 Ill. Adm. Code 724.251. The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator...
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must provide a signed duplicate original of the insurance policy.

B) Each insurance policy must be issued by an insurer that is licensed by the Illinois Department of Financial and Professional Regulation-Division of Insurance.

2) An owner or operator may meet the requirements of this Section by passing a financial test or using the guarantee for liability coverage, as specified in subsections (f) and (g) of this Section below.

3) An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage, as specified in subsection (h) of this Section below.

4) An owner or operator may meet the requirements of this Section by obtaining a surety bond for liability coverage, as specified in subsection (i) of this Section below.

5) An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage, as specified in subsection (j) of this Section below.

6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator must specify at least one such assurance as "primary" coverage, and must specify other such assurance as "excess" coverage.

7) An owner or operator must notify the Agency within 30 days whenever one of the following occurs:

A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized
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in subsections (b)(1) through (b)(6) of this Section above.

B) A Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (b)(1) through (b)(6) of this Section above; or

C) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsections (b)(1) through (b)(6) of this Section above.

c) Request for adjusted level of required liability coverage. If an owner or operator demonstrates to the Agency that the levels of financial responsibility required by subsections (a) or (b) of this Section above are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain an adjusted level of required liability coverage from the Agency. The request for an adjusted level of required liability coverage must be submitted in writing to the Agency. If granted, the Agency's action shall take the form of an adjusted level of required liability coverage, such level to be based on the Agency assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Agency may require an owner or operator who requests an adjusted level of required liability coverage to provide such technical and engineering information as is necessary to determine a level of financial responsibility other than that required by subsection (a) or (b) of this Section above. The Agency shall process any request for an adjusted level of required liability coverage as if it were a permit modification request under 35 Ill. Adm. Code 703.271(e)(3) and 705.128. Notwithstanding any other provision, the Agency shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a tentative decision to grant an adjusted level of required liability insurance. The Agency may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the tentative decision.

d) Adjustments by the Agency. If the Agency determines that the levels of financial
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responsibility required by subsection (a) or (b) of this Section above are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Agency must adjust the level of financial responsibility required under subsection (a) or (b) of this Section above as may be necessary to protect human health and the environment. This adjusted level must be based on the Agency's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Agency determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, the Agency may require that an owner or operator of the facility comply with subsection (b) of this Section above. An owner or operator must furnish to the Agency, within a time specified by the Agency in the request, which must not be less than 30 days, any information that the Agency requests to determine whether cause exists for such adjustments of level or type of coverage. The Agency must process any request for an adjusted level of required liability coverage as if it were a permit modification request under 35 Ill. Adm. Code 703.271(e)(3) and 705.128. Notwithstanding any other provision, the Agency must hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a tentative decision to grant an adjusted level of required liability insurance. The Agency may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the tentative decision.

e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain liability coverage for that facility, unless the Agency determines that closure has not been in accordance with the approved closure plan.

f) Financial test for liability coverage.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test, as specified in this subsection (f)(1). To pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (f)(1)(B) of this Section below:

A) The owner or operator must have each of the following:
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i) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

ii) Tangible net worth of at least $10 million; and

iii) Assets in the United States amounting to either: at least 90 percent of total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

B) The owner or operator must have each of the following:

i) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

ii) Tangible net worth of at least $10 million; and

iii) Tangible net worth of at least six times the amount of liability coverage to be demonstrated by this test; and

iv) Assets in the United States amounting to either at least 90 percent of total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

The phrase "amount of liability coverage," as used in subsection (f)(1) of this Section, above refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b) of this Section above.

To demonstrate that the owner or operator meets this test, the owner or operator must submit each of the following three items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by 35 Ill. Adm. Code 724.243(f) and 724.245(f), or by Sections 725.243(e) and 725.245(e), and liability coverage, it must submit the
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B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating as follows that:

i) That the accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

5) After the initial submission of items specified in subsection (f)(3) of this Section above, the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (f)(3) of this Section above.

6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this Section above, the owner or operator shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage, as specified in this Section. Evidence of insurance must be submitted to the Agency within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

7) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) of this Section above). An adverse
opinion or a disclaimer of opinion is cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

g) Guarantee for liability coverage.

1) Subject to subsection (g)(2) of this Section, an owner or operator may meet the requirements of this Section by obtaining a written guarantee, referred to as a "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners and operators in subsection (f)(1) through (f)(6) of this Section. The wording of the guarantee must be as specified in 35 Ill. Adm. Code 724.251. A certified copy of the guarantee must accompany the items sent to the Agency as specified in subsection (f)(3) of this Section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide as follows:

A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

B) The guarantee remains in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. The guarantee must not be terminated unless and until the Agency approves alternate liability coverage complying with
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2) The guarantor must execute the guarantee in Illinois. The guarantee must be accompanied by a letter signed by the guarantor that states as follows:

A) The guarantee was signed in Illinois by an authorized agent of the guarantor;

B) The guarantee is governed by Illinois law; and

C) The name and address of the guarantor's registered agent for service of process.


h) Letter of credit for liability coverage.

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection, and submitting a copy of the letter of credit to the Agency.

2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies.


4) An owner or operator uses a letter of credit to satisfy the requirements of this Section may also establish a trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the
authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or that who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 1991, ch. 32, par. 1551-1 et seq. [205 ILCS 620/1 et seq.]).

5) The wording of the standby trust fund must be identical to the wording specified in 35 Ill. Adm. Code 724.251(n).

i) Surety bond for liability coverage.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that which conforms to the requirements of this subsection (i) and submitting a copy of the bond to the Agency.

2) The surety company issuing the bond must shall be licensed by the Illinois Department of Financial and Professional Regulation -- Division of Insurance.


j) Trust fund for liability coverage.

1) An owner or operator may satisfy the requirements of this Section by establishing a trust fund that which conforms to the requirements of this subsection and submitting a signed, duplicate original of the trust agreement to the Agency.

2) The trustee must shall be an entity that which has the authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or that who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 1991, ch. 32, par. 1551-1 et seq. [205 ILCS 620/1 et seq.]).

3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this Section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of liability coverage to be provided, the owner or operator, by the anniversary of the date of establishment of the fund, must shall either add sufficient funds to the trust fund to cause its value to
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equal the full amount of liability coverage to be provided, or obtain other financial assurance, as specified in this Section, to cover the difference. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden accidental occurrences required to be provided by the owner or operator by this Section, less the amount of financial assurance for liability coverage which is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.


(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.248 Incapacity of Owners or Operators, Guarantors, or Financial Institutions

a) An owner or operator must notify the Agency by certified mail of the commencement of a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy) naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Sections 725.243(e) and 725.245(e) must make such a notification if the guarantor is named as a debtor, as required under the terms of the corporate guarantee (35 Ill. Adm. Code 724.251).

b) An owner or operator that fulfills the requirements of Sections 725.243, 725.245, or 725.247 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

Section 725.270 Applicability
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The regulations in this Subpart I apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as Section §725.101 provides otherwise.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.271  Condition of Containers

If a container holding hazardous waste is not in good condition or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that it complies with the requirements of this Part.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.272  Compatibility of Waste with Containers

The owner or operator must use a container made of or lined with materials that will not react with and are otherwise compatible with the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.273  Management of Containers

a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

b) A container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.


(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.274  Inspections

The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)
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BOARD NOTE: See Section 725.271 for remedial action required if deterioration or leaks are detected.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.276 Special Requirements for Ignitable or Reactive Waste

Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

BOARD NOTE: See Section §725.117(a) for additional requirements.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.277 Special Requirements for Incompatible Wastes

a) Incompatible wastes or incompatible wastes and materials (see Appendix V of 40 CFR 265, incorporated by reference in 35 Ill. Adm. Code 720.111(b) for examples) must not be placed in the same container, unless Section §725.117(b) is complied with.

b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see Appendix V of 40 CFR 265, incorporated by reference in 35 Ill. Adm. Code 720.111(b) for examples), unless Section §725.117(b) is complied with.

c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

BOARD NOTE: The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge or hazardous waste or hazardous waste constituents that could result from the mixing of incompatible wastes or materials if containers break or leak.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.278 Air Emission Standards

The owner or operator must manage all hazardous waste placed in a container in accordance
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with the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724 Subparts AA, BB, and CC.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART J: TANK SYSTEMS

Section 725.290 Applicability

The regulations of this Subpart J apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste, except as otherwise provided in subsections (a), (b) or (c) of this Section below, or in Section 725.101.

a) Tank systems that are used to store or treat hazardous waste that contains no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements in Section 725.293. To demonstrate the absence or presence of free liquids in the stored or treated waste, the following test must be used: USEPA Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", USEPA Publication No. SW-846), incorporated by reference in 35 Ill. Adm. Code 720.111(a).

b) Tank systems, including sumps, as defined in 35 Ill. Adm. Code 720.110, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 725.293(a).

c) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in 35 Ill. Adm. Code 720.110 and regulated under Subpart W of this Part, must meet the requirements of this Subpart J.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.291 Assessment of Existing Tank System's Integrity

a) For each existing tank system that does not have secondary containment meeting the requirements of Section 725.293, the owner or operator must determine either that the tank system is not leaking or that it is unfit for use. Except as provided in subsection (c), the owner or operator shall, after January 12, 1988, obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with 35 Ill. Adm. Code 702.126(d), that attests to the tank system's integrity.
This assessment must determine whether the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

1) Design standards, if available, according to which the tank and ancillary equipment were constructed;

2) Hazardous characteristics of the waste(s) that have been or will be handled;

3) Existing corrosion protection measures;

4) Documented age of the tank system, if available, (otherwise, an estimate of the age); and

5) Results of a leak test, internal inspection, or other tank integrity examination, such that the following conditions are met:

A) For non-enterable underground tanks, this assessment must consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pocket, and high water table effects.

B) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by an independent, qualified, registered professional engineer in accordance with 35 Ill. Adm. Code 702.126(d), that addresses cracks, leaks, corrosion, and erosion.

(BOARD NOTE: Board Note: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks, incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in conducting the integrity examination of an other than non-enterable underground tank system.)

c) Tank systems that store or treat materials that become hazardous wastes
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subsequent to July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

d) If, as a result of the assessment conducted in accordance with subsection (a) of this Section, a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of Sections 725.296.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.292 Design and Installation of New Tank Systems or Components

a) An owner or operator of a new tank system or component must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with 35 Ill. Adm. Code 702.126(d), attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

1) Design standards according to which the tank(s) and ancillary equipment is or will be constructed.

2) Hazardous characteristics of the waste(s) to be handled.

3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of the following:

   A) Factors affecting the potential for corrosion, including but not limited to the following:

      i) Soil moisture content;

      ii) Soil pH;

      iii) Soil sulfides level;
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iv) Soil resistivity;

v) Structure to soil potential;

vi) Influence of nearby underground metal structures (e.g., piping);

vii) Stray electric current;

viii) Existing corrosion-protection measures (e.g., coating, cathodic protection); and

B) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

i) Corrosion-resistant materials of construction such as special alloys, or fiberglass-reinforced plastic;

ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

iii) Electrical isolation devices such as insulating joints and flanges, etc.

BOARD NOTE: The practices described in the National Association of Corrosion Engineers (NACE) Standard, "Recommended Practice (RP-02-85) Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and API Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in providing corrosion protection for tank systems.

4) For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and
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5) Design considerations to ensure the following that:

A) Tank foundations will maintain the load of a full tank;

B) Tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

C) Tank systems will withstand the effects of frost heave.

b) The owner and operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, shall inspect the system or component for the presence of any of the following items:

1) Weld breaks;

2) Punctures;

3) Scrapes of protective coatings;

4) Cracks;

5) Corrosion; and

6) Other structural damage or inadequate construction or installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

c) New tank systems or components and piping that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, and homogeneous substance carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

d) All new tanks and ancillary equipment must be tested for tightness prior to being
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covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leaks in the system must be performed prior to the tank system being covered, enclosed, or placed in use.

e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.


f) The owner and operator must provide the type and degree of corrosion protection necessary, based on the information provided under subsection (a)(3) of this Section, to ensure the integrity of the tank system during use of the tanks system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

g) The owner and operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (b) through (f) of this Section to attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (b) and (d) of this Section were performed. These written statements must also include the certification statement, as required in 35 Ill. Adm. Code 702.126(d).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.293 Containment and Detection of Releases

a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this Section must be provided (except as provided in subsections (f) and (g) of this Section).

1) For all new tank systems or components, prior to its being put into service;

2) For all existing tanks used to store or treat USEPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027, as defined in 35 Ill.
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Adm. Code 721.131, within two years after January 12, 1987;

3) For those existing tank systems of known and documentable age, within two years after January 12, 1987, or when the tank systems have reached 15 years of age, whichever come later;

4) For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age or within two years of January 12, 1987, whichever comes later; and

5) For tank systems that store or treat materials that become hazardous wastes subsequent to January 12, 1987, within the time intervals required in subsections (a)(1) through (a)(4) of this Section, except that the date that a material becomes a hazardous waste must be used in place of January 12, 1987.

b) Secondary containment systems must be as follows:

1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

c) To meet the requirements of subsection (b) of this Section, secondary containment systems must be at a minimum as follows:

1) Constructed of or lined with materials that are compatible with the wastes to be placed in the tank system and of sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

2) Placed on a foundation or base capable of providing support to the secondary containment system and resistance to pressure gradients above and below the system and capable of preventing failure due to settlement,
3) Provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that the existing detection technology or site conditions will not allow detection of a release within 24 hours;

4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

BOARD NOTE: If the collected material is a hazardous waste under 35 Ill. Adm. Code 721, it is subject to management as a hazardous waste in accordance with all applicable requirements of 35 Ill. Adm. Code 722 through 725. If the collected material is discharged through a point source to waters of the State, it is subject to the NPDES permit requirement of Section 12(f) of the Environmental Protection Act and 35 Ill. Adm. Code 309. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of 35 Ill. Adm. Code 307 and 310. If the collected material is released to the environment, it may be subject to the reporting requirements of 35 Ill. Adm. Code 750.410 and 40 CFR 302.6, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

d) Secondary containment for tanks must include one or more of the following devices:

1) A liner (external to the tank);

2) A vault;

3) A double-walled tank; or

4) An equivalent device as approved by the Board in an adjusted standards proceeding.
e) In addition to the requirements of subsections (b), (c), and (d), secondary containment systems must satisfy the following requirements:

1) External liner systems must be as follows:
   A) Designed or operated to contain 100 percent of the capacity of the largest tank within the liner system's boundary;
   B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system, unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;
   C) Free of cracks or gaps; and
   D) Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tanks (i.e., capable of preventing lateral as well as vertical migration of the waste).

2) Vault systems must be as follows:
   A) Designed or operated to contain 100 percent of the capacity of the largest tank within the vault system's boundary;
   B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system, unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;
   C) Constructed with chemical-resistant water stops in place at all joints (if any);
   D) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;
   E) Provided with a means to protect against the formation of and
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i) Meets the definition of ignitable waste under 35 Ill. Adm. Code 721.121; or

ii) Meets the definition of reactive waste under 35 Ill. Adm. Code 721.123 and may form an ignitable or explosive vapor; and

F) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

3) Double-walled tanks must be as follows:

A) Designed as an integral structure (i.e., an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

B) Protected, if constructed of metal, from both corrosion of the primary tank interior and the external surface of the outer shell; and

C) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours or as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that the existing leak detection technology or site conditions will not allow detection of a release within 24 hours.


f) Ancillary equipment must be provided with full secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of subsections (h) and (c) of this Section, except for the following:

1) Aboveground piping (exclusive of flanges, joints, valves, and connections)
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that are visually inspected for leaks on a daily basis;

2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

g) Pursuant to Section 28.1 of the Environmental Protection Act [415 ILCS 5/28.1], and in accordance with Subpart D of 35 Ill. Adm. Code 104106.Subpart D, an adjusted standard will be granted by the Board regarding alternative design and operating practices only if the Board finds either that the alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system, or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not receive an adjusted standard from the secondary containment requirements of this Section through a justification in accordance with subsection (g)(2) of this Section.

1) When determining whether to grant alternative design and operating practices based on a demonstration of equivalent protection of groundwater and surface water, the Board will consider whether the petitioner has justified an adjusted standard based on the following factors:

A) The nature and quantity of the waste;

B) The proposed alternate design and operation;

C) The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

D) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to
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groundwater or surface water.

2) In deciding whether to grant alternative design and operating practices based on a demonstration of no substantial present or potential hazard, the Board will consider whether the petitioner has justified an adjusted standard based on the following factors:

A) The potential adverse effects on groundwater, surface water, and land quality taking the following into account:

   i) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

   ii) The hydrogeological characteristics of the facility and surrounding land;

   iii) The potential for health risks caused by human exposure to waste constituents;

   iv) The potential for damage to wildlife; crops, vegetation, and physical structures caused by exposure to waste constituents; and

   v) The persistence and permanence of the potential adverse effects.

B) The potential adverse effects of a release on groundwater quality, taking the following into account:

   i) The quantity and quality of groundwater and the direction of groundwater flow;

   ii) The proximity and withdrawal rates of water in the area;

   iii) The current and future uses of groundwater in the area; and

   iv) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality.

C) The potential adverse effects of a release on surface water quality,
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taking the following into account:

i) The quantity and quality of groundwater and the direction of groundwater flow;

ii) The patterns of rainfall in the region;

iii) The proximity of the tank system to surface waters;

iv) The current and future uses of surface waters in the area and water quality standards established for those surface waters; and

v) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality: and—And.

D) The potential adverse effects of a release on the land surrounding the tank system, taking the following into account:

i) The patterns of rainfall in the region; and

ii) The current and future uses of the surrounding land.

3) The owner or operator of a tank system, for which alternative design and operating practices had been granted in accordance with the requirements of subsection (g)(1), at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the alternative design and operating practices), must fulfill the following requirements:

A) It must comply with the requirements of Section 725.296, except Section 725.296(d); and

B) It must decontaminate or remove contaminated soil to the extent necessary to assure the following:

i) It must enable the tank system, for which alternative design and operating practices were granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it
C) If contaminated soil cannot be removed or decontaminated in accordance with subsection (g)(3)(B), it must comply with the requirements of Section 725.297(b).

4) The owner or operator of a tank system, for which alternative design and operating practices had been granted in accordance with the requirements of subsection (g)(1) of this Section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the alternative design and operating practices, must fulfill the following requirements:  

A) It must comply with the requirements of Section 725.296(a), (b), (c), and (d); and  

B) It must prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if groundwater has been contaminated, the owner or operator must comply with the requirements of Section 725.297(b);  

C) If repairing, replacing, or reinstalling the tank system, it must provide secondary containment in accordance with the requirements of subsections (a) through (f) of this Section, or make the alternative design and operating practices demonstration to the Board again with respect to secondary containment and meet the requirements for new tank systems in Section 725.292 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil is decontaminated or removed, and groundwater or surface water has not been contaminated.

h) In order to make an alternative design and operating practices demonstration, the owner or operator must follow the following procedures, in addition to those specified in Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104106.Subpart D:
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1) The owner or operator must file a petition for approval of alternative design and operating practices according to the following schedule:

   A) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with subsection (a) of this Section; and

   B) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

2) As part of the petition, the owner or operator shall also submit the following to the Board:

   A) A description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in subsection (g)(1) or (g)(2) of this Section; and


3) The owner or operator must complete its showing within 180 days after filing its petition for approval of alternative design and operating practices.

4) The Agency must issue or modify the RCRA permit so as to require the permittee to construct and operate the tank system in the manner that was provided in any Board order approving alternative design and operating practices.

   i) All tank systems, until such time as secondary containment meeting the requirements of this Section is provided, must comply with the following:

   1) For non-enterable underground tanks, a leak test that meets the requirements of Section 725.291(b)(5) must be conducted at least annually;

   2) For other than non-enterable underground tanks and for all ancillary equipment, an annual leak test, as described in subsection (i)(1) of this Section, or an internal inspection or other tank integrity examination, by
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an independent, qualified, registered professional engineer, that addresses cracks, leaks, corrosion and erosion must be conducted at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

BOARD NOTE: The practices described in API Publication, Guide for Inspection of Refining Equipment, Chapter XIII, "Atmospheric and Low Pressure Storage Tanks," incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, when applicable, as guidelines for assessing the overall condition of the tank system.

3) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (i)(1) through (i)(3) of this Section.

4) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (i)(1) through (i)(3) of this Section, the owner or operator must comply with the requirements of Section 725.296.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.294 General Operating Requirements

a) Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment or the secondary containment system to rupture, leak, corrode, or otherwise fail.

b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include the following, at a minimum:

1) Spill prevention controls (e.g., check valves, dry disconnect couplings, etc.);

2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.
c) The owner or operator must comply with the requirements of Section 725.296 if a leak or spill occurs in the tank system.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.295 Inspections

a) The owner or operator must inspect the following, where present, at least once each operating day:

1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

2) The aboveground portion of the tank system, if any, to detect corrosion or releases or waste;

3) Data gathered from monitoring equipment, (e.g., pressure and temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design; and

4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation, etc.);

BOARD NOTE: Section 725.115(c) requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. Section 725.296 requires the owner or operator to notify the Agency within 24 hours of confirming a release. Also, 40 CFR 302, incorporated by reference in 35 Ill. Adm. Code 720.111(b), (1986) may require the owner or operator to notify the National Response Center of a release.

b) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

2) All sources of impressed current must be inspected and/or tested, as
c) The owner or operator must document in the operating record of the facility an inspection of those items in subsections (a) and (b) of this Section.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.296 Response to Leaks or Spills and Disposition of Tank Systems

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately. The owner or operator must satisfy the following requirements:

a) Cease using; prevent flow or addition of wastes. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

b) Removal of waste from tank system or secondary containment system.

1) If the release was from the tank system, the owner or operator must, within 24 hours after detection of the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

2) If the release was to a secondary containment system, all released materials must be removed within 24 hours to prevent harm to human health and the environment.

c) Containment of visible releases to the environment. The owner or operator must immediately conduct a visual inspection of the release and, based upon that inspection, do the following:
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1) Prevent further migration of the leak or spill to soils or surface water; and

2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

d) Notifications reports.

1) Any release to the environment, except as provided in subsection (d)(2) of this Section, must be reported to the Agency within 24 hours after detection.

2) A leak or spill of hazardous waste is exempted from the requirements of this subsection (d) if the following occur:

   A) The spill is less than or equal to a quantity of one (1) pound; and

   B) The spill is immediately contained and cleaned-up.

3) Within 30 days after detection of a release to the environment, a report containing the following information must be submitted to the Agency:

   A) Likely route of migration of the release;

   B) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate, etc.);

   C) Results of any monitoring or sampling conducted in connection with the release, (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Agency as soon as they become available;

   D) Proximity to downgradient drinking water, surface water, and population areas; and

   E) Description of response actions taken or planned.

e) Provision of secondary containment, repair, or closure.
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1) Unless the owner or operator satisfies the requirements of subsections (e)(2) through (e)(4) of this Section, the tank system must be closed in accordance with Section 725.297.

2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner or operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 725.293 before it is returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of subsection (f) of this Section are satisfied. If a component is replaced to comply with the requirements of this subsection (e)(4) of this Section, that component must satisfy the requirements for new tank systems or components in Sections 725.292 and 725.293. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with Section 725.293 prior to being returned to use.

f) Certification of major repairs. If the owner or operator has repaired a tank system in accordance with subsection (e) of this Section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner or operator has obtained a certification by an independent qualified, registered professional engineer in accordance with 35 Ill. Adm. Code 702.126(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Agency within seven days after returning the tank system to use.
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BOARD NOTE: See Section 725.115(c) for the requirements necessary to remedy a failure. Also, 40 CFR 302.6, incorporated by reference in 35 Ill. Adm. Code 720.111(b), requires the owner or operator to notify the National Response Center of a release of any "reportable quantity."

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.297 Closure and Post-Closure Care

a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Subparts G and H of this Part.

b) If the owner or operator demonstrates that not all contaminated soils can be practically removed or decontaminated as required in subsection (a) of this Section, then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (Section 725.410). In addition, for the purposes of closure, post-closure and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall meet all of the requirements of landfills specified in Subparts G and H of this Part.

c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of Section 725.293(b) through (f), and which is not exempt from the secondary containment requirements in accordance with Section 725.293(g), then the following requirements apply:

1) The closure plan for the tank system must include both a plan for complying with subsection (a) of this Section, and a contingent plan for complying with subsection (b) of this Section;

2) A contingent post-closure plan for complying with subsection (b) of this Section must be prepared and submitted as part of the permit application;

3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent
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post-closure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (a) of this Section:

4) Financial assurance must be based on the cost estimates in subsection (c)(3) of this Section; and

5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure care, and financial responsibility requirements for landfills under Subparts G and H of this Part.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.298 Special Requirements for Ignitable or Reactive Waste

a) Ignitable or reactive waste must not be placed in a tank system, unless either of the following conditions is fulfilled:

1) The waste is treated, rendered or mixed before or immediately after placement in the tank system so that the following two conditions are fulfilled:

   A) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123 and

   B) Section 725.117(b) is complied with; or

2) The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

3) The tank system is used solely for emergencies.

b) The owner or operator of a facility where ignitable or reactive waste is stored or tested in tanks must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a).
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(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.299 Special Requirements for Incompatible Wastes

a) Incompatible wastes or incompatible wastes and materials must not be placed in the same tank system, unless Section 725.117(b) is complied with.

b) Hazardous waste must not be placed in a tank system that has not been decontaminated and which previously held an incompatible waste or material unless Section 725.117(b) is complied with.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.300 Waste Analysis and Trial Tests

In addition to performing the waste analysis required by Section 725.113, the owner or operator shall, whenever a tank system is to be used to chemically treat or store a hazardous waste that is substantially different from waste previously treated or stored in that tank system, or to treat chemically a hazardous waste with a substantially different process than any previously used in that tank system, the owner or operator must do the following:

a) It must conduct waste analyses and trial treatment or storage tests (e.g., bench-scale or pilot-plant scale tests); or

b) It must obtain written, documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will meet the requirements of Section 725.294(a).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.301 Generators of 100 to 1,000 Kilograms of Hazardous Waste Per Month

a) The requirements of this Section apply to small quantity generators that generate more than 100 kg but less than 1,000 kg of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200 miles), and that do not accumulate over 6,000 kg on-site at any time.

b) A generator of between 100 and 1,000 kg/mo hazardous waste must comply with the following general operating requirements:
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1) Treatment or storage of hazardous waste in tanks must comply with Section 725.117(b);

2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life;

3) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank; and

4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

BOARD NOTE: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).

c) A generator of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect the following, where present:

1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

3) The level of waste in the tank at least once each operating day to ensure compliance with subsection (b)(3) of this Section;

4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

5) The construction materials of and the area immediately surrounding discharge confinement structures (e.g., dikes) at least weekly to detect...
erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

BOARD NOTE: As required by Section 725.115(c), the owner or operator must remedy any deterioration or malfunction the owner or operator finds.

d) A generator of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks shall, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

BOARD NOTE: At closure, as throughout the operating period, unless the owner or operator demonstrates, in accordance with 35 Ill. Adm. Code 721.103(d) or (e), that any solid waste removed from the tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 722, 723, and 725.

e) A generator of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:

1) Ignitable or reactive waste must not be placed in a tank unless one of the following conditions are fulfilled:

   A) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the following is true of the waste:

      i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123, and

      ii) Section 725.117(b) is complied with;

   B) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

   C) The tank is used solely for emergencies.

2) The owner or operator of a facility that treats or stores ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National
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f) A generator of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

1) Incompatible wastes or incompatible wastes and materials (see Appendix E for examples) must not be placed in the same tank unless Section 725.117(b) is complied with.

2) Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material unless Section 725.117(b) is complied with.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.302 Air Emission Standards

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the requirements of Subparts AA, BB, and CC of this Part.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART K: SURFACE IMPOUNDMENTS

Section 725.320 Applicability

The regulations in this Subpart K apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as Section § 725.101 provides otherwise.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.321 Design and Operating Requirements

a) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must install two or more liners and a
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leachate collection and removal system between such liners, and operate the leachate collection and removal system, in accordance with 35 Ill. Adm. Code 724.321(c), unless exempted under 35 Ill. Adm. Code 724.321(d), (e), or (f). "Construction commences" is as defined in 35 Ill. Adm. Code 720.110 under "existing facility."

b) The owner or operator of each unit referred to in subsection (a) of this Section must notify the Agency at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

c) The owner or operator of any replacement surface impoundment unit is exempt from subsection (a) of this Section if the following conditions are fulfilled:

1) The existing unit was constructed in compliance with the design standards of 35 Ill. Adm. Code 724.321(c), (d), and (e), as amended in R86-1, at 10 Ill. Reg. 14119, effective August 12, 1986; and

BOARD NOTE: The cited subsections implemented the design standards of Sections 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act (42 U.S.C. 6924(o)(1)(A)(i) and (o)(5)6901 et seq.).

2) There is no reason to believe that the liner is not functioning as designed.

d) The Agency must not require a double liner as set forth in subsection (a) of this Section for any monofill, if the following conditions are fulfilled:

1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents that render the wastes hazardous for reasons other than the toxicity characteristic in 35 Ill. Adm. Code 721.124, with USEPA hazardous waste numbers D004 through D017; and

2) No migration demonstration.

A) Design and location requirements.

i) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection (d)(2)(A)(i) the term "liner" means a liner
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designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment that has been exempted from the requirements of subsection (a) of this Section above, of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment must comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action;

ii) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in 35 Ill. Adm. Code 702.110); and

iii) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with RCRA permits; or

B) The owner or operator demonstrates to the Board that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

e) In the case of any unit in which the liner and leachate collection system have been installed pursuant to the requirements of subsection (a) of this Section above, and in good faith compliance with subsection (a) and with guidance documents governing liners and leachate collection systems under subsection (a) of this Section above, the Agency must not require a liner or leachate collection system that is different from that which was so installed pursuant to subsection (a) of this Section above when issuing the first permit to such facility, except that the Agency is not precluded from requiring installation of a new liner
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when the Agency finds that any liner installed pursuant to the requirements of subsection (a) of this Section above is leaking.

f) A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. Except as provided in subsection (g) of this Section below, there must be at least 60 centimeters (two feet) of freeboard.

g) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of the engineer's knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, must be maintained at the facility.

BOARD NOTE: Any point source discharge from a surface impoundment to waters of the State is subject to the requirements of Section 12 of the Environmental Protection Act [415 ILCS 5/12]. Spills may be subject to Section 311 of the Clean Water Act (33 U.S.C. 1321 et seq.).

h) Surface impoundments that are newly subject to this Part due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with subsections (a), (c), or (d) of this Section above not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under 35 Ill. Adm. Code 728 or the granting of an extension to the effective date of a prohibition pursuant to 35 Ill. Adm. Code 728.105, within this 48 month period.

i) Refusal to grant an exemption or waiver, or grant with conditions, may be appealed to the Board.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.322 Action Leakage Rate

a) The owner or operator of surface impoundment units subject to Section 725.321(a) must submit a proposed action leakage rate to the Agency when submitting the notice required under Section 725.321(b). Within 60 days of receipt of the notification, the Agency must do either of the following: establish an action leakage rate, either as proposed by the owner or
operator or modified using the criteria in this Section, or extend the review period for up to 30 days. If no action is taken by the Agency before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

b) The Agency must approve an action leakage rate for surface impoundment units subject to Section 725.321(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material, etc.), construction, operation, and location of the LDS, waste and leachate characteristics, the likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover, and creep of synthetic components of the system, overburden pressures, etc.).

c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under Section 725.326(b) to an average daily flow rate (gallons per acre per day) for each sump. The average daily flow rate for each sump must be calculated weekly during the active life and closure period and, if the unit is closed in accordance with Section 725.328(a)(2), monthly during the post-closure care period, unless the Agency approves a different frequency pursuant to Section 725.326(b).

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act [415 ILCS 5/40].

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.323 Response Actions

a) The owner or operator of surface impoundment units subject to Section 725.321(a) must submit a response action plan to the Agency when submitting the proposed action leakage rate under Section 725.322. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b) of this Section below.

b) If the flow rate into the LDS exceeds the action leakage rate for any sump, the owner or operator must do the following:

1) Notify the Agency in writing of the exceedence within seven days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks; and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3) through (b), (4) and (5) of this Section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3) through (b), (4) and (5) of this Section, the owner or operator must either of the following:

1) Perform the following assessments:
   A) Assess the source of liquids and amounts of liquids by source;
   B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act [415 ILCS 5/40].

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.324 Containment System

All earthen dikes must have a protective cover, such as grass, shale or rock to minimize wind and water erosion and to preserve its structural integrity.

BOARD NOTE: Two versions of this Section exist. USEPA added the second, which was inadvertently repealed at 57 Fed. Reg. 3486, January 29, 1992. Section 725.324 is derived from the original version of 40 CFR 265.223.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.325 Waste Analysis and Trial Tests

a) In addition to the waste analyses required by Section 725.113, whenever a surface impoundment is to be used for either of the purposes in subsection (a)(1) and (2)(a) of this Section, the owner or operator must, before treating the different waste or using the different process, perform either of the required actions listed in subsection (b) of this Section:

1) Chemically treat a hazardous waste that is substantially different from waste previously treated in that impoundment; or

2) Chemically treat hazardous waste with a substantially different process than and previously used in that impoundment.

b) Required actions.

1) The owner or operator must conduct waste analyses and trial
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treatment tests (e.g., bench scale or pilot plant scale tests); or

2) **The owner or operator must obtain** written, documented information on similar treatment of similar waste under similar operating conditions, to show that this treatment will comply with Section 725.117(b).

BOARD NOTE: As required by Section 725.113, the waste analyses plan must include analyses needed to comply with Sections 725.329 and 725.330. As required by Section 725.173, the owner or operator **must shall** place the results from each waste analysis and trial test, or the documented information in the operating record of the facility.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.326 Monitoring and **Inspections**

a) The owner or operator **must shall** inspect:

1) The freeboard level at least once each operating day to ensure compliance with Section 725.322; and

2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

BOARD NOTE: As required by Section 725.115(c), the owner or operator **must shall** remedy any deterioration or malfunction the owner or operator finds.

b) LDS.

1) An owner or operator required to have a LDS under Section 725.321(a) **must shall** record the amount of liquids removed from each LDS sump at least once each week during the active life and closure period.

2) After the final cover is installed, the amount of liquids removed from each LDS sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period
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the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Agency based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with Section 725.322(a).

c) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act [415 ILCS 5/40].

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.328 Closure and Post-Closure Care

a) At closure, the owner or operator must do either of the followings:

1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste or leachate, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies; or

2) Close the impoundment and provide post-closure care for a landfill under Subpart G of this Part and Section 725.410, including the following:

A) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

B) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

C) Cover the surface impoundment with a final cover designed and constructed to do the following:

i) Provide long-term minimization of the migration of liquids
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through the closed impoundment;

ii) Function with minimum maintenance;

iii) Promote drainage and minimize erosion or abrasion of the cover;

iv) Accommodate settling and subsidence so that the cover's integrity is maintained; and

v) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

b) In addition to the requirements of Subpart G of this Part and Section 725.410, during the post-closure care period the owner or operator of a surface impoundment in which wastes, waste residues or contaminated materials remain after closure in accordance with subsection (a)(2) of this Section above shall:

1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

2) Maintain and monitor the LDS in accordance with 35 Ill. Adm. Code 724.321(c)(2)(D) and (c)(3) and 725.326(b) and comply with all other applicable LDS requirements of this Part;

3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F of this Part; and

4) Prevent run-on and run-off from eroding or damaging the final cover.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.329 Special Requirements for Ignitable or Reactive Waste

Ignitable or reactive waste must not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of 35 Ill. Adm. Code 728, and one of the following conditions is fulfilled:

a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that the following conditions are true:
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1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

2) Section 725.117(b) is complied with; or

b) Management conditions.

1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

2) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of the chemist's or engineer's knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

3) The certification and the basis for it are maintained at the facility; or

c) The surface impoundment is used solely for emergencies.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.330 Special Requirements for Incompatible Wastes

Incompatible wastes, or incompatible waste and materials (see Appendix V of 40 CFR 265, incorporated by reference in 35 Ill. Adm. Code 720.111(b) for examples) must not be placed in the same surface impoundment, unless Section 725.117(b) is complied with.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.331 Air Emission Standards

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the requirements of Subparts BB and CC of 35 Ill. Adm. Code 724 Subparts BB and CC.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART L: WASTE PILES
Section 725.350 Applicability

The regulations in this Subpart L apply to owners and operators of facilities that treat or store hazardous waste in piles, except as Section § 725.101 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under Subpart N of this Part.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.351 Protection from Wind

The owner or operator of a pile containing hazardous waste that could be subject to dispersal by wind must cover or otherwise manage the pile so that wind dispersal is controlled.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.352 Waste Analysis

a) In addition to the waste analyses required by Section 725.113, the owner or operator shall analyze a representative sample of waste from each incoming movement before adding the waste to any existing pile unless either of the following conditions is fulfilled:

1) The only wastes the facility receives that are amenable to piling are compatible with each other, or

2) The waste received is compatible with the waste in the pile to which it is to be added.

b) The analysis conducted must be capable of differentiating between the types of hazardous waste the owner or operator places in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis must include a visual comparison of color and texture.

BOARD NOTE: As required by Section 725.113, the waste analysis plan must include analyses needed to comply with Sections 725.356 and 725.357. As required by Section 725.173, the owner or operator must place the results of this analysis in the operating record of the facility.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.353 Containment
If leachate or run-off from a pile is a hazardous waste, then control of the leachate or runoff must be accomplished by either of the following means:

a) **Control by pile design, construction, and operation.**
   1) The pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;
   2) The owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm;
   3) The owner or operator must design, construct, operate and maintain a runoff management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm; and
   4) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

b) **Alternative control.**
   1) The pile must be protected from precipitation and runon by some other means; and
   2) No liquids or wastes containing free liquids may be placed in the pile.

*Board Note*: If collected leachate or runoff is discharged through a point source to waters of the United States, it is subject to the requirements of Section 12 of the Illinois Environmental Protection Act [415 ILCS 5/12], as amended.

(Source: Amended at 29 Ill. Reg. _______, effective ____________

**Section 725.354 Design and Operating Requirements**

The owner or operator of each new waste pile on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system above and between such liners and operate the leachate collection and removal systems,
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in accordance with 35 Ill. Adm. Code 724.351(c), unless exempted under 35 Ill. Adm. Code 724.351(d), (e) or (f); and **must** comply with the procedures of Section 725.321(b). "Construction commences" is as defined in 35 Ill. Adm. Code 720.110 under "existing facility.". The owner or operator of each unit referred to in this Section must notify the Agency at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months after the receipt of such notice.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.355  Action Leakage Rates

a)  The owner or operator of waste pile units subject to Section 725.354 must submit a proposed action leakage rate to the Agency when submitting the notice required under Section 725.354. Within 60 days after receipt of the notification, the Agency must either establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section; or it must extend the review period for up to 30 days. If no action is taken by the Agency before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

b)  The Agency must approve an action leakage rate for surface impoundment units subject to Section 725.354. The action leakage rate is the maximum design flow rate that the LDS can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material, etc.), construction, operation, and location of the LDS; waste and leachate characteristics; the likelihood and amounts of other sources of liquids in the LDS; and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover, and creep of synthetic components of the system; overburden pressures, etc.).

c)  To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under Section 725.360, to an average daily flow rate (gallons per acre per day) for each sump. The average daily flow rate for each sump must be calculated weekly during the active life and closure period.

d)  Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the
Section 725.356 Special Requirements for Ignitable or Reactive Waste

Ignitable or reactive waste must not be placed in a pile, unless the waste and pile meet all applicable requirements of 35 Ill. Adm. Code 728, and either of the following is true:

a) **Both of the following are true of addition**

1) **The addition results** in the waste or mixture no longer meeting the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

2) **The addition complies** with Section 725.117(b); or

b) The waste is managed in such a way that it is protected from any material or conditions that may cause it to ignite or react.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.357 Special Requirements for Incompatible Wastes

a) Incompatible wastes, or incompatible wastes and materials (see Appendix V of 40 CFR 265, incorporated by reference in 35 Ill. Adm. Code 720.111(b) for examples) must not be placed in the same pile, unless Section 725.117(b) is complied with.

b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

**BOARD NOTE:** The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents that could result from the contact or mixing of incompatible wastes or materials.

c) Hazardous waste must not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated.
sufficiently to ensure compliance with Section § 725.117(b).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.358 Closure and Post-Closure Care

a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies; or

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection paragraph (a) of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, it must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (Section 725.410).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.359 Response Actions

a) The owner or operator of waste pile units subject to Section 725.354 must submit a response action plan to the Agency when submitting the proposed action leakage rate under Section 725.355. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b) of this Section below.

b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator must do the following:

1) Notify the Agency in writing of the exceedence within seven days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days after the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
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3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3) through (b)(4) and (5) of this Section above, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator shall submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3) through (b), (4) and (5) of this Section above, the owner or operator shall either of the following:

1) Perform the following assessments:

   A) Assess the source of liquids and amounts of liquids by source;

   B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

   C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act [415 ILCS 5/40].
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(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.360 Monitoring and Inspection

An owner or operator required to have a LDS under Section 725.354 must record the amount of liquids removed from each LDS sump at least once each week during the active life and closure period.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART M: LAND TREATMENT

Section 725.370 Applicability

The regulations in this Subpart M apply to owners and operators of hazardous waste land treatment facilities, except as Section §725.101 provides otherwise.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.372 General Operating Requirements

a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or non-hazardous by degradation, transformation, or immobilization processes occurring in or on the soil.

b) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the unit during peak discharge from at least a 25-year storm.

c) The owner or operator must design, construct, operate, and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 25-year storm.

d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

e) If the treatment zone contains particulate matter that may be subject to wind dispersal the owner or operator must manage the unit to control wind dispersal.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
Section 725.373 Waste Analysis

In addition to the waste analyses required by Section 725.113, before placing a hazardous waste in or on a land treatment facility, the owner or operator must do each of the following:

a) Determine the concentrations in the waste of any substances that equal or exceed the maximum concentrations contained in 35 Ill. Adm. Code 721.124 that cause a waste to exhibit the toxicity characteristic;

b) For any waste listed in Subpart D of 35 Ill. Adm. Code 721, determine the concentrations of any substances that caused the waste to be listed as a hazardous waste; and

c) If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, unless the owner or operator has written, documented data that show that the constituent is not present.

BOARD NOTE: 35 Ill. Adm. Code 721 specifies the substances for which a waste is listed as a hazardous waste. As required by Section 725.113 the waste analysis plan must include analyses needed to comply with Sections 725.381 and 725.382. As required by Section 725.173, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.376 Food Chain Crops

a) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, must have notified the Agency Director by July 16, 1982.

BOARD NOTE: The growth of food chain crops at a facility that has never before been used for this purpose is a significant change in process under 35 Ill. Adm. Code 703.155. The owner or operator of such a facility that proposes to grow food chain crops after the effective date of this Part must comply with 35 Ill. Adm. Code 703.155.
b) **Limitation relating to arsenic, lead, mercury, and other constituents.**

1) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that either of the following is true of any arsenic, lead, mercury, or other constituents identified under Section 725.373(b):

   A) They will not be transferred to the food portion of the crop by plant uptake or direct contact and will not otherwise be ingested by food chain animals (e.g., by grazing); or

   B) They will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

2) The information necessary to make the demonstration required by subsection paragraph (b)(1) of this Section must be kept at the facility and must, at a minimum, fulfill the following conditions:

   A) It must be based on tests for the specific waste and application rates being used at the facility; and

   B) It must include descriptions of crop and soil characteristics, sample selection, criteria, sample size determination, analytical methods, and statistical procedures.

c) **Limitation relating to cadmium.** Food chain crops must not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of subsection paragraph (c)(1)(A) through (c)(1)(C) of this Section or all requirements of subsection paragraph (c)(2)(A) through (c)(2)(D) of this Section are met.

1) **Cadmium limitation for crops for human consumption.** Application of waste must comply with all of the following conditions:

   A) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

   B) The annual application of cadmium from waste does not exceed
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0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables or root crops grown for human consumption. For other food chain crops the annual cadmium application rate does not exceed the following:

ANNUAL CADMIUM APPLICATION RATE
(kilograms per hectare)

<table>
<thead>
<tr>
<th>Period</th>
<th>Rate</th>
</tr>
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<tbody>
<tr>
<td>Present to June 30, 1984</td>
<td>2.0</td>
</tr>
<tr>
<td>July 1, 1984 to December 31, 1986</td>
<td>1.25</td>
</tr>
<tr>
<td>Beginning January 1, 1987</td>
<td>0.5</td>
</tr>
</tbody>
</table>

C) The cumulative application of cadmium from waste does not exceed the levels in either subsection paragraph (c)(1)(C)(i) or subsection paragraph (c)(1)(C)(ii) of this Section.

i) Maximum cumulative application of cadmium.

MAXIMUM CUMULATIVE APPLICATION OF CADMIUM
(kilograms per hectare)

FOR BACKGROUND SOIL pH LESS THAN 6.5

Soil cation exchange capacity
(milliequivalents per 100 grams)

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5</td>
<td>5</td>
</tr>
<tr>
<td>5 to 15</td>
<td>5</td>
</tr>
<tr>
<td>Greater than 15</td>
<td>5</td>
</tr>
</tbody>
</table>

FOR BACKGROUND SOIL pH GREATER THAN 6.5

Soil cation exchange capacity
(milliequivalents per 100 grams)

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5</td>
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</tr>
<tr>
<td>5 to 15</td>
<td>10</td>
</tr>
<tr>
<td>Greater than 15</td>
<td>520</td>
</tr>
</tbody>
</table>
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ii) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

MAXIMUM CUMULATIVE APPLICATION OF CADMIUM
(kilograms per hectare)

FOR BACKGROUND SOIL pH LESS THAN 6.5 WITH pH ADJUSTMENT

Soil cation exchange capacity
(milliequivalents per 100 grams)

<table>
<thead>
<tr>
<th>Soil cation exchange capacity</th>
<th>MAXIMUM CUMULATIVE APPLICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5</td>
<td>5</td>
</tr>
<tr>
<td>5 to 15</td>
<td>10</td>
</tr>
<tr>
<td>Greater than 15</td>
<td>520</td>
</tr>
</tbody>
</table>

2) Cadmium limitation for crops for animal feed. Application of waste must comply with all of the following conditions:

A) The only food chain crop produced is animal feed.

B) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later and this pH level is maintained whenever food chain crops are grown.

C) There is a facility operating plan that demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain and may result from alternative land uses.

D) Future property owners are notified by a stipulation in the land record or property deed that states that the property has received waste at high cadmium application rates and that food chain crops must not be grown except in compliance with subsection paragraph (c)(2) of this Section.
Section 725.378 Unsaturated Zone (Zone of Aeration) Monitoring

a) The owner or operator must have in writing, and must implement, an unsaturated zone monitoring plan that is designed to accomplish the following:

1) It must detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility, and

2) It must provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soil nearby. This background monitoring must be conducted before or in conjunction with the monitoring required under subsection (a)(1) of this Section above.

b) The unsaturated zone monitoring plan must include, at a minimum, both of the following:

1) Soil monitoring using soil cores, and

2) Soil-pore water monitoring using devices, such as lysimeters.

c) To comply with subsection (a)(1) of this Section above, the owner or operator must demonstrate in his unsaturated zone monitoring plan that ensures the following:

1) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

2) The number of soil and soil-pore water samples to be taken is based on the variability of the following:

A) The hazardous waste constituents (as identified in Section 725.373(a) and(b)) in the waste and in the soil, and
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B) The soil types; and

3) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time, and rate of waste application, proximity to ground water, and soil permeability.

d) The owner or operator must keep at the facility its unsaturated zone monitoring plan and the rationale used in developing this plan.

e) The owner or operator must analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under Section 725.373(a) and (b).

BOARD NOTE: As required by Section 725.173, the owner or operator must place all data and information developed under this Section in the operating record of the facility.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.380 Closure and Post-Closure

a) In the closure plan under Section 725.212 and the post-closure plan under Section 725.218 the owner or operator must address the following objectives and indicate how they will be achieved:

1) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

2) Control of the release of contaminated runoff from the facility into surface water;

3) Control of the release of airborne particulate contaminants caused by wind erosion; and

4) Compliance with Section 725.376 concerning the growth of food-chain crops.

b) The owner or operator must consider at least the following factors in addressing the closure and post-closure care objectives of subsection paragraph (a) of this Section:
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1) The type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

3) The site location, topography, and surrounding land use with respect to the potential effects of pollutant migration (e.g., proximity to groundwater, surface water, and drinking water sources);

4) Climate, including amount, frequency, and pH of precipitation;

5) Geological and soil profiles and surface and subsurface hydrology of the site and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

6) Unsaturated zone monitoring information obtained under Section 725.378; and

7) The type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

c) The owner or operator must consider at least the following methods in addressing the closure and post-closure care objectives of subsection paragraph (a) of this Section:

1) Removal of contaminated soils;

2) Placement of a final cover, considering the following:

   A) Functions of the cover (e.g., infiltration control, erosion and runoff control, and wind erosion control); and

   B) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

3) Monitoring of groundwater.

d) In addition to the requirements of Subpart G of this Part during the closure period...
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the owner or operator of a land treatment facility must do the following:

1) It must continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

2) It must maintain the run-on control system required under Section 725.372(b);

3) It must maintain the run-off management system required under Section 725.372(c); and

4) It must control wind dispersal of particulate matter that may be subject to wind dispersal.

e) For the purpose of complying with Section 725.215, when closure is completed the owner or operator may submit to the Agency certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

f) In addition to the requirements of Section 725.217, during the post-closure care period the owner or operator of a land treatment unit must fulfill the following requirements:

1) It must continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

2) It must restrict access to the unit as appropriate for its post-closure use;

3) It must assure that growth of food chain crops complies with Section 725.376; and

4) It must control wind dispersal of hazardous waste.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.381 Special Requirements for Ignitable or Reactive Waste
The owner or operator must not apply ignitable or reactive waste to the treatment zone unless the waste and treatment zone meet all applicable requirements of 35 Ill. Adm. Code 728, and:

a) The waste is immediately incorporated into the soil so that the following conditions are fulfilled:

1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

2) Section 724.117(b) is complied with; or

b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.382 Special Requirements for Incompatible Wastes

Incompatible wastes or incompatible wastes and materials (see Appendix V of 40 CFR 265, incorporated by reference in 35 Ill. Adm. Code 720.111(b) for examples), must not be placed in the same land treatment area unless Section 725.117(b) is complied with.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART N: LANDFILLS

Section 725.400 Applicability

The regulations in this Subpart apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as Section 725.101 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this Subpart.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.401 Design Requirements

a) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an
existing landfill unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with 35 Ill. Adm. Code 724.401(c), unless exempted by 35 Ill. Adm. Code 724.401(d), (e) or (f). "Construction commences" is as defined in 35 Ill. Adm. Code 720.110 under "existing facility".

b) The owner or operator of each unit referred to in subsection (a) of this Section above shall notify the Agency at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months after the receipt of such notice.

c) The owner or operator of any replacement landfill unit is exempt from subsection (a) of this Section above if both of the following are true:

1) The existing unit was constructed in compliance with the design standards of 35 Ill. Adm. Code 724.401(c), (d), and (e), as amended in R86-1, at 10 Ill. Reg. 14119, effective August 12, 1986; and

BOARD NOTE: The cited subsections implemented the design standards of sections 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act (42 U.S.C. 6924(o)(1)(A)(i) and (o)(5)6901 et seq.).

2) There is no reason to believe that the liner is not functioning as designed.

d) The Agency must not require a double liner as set forth in subsection (a) of this Section above for any monofill, if the following conditions are fulfilled:

1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such waste does not contain constituents that render the wastes hazardous for reasons other than the toxicity characteristic in 35 Ill. Adm. Code 721.124, with hazardous waste number D004 through D017; and

2) Alternative demonstration.

   A) Liner and location requirements.

      i) The monofill has at least one liner for which there is no evidence that such liner is leaking;
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ii) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in 35 Ill. Adm. Code 702.110); and

iii) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with RCRA permits; or

B) The owner or operator demonstrates to the Board that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

e) In the case of any unit in which the liner and leachate collection system have been installed pursuant to the requirements of subsection (a) of this Section above, and in good faith compliance with subsection (a) of this Section above and with guidance documents governing liners and leachate collection systems under subsection (a) above, the Agency shall not require a liner or leachate collection system that is different from that which was so installed pursuant to subsection (a) of this Section above when issuing the first permit to such facility, except that the Agency is not precluded from requiring installation of a new liner when the Agency finds that any liner installed pursuant to the requirements of subsection (a) of this Section above is leaking.

f) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

g) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24 hour, 25-year storm.

h) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

i) The owner or operator of a landfill containing hazardous waste that is subject to dispersal by wind shall cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

BOARD NOTE: As required by Section 725.113, the waste analysis plan must
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include analyses needed to comply with Sections 725.412, 725.413, and 725.414. As required by Section 725.173, the owner or operator must place the results of these analyses in the operating record of the facility.

j) Refusal to grant an exemption or waiver, or grant with conditions, may be appealed to the Board.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.402 Action Leakage Rate

a) The owner or operator of landfill units subject to Section 725.401(a) submit a proposed action leakage rate to the Agency when submitting the notice required under Section 725.401(b). Within 60 days of receipt of the notification, the Agency must establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section, or extend the review period for up to 30 days. If no action is taken by the Agency before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

b) The Agency must approve an action leakage rate for landfill units subject to Section 725.401(a). The action leakage rate is the maximum design flow rate that the LDS can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover, and creep of synthetic components of the system, overburden pressures, etc.).

c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under Section 725.404 to an average daily flow rate (gallons per acre per day) for each sump. The average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period unless the Agency approves a different period under Section 725.404(b).

d) Final Agency determinations pursuant to this Section are deemed to be permit
Section 725.403 Response Actions

a) The owner or operator of landfill units subject to Section 725.401(a) **must** submit a response action plan to the Agency when submitting the proposed action leakage rate under Section 725.402. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b) of this Section below.

b) If the flow rate into the LDS exceeds the action leakage rate for any sump, the owner or operator **must do each of the followings**:

1) Notify the Agency in writing of the exceedence within seven (7) days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days after the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3), (4) and through (b)(5) of this Section above, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator **must** submit to the Agency a report summarizing the results.
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of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3), (4) and through (b)(5) of this Section above, the owner or operator must shall either of the following:

1) Perform the following assessments:

   A) Assess the source of liquids and amounts of liquids by source;
   
   B) Conduct a fingerprint, hazardous constituent or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
   
   C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act [415 ILCS 5/40].

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.404 Monitoring and Inspections

a) An owner or operator required to have an LDS under Section 725.401(a) must shall record the amount of liquids removed from each LDS sump at least once each week during the active life and closure period.

b) After the final cover is installed, the amount of liquids removed from each LDS sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must shall return to monthly recording of amounts of liquids removed from each
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sump until the liquid level again stays below the pump operating level for two consecutive months.

c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Agency based on pump activation level, sump dimensions and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with Section 725.402(a).

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act [415 ILCS 5/40].

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.410 Closure and Post-Closure Care

a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to accomplish the following:

1) It must provide long-term minimization of migration of liquids through the closed landfill;

2) It must function with minimum maintenance;

3) It must promote drainage and minimize erosion or abrasion of the cover;

4) It must accommodate settling and subsidence so that the cover's integrity is maintained; and

5) It must have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

b) After final closure, the owner or operator must comply with all post-closure requirements contained in Section 725.217 through 725.220 including maintenance and monitoring throughout the post-closure care period. The owner or operator must do the followings:

1) It must maintain the integrity and effectiveness of the final cover,
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including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

2)  It must maintain and monitor the LDS in accordance with 35 Ill. Adm. Code 724.401(c)(3)(D) and (c)(4) and Section 725.404(b), and comply with all other applicable LDS requirements of this Part;

3)  It must maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F;

4)  It must prevent run-on and run-off from eroding or otherwise damaging the final cover; and

5)  It must protect and maintain surveyed benchmarks used in complying with Section 725.409.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.412 Special Requirements for Ignitable or Reactive Waste

a)  Except as provided in subsection (b) of this Section and in Section 725.416, ignitable or reactive waste must not be placed in a landfill, unless the waste and landfill meets all applicable requirements of 35 Ill. Adm. Code 728, and the waste is treated, rendered or mixed before or immediately after placement in the landfill so that both of the following conditions are fulfilled:

1)  The resulting waste, mixture or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

2)  Section 725.117(b) is complied with.

b)  Except for prohibited wastes that remain subject to treatment standards in Subpart D of 35 Ill. Adm. Code 728-Subpart D, ignitable waste in containers may be landfilled without meeting the requirements of subsection (a) of this Section provided that the wastes are disposed of in such a way that they are protected from any material or conditions that may cause them to ignite. At a minimum, ignitable wastes must be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material to minimize the potential for ignition of the
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wastes; and must not be disposed in cells that contain or will contain other wastes that may generate heat sufficient to cause ignition of the waste.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.413  Special Requirements for Incompatible Wastes

Incompatible wastes or incompatible wastes and materials (see Appendix V of 40 CFR 265, incorporated by reference in 35 Ill. Adm. Code 720.111(b) for examples) must not be placed in the same landfill cell, unless §725.117(b) is complied with.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.414  Special Requirements for Liquid Wastes

a) This subsection (a) corresponds with 40 CFR 265.314(a), which pertains to the placement of bulk or non-containerized liquid waste or waste containing free liquids in a landfill prior to May 8, 1985. This statement maintains structural consistency with USEPA rules.

b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

c) Containers holding free liquids must not be placed in a landfill unless one of the following conditions is fulfilled:

1) One of the following occurs with regard to all free-standing liquid:

   A) It has been removed by decanting, or other methods;
   B) It has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or
   C) It has been otherwise eliminated; or

2) The container is very small, such as an ampule; or

3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or
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4) The container is a lab pack as defined in Section 724.416 and is disposed of in accordance with Section 724.416.

d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," USEPA Publication No. SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

e) The placement of any liquid that is not a hazardous waste in a landfill is prohibited (35 Ill. Adm. Code 729.311).

f) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are one of the following: materials listed or described in subsection (f)(1) of this Section; materials that pass one of the tests in subsection (f)(2) of this Section; or materials that are determined by the Board to be nonbiodegradable through the adjusted standard procedure of Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104 adjusted standard process.

1) Nonbiodegradable sorbents are the following:

A) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites, calcium carbonate (organic free limestone), oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth, perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal/activated carbon); or

B) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorbornene, polysobutylene, ground synthetic rubber, cross-linked allylstryrene, and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

C) Mixtures of these nonbiodegradable materials.
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2) Tests for nonbiodegradable sorbents.


C) The sorbent material is determined to be non-biodegradable under OECD test 301B (CO₂ Evolution (Modified Sturm Test)), incorporated by reference in 35 Ill. Adm. Code 720.111(a).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.415 Special Requirements for Containers

Unless they are very small, such as an ampule, containers must be in either of the following conditions:

a) They must be at least 90 percent full when placed in the landfill; or

b) They must be crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.416 Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the USDOT Department of Transportation...
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b) The inside containers must be overpacked in an open head USDOT specification metal shipping container, (49 CFR 178 and 179, incorporated by reference in 35 Ill. Adm. Code 720.111(b)) of no more than 416 liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with 35 Ill. Adm. Code 725.414(f) to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material.

c) The sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with Section 725.117(b).

d) Incompatible wastes, as defined in 35 Ill. Adm. Code 720.110, must not be placed in the same outside container.

e) Reactive waste, other than cyanide- or sulfide-bearing waste, as defined in 35 Ill. Adm. Code 721.123(a)(5), must be treated or rendered non-reactive prior to packaging in accordance with subsections (a) through (d) of this Section. Cyanide- or sulfide-bearing reactive waste may be packaged in accordance with subsections (a) through (d) of this Section without first being treated or rendered non-reactive.

f) Such disposal is in compliance with the requirements of 35 Ill. Adm. Code 728. Persons who incinerate lab packs according to the requirements of 35 Ill. Adm. Code 728.142(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums must meet the USDOT specifications in 49 CFR 173.12171.12 and be overpacked according to subsection (b), of this Section above.

g) Pursuant to 35 Ill. Adm. Code 729.312, the use of labpacks for disposal of liquid wastes or wastes containing free liquids allowed under this Section is restricted to labwaste and non-periodic waste, as those terms are defined in that Part.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

SUBPART O: INCINERATORS
Section 725.440 Applicability

a) The regulations in this Subpart O apply to owners or operators of hazardous waste incinerators (as defined in 35 Ill. Adm. Code 720.110), except as 35 Ill. Adm. Code 724.101 provides otherwise.

b) Integration of the MACT standards.

1) Except as provided by subsections (b)(2) and (b)(3) of this Section, the standards of this Part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of subpart EEE of 40 CFR 63, Subpart EEE, incorporated by reference in 35 Ill. Adm. Code 720.111(b), by conducting a comprehensive performance test and submitting to the Agency a Notification of Compliance, under 40 CFR 63.1207(j) and 63.1210(b), documenting compliance with the requirements of subpart EEE of 40 CFR 63, Subpart EEE.

2) The MACT standards of subpart EEE of 40 CFR 63, Subpart EEE do not replace the closure requirements of Section 724.451 or the applicable requirements of Subparts A through H, BB, and CC of this Part.

3) Section 725.445, generally prohibiting burning of hazardous waste during startup and shutdown, remains in effect if the owner or operator elects to comply with 35 Ill. Adm. Code 703.320(b)(1)(A) to minimize emissions of toxic compounds from startup and shutdown.

BOARD NOTE: Operating conditions used to determine effective treatment of hazardous waste remain effective after the owner or operator demonstrates compliance with the standards of subpart EEE of 40 CFR 63, subpart EEE. Sections 9.1 and 39.5 of the Environmental Protection Act [415 ILCS 5/9.1 and 39.5] make the federal MACT standards directly applicable to entities in Illinois and authorize the Agency to issue permits based on the federal standards.

c) An owner or operator of an incinerator that burns hazardous waste is exempt from all of the requirements of this Subpart O, except Section 725.451 (Closure), provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in Appendix H to 35 Ill. Adm. Code 721 and such documentation is retained at the facility, if the waste to be burned is one of the following:
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1) It is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both;

2) It is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, solely because it is reactive (Hazard Code R) for characteristics other than those listed in 35 Ill. Adm. Code 721.123(a)(4) and (a)(5), and will not be burned when other hazardous wastes are present in the combustion zone;

3) It is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under Subpart C of 35 Ill. Adm. Code 721; or

4) It is a hazardous waste solely because it possesses the reactivity characteristics described by 35 Ill. Adm. Code 721.123(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), or (a)(8) and will not be burned when other hazardous wastes are present in the combustion zone.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.441 Waste Analysis

In addition to the waste analyses required by Section §725.113, the owner or operator must sufficiently analyze any waste that he has not previously burned in his incinerator to enable him to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants that might be emitted. At a minimum, the analysis must determine the following:

a) Heating value of the waste;

b) Halogen content and sulfur content in the waste; and

c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

BOARD NOTE: Comment: As required by Section §725.173, the owner or operator must place the results from each waste analysis or the documented information in the operating record of the facility.
Section 725.445 General Operating Requirements

During startup and shutdown of an incinerator, the owner or operator must not feed hazardous waste unless the incinerator is at steady state (normal) conditions of operation, including steady state operating temperature and airflow.

Section 725.447 Monitoring and Inspection

The owner or operator must conduct, as a minimum, the following monitoring and inspections when incinerating hazardous waste:

a) Existing instruments that relate to combustion and emission control must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions must be made immediately either automatically or by the operator. Instruments that relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

b) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions and all emergency shutdown controls and system alarms must be checked to assure proper operation.

(Source: Amended at 29 Ill. Reg. _____, effective _________)

Section 725.451 Closure

At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters and scrubber sludges) from the incinerator.

BOARD NOTE: Comment: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with Section 721.103(d), that the residue removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. CodeParts 722 through 726 and 728–725 and 40 CFR Part 266.

Section 725.452 Interim Status Incinerators Burning Particular Hazardous Wastes

a) An owner or operator of an incinerator subject to this Subpart O may burn hazardous wastes numbers F020, F021, F022, F023, F026, or F027 if they receive a certification from the Agency that they
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can meet the performance standards to Subpart O of 35 Ill. Adm. Code 724. Subpart O when it burns these wastes.

b) The following standards and procedures will be used in determining whether to certify an incinerator:

1) The owner or operator must submit an application to the Agency containing applicable information in 35 Ill. Adm. Code 703.125, 703.222, 703.223, 703.224, and 703.225 demonstrating that the incinerator can meet the performance standards in Subpart O of 35 Ill. Adm. Code 724. Subpart O when they burn these wastes.

2) The Agency must issue a tentative decision as to whether the incinerator can meet the performance standards in Subpart O of 35 Ill. Adm. Code 724. Subpart O. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the county where the incinerator is located. The Agency must accept comment on the tentative decision for 60 days. The Agency also may hold a public hearing upon request or at its discretion.

3) After the close of the public comment period, the Agency must issue a decision whether or not to certify the incinerator.

4) Any person who participated may appeal the Agency's decision to the Board, pursuant to 35 Ill. Adm. Code 705.212.

(Source: Amended at 29 Ill. Reg. _______, effective __________)

SUBPART P: THERMAL TREATMENT

Section 725.470 Other Thermal Treatment

The regulations in this Subpart P apply to owners and operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion except, as Section 725.101 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of Subpart O of this Part if the unit is an incinerator, and Subpart H of 35 Ill. Adm. Code 726. Subpart H, if the unit is a boiler or industrial furnace, as defined in 35 Ill. Adm. Code 720.110.

(Source: Amended at 29 Ill. Reg. _______, effective __________)
Section 725.473  General Operating Requirements

Before adding hazardous waste, the owner or operator must bring his thermal treatment process to steady state (normal) conditions of operation, including steady state operating temperature—using auxiliary fuel or other means, unless the process is a noncontinuous (batch) thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

Section 725.475  Waste Analysis

In addition to the waste analyses required by Section 725.113, the owner or operator must sufficiently analyze any waste that has not previously treated in his thermal process to enable him to establish steady state (normal) or other appropriate (for a noncontinuous process) operating conditions (including waste and auxiliary fuel feed) and to determine the type of pollutants that might be emitted. At minimum, the analysis must determine the following:

a) Heating value of the waste;
b) Halogen content and sulfur content in the waste; and
c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

BOARD NOTE: Comment: As required by Section §725.173, the owner or operator must place the results from each waste analysis or the documented information in the operating record of the facility.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.477  Monitoring and Inspections

The owner or operator must conduct, as a minimum, the following monitoring and inspections when thermally treating hazardous waste:

a) Existing instruments that relate to temperature and emission control (if an emission control device is present) must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions must be made immediately either automatically or by the operator. Instruments that relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment...
process temperature, and relevant process flow and level controls.

b) The stack plume (emissions), where present, must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

c) The complete thermal treatment process and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.481 Closure

At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash) from the thermal treatment process or equipment.

BOARD NOTE: Comment: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with Section 721.103(c) or (d) that any solid waste removed from his thermal treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 722, 723, and 725.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.482 Open Burning; Waste Explosives

Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste that has the potential to detonate and bulk military propellants that cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must do so in accordance with the following table and in a manner that does not threaten human health or the environment.

<table>
<thead>
<tr>
<th>Distance From Open Pounds of Waste Explosives or Propellants</th>
<th>Burning or Detonation To the Property of Others</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Range</th>
<th>Distance (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 100</td>
<td>204 (670)</td>
</tr>
<tr>
<td>101 to 1000</td>
<td>380 (1250)</td>
</tr>
<tr>
<td>1001 to 10,000</td>
<td>530 (1730)</td>
</tr>
<tr>
<td>10,001 to 30,000</td>
<td>690 (2260)</td>
</tr>
</tbody>
</table>

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.483 Interim Status Thermal Treatment Devices Burning Particular Hazardous Wastes

a) An owner or operators of a thermal treatment device subject to this Subpart P may burn hazardous waste numbers F020, F021, F022, F023, F026, or F027 if it receives a certification from the Agency that it can meet the performance standards of Subpart O of 35 Ill. Adm. Code 724. Subpart O when it burns these wastes.

b) The following standards and procedures must be used in determining whether to certify a thermal treatment unit:

1) The owner or operator shall submit an application to the Agency containing the applicable information in 35 Ill. Adm. Code 703.125, 703.222, 703.223, 703.224, and 703.225 demonstrating that the thermal treatment unit can meet the performance standard in Subpart O of 35 Ill. Adm. Code 724. Subpart O when it burns these wastes.

2) The Agency shall issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in Subpart O of 35 Ill. Adm. Code 724. Subpart O. Notification of this tentative decision must be provided by newspaper advertisement and radio broadcast in the county where the thermal treatment device is located. The Agency shall accept comment on the tentative decision for 60 days. The Agency also may hold a public hearing upon request or at its discretion.

3) After the close of the public comment period, the Agency shall issue a decision whether or not to certify the thermal treatment unit.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART Q: CHEMICAL, PHYSICAL, AND BIOLOGICAL TREATMENT
Section 725.500 Applicability

The regulations in this Subpart Q apply to owners and operators of facilities that treat hazardous waste by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as Section §725.101 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments and land treatment facilities must be conducted in accordance with Subparts J, K, and M of this Part, respectively.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.501 General Operating Requirements

a) Chemical, physical, or biological treatment of hazardous waste must comply with Section 725.117(b).

b) Hazardous waste or treatment reagents must not be placed in the treatment process or equipment if they could cause the treatment process or equipment to rupture, leak, corrode, or otherwise fail before the end of its intended life.

c) Where hazardous waste is continuously fed into a treatment process or equipment, the process or equipment must be equipped with a means to stop this inflow (e.g., a waste feed cutoff system or bypass system to a standby containment device).

BOARD NOTE: These systems are intended to be used in the event of a malfunction in the treatment process or equipment.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.502 Waste Analysis and Trial Tests

a) In addition to the waste analysis required by Section 725.113 subsection (b) of this Section above applies whenever either of the following conditions exist:

1) A hazardous waste that is substantially different from waste previously treated in a treatment process or equipment at the facility is to be treated in that process or equipment, or

2) A substantially different process from any previously used at the facility is to be used to chemically treat hazardous waste.
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b) To show that this proposed treatment will meet all applicable requirements of Section 725.501(a) and (b), the owner or operator must, before treating the different waste or using the different process or equipment:

1) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests), or

2) Obtain written, documented information on similar treatment of similar waste under similar operating conditions.

BOARD NOTE: As required by Section 725.113, the waste analysis plan must include analyses needed to comply with Sections 725.505 and 725.506. As required by Section 725.173, the owner or operator must place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.503 Inspections

The owner operator of a treatment facility must inspect the following, where present:

a) Discharge control and safety equipment (e.g., waste feed cutoff systems, bypass systems, drainage systems, and pressure relief systems) at least once each operating day to ensure that it is in good working order;

b) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the treatment process or equipment is being operated according to its design;

c) The construction materials of the treatment process or equipment at least weekly to detect corrosion or leaking of fixtures or seams; and

d) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

BOARD NOTE: As required by Section 725.115(c), the owner or operator must remedy any deterioration or malfunction it finds.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)
Section 725.505 Special Requirements for Ignitable or Reactive Waste

Ignitable or reactive waste must not be placed in a treatment process or equipment unless either of the following conditions exists:

a) The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that both of the following conditions are fulfilled:
   1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Section 721.121 or 721.123, and
   2) Section 725.117(b) is complied with; or

b) The waste is treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.506 Special Requirements for Incompatible Wastes

a) An owner or operator must not place incompatible wastes or incompatible wastes and materials (see Section 725, Appendix E to this Part for examples) in the same treatment process or equipment unless it complies with Section 725.117(b).

b) An owner or operator must not place hazardous waste in unwashed treatment equipment that previously held an incompatible waste or material, unless it complies with Section 725.117(b).

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART R: UNDERGROUND INJECTION

Section 725.530 Applicability

Except as Section 725.101 provides otherwise, the following apply:

a) The owner or operator of a facility that disposes of hazardous waste by
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underground injection is excluded from the requirements of Subparts G and H of this Part.

b) The requirements of this Subpart R apply to owners and operators of wells that are used to dispose of hazardous waste which are classified as Class I under 35 Ill. Adm. Code 704.106(a) and which are classified as Class IV under 35 Ill. Adm. Code 704.106(d).

(Board Note: In addition to the requirements of Subpart A through E of this Part, the owner or operator of a facility which disposes of hazardous waste by underground injection ultimately must comply with the requirements of Sections 725.531-725.537. These Sections are reserved at this time. The USEPA intends to submit proposed regulations at a later date that would establish those requirements.)

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART W: DRIP PADS

Section 725.540 Applicability

a) The requirements of this Subpart W apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-on to an associated collection system.

1) An "existing"Existing drip pads" is one that fulfills the following conditions:

A) It was constructed before December 6, 1990; or

B) It was constructed for which the owner or operator had a design and entered into binding financial or other agreements for construction prior to December 6, 1990.

2) All other drip pads are "new drip pads".

3) The requirements of Section 725.543(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.
b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under Section 724.672(e) or (f).

c) The requirements of this subsection are not applicable to the management of infrequent and incidental drippage in storage yards provided that the owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

1) Clean up the drippage;

2) Document the clean-up of the drippage;

3) Retain documentation regarding the clean-up for three years; and

4) Manage the contaminated media in a manner consistent with State and Federal regulations.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.541 Assessment of Existing Drip Pad Integrity

a) For each existing drip pad, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this Subpart except the requirements for liners and leak detection systems of Section 725.543(b). No later than June 6, 1991, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of Section 725.543 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of Section 725.543, except the standards for liners and leak detection systems, specified in Section 725.543(b).

b) The owner or operator must develop a written plan for upgrading, repairing and modifying the drip pad to meet the requirements of Section 725.543(b) and
submit the plan to the Agency no later than two years before the date that all repairs, upgrades and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of Section 725.543. The plan must be reviewed and certified by an independent qualified, registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

1) For existing drip pads of known and documentable age, all upgrades, repairs and modifications must be completed by June 6, 1993, or when the drip pad has reached 15 years of age, whichever comes later.

2) For existing drip pads for which the age cannot be documented, by June 6, 1999; but, if the age of the facility is greater than seven years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by June 6, 1993, whichever comes later.

3) The owner or operator may petition the Board for an extension of the deadline in subsection (b)(1) or (b)(2) of this Section, above.
   A) The owner or operator shall file a petition for a RCRA variance, as specified in Subpart B of 35 Ill. Adm. Code 104.
   B) The Board will grant the petition for extension if it finds the following:
      i) The drip pad meets all of the requirements of Section 725.543, except those for liners and leak detection systems specified in Section 725.543(b); and
      ii) That it will continue to be protective of human health and the environment.

c) Upon completion of all repairs and modifications, the owner or operator shall submit to the Agency, the as-built drawings for the drip pad, together with a certification by an independent, qualified, registered professional engineer attesting that the drip pad conforms to the drawings.

d) If the drip pad is found to be leaking or unfit for use, the owner or operator shall comply with the provisions of Section 725.543(m) or close the drip pad in accordance with Section 725.545.
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(Source: Amended at 29 Ill. Reg. _______, effective __________)

Section 725.542  Design and Installation of New Drip Pads

Owners and operators of new drip pads shall ensure that the pads are designed, installed and operated in accordance with one of the following:

a) All of the requirements of Sections 725.543 (except 725.543(a)(4)), 725.544, and 725.545; or

b) All of the requirements of Section 725.543 (except 725.543(b)), 725.544, and 725.545.

(Source: Amended at 29 Ill. Reg. _______, effective __________)

Section 725.543  Design and Operating Requirements

a) Drip pads must fulfill the following requirements:

1) Not be constructed of earthen materials, wood, or asphalt, unless the asphalt is structurally supported;

2) Be sloped to free-drain to the associated collection system treated wood drippage, rain, other waters, or solutions of drippage and water or other wastes;

3) Have a curb or berm around the perimeter;

4) In addition, the drip pad must fulfill the following requirements:

A) Have a hydraulic conductivity of less than or equal to \(-1 \times 10^{-7}\) centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to \(-1 \times 10^{-7}\) centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect it hydraulic conductivity, and the
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material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to the existing drip pads and those drip pads for which the owner or operator elects to comply with Section 725.542(a) instead of Section 725.542(b).

B) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this Section, except for in subsection (b) of this Section below.

5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

BOARD NOTE: In judging the structural integrity requirement of this subsection (a), the Agency should generally consider applicable standards established by professional organizations generally recognized by the industry, including ACI 318 or ASTM C94, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

b) If an owner or operator elects to comply with Sectionsubsection 725.542(b) instead of Sectionsubsection 725.542(a), the drip pad must have the following features:

1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be constructed as follows:

A) Constructed of materials that have appropriate chemical properties
and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

B) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

C) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

2) A leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed as follows:

A) Constructed of materials that fulfill the following requirements are:
   i) They are chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and
   ii) They are of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

B) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

C) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

3) A leakage collection system immediately above the liner that is designed, constructed, maintained, and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.
A) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and cleaning procedure used in the facility's operating log.

B) The Federal rules do not contain a 40 CFR 265.443(b)(3)(ii). This subsection is added to conform to Illinois Administrative Code requirements.

c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

BOARD NOTE: See subsection (m) of this Section below for remedial action required if deterioration or leakage is detected.

d) The drip pad and associated collection system must be designed and operated to convey, drain and collect liquid resulting from drippage or precipitation in order to prevent run-off.

e) Unless the drip pad is protected by a structure, as described in Section 725.540(b), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

f) Unless the drip pad is protected by a structure or cover, as described in Section 725.540(b), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

g) The drip pad must be evaluated to determine that it meets the requirements of subsections (a) through (f) of this Section above. The owner or operator must obtain a statement from an independent, qualified, registered professional engineer certifying that the drip pad design meets the requirements of this Section.
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h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

i) The drip pad surface must be cleaned thoroughly at least once every seven days **using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning, with residues being properly managed**, such that accumulated residues of hazardous waste or other materials are removed **as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning.** The owner or operator **must** document, in the facility's operating log, the date and time of each cleaning and the cleaning procedure.

j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator **must maintain records sufficient to document that all treated wood is held on the pad, in accordance with this Section, following treatment.**

l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator **must perform the following**

A) Enter a record of the discovery in the facility operating log;
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B) Immediately remove from service the portion of the drip pad affected by the condition;

C) Determine what steps must be taken to repair the drip pad, clean up any leakage from below the drip pad, and establish a schedule for accomplishing the clean up and repairs;

D) Within 24 hours after discovery of the condition, notify the Agency of the condition and, within 10 working days, provide written notice to the Agency with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

2) The Agency shall review the information submitted; make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete; and notify the owner or operator of the determination and the underlying rationale in writing.

3) Upon completing all repairs and clean up, the owner or operator shall notify the Agency in writing and provide a certification, signed by an independent, qualified, registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with subsection (m)(1)(D) of this Section above.

n) The owner or operator shall maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices and a description of treated wood storage and handling practices.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.544 Inspections

a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of Section 725.543 by an independent, qualified, registered
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professional engineer. The certification must be maintained at the facility as part of the facility operating record. After installation liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

2) The presence of leakage in and proper functioning of leak detection system.

3) Deterioration or cracking of the drip pad surface.

BOARD NOTE: See Section 725.543(m) for remedial action required if deterioration or leakage is detected.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.545 Closure

a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) of this Section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated. The operator shall close the unit and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (Section 725.410). For permitted units, the requirement to have a permit continues throughout the post-closure period.

c) Existing drip pads without liners.

1) The owner or operator of an existing drip pad that does not comply with the liner requirements of Section 725.543(b)(1) must do the
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Following shall:

A) **It must include** in the closure plan for the drip pad under Section 725.212 both a plan for complying with subsection (a) of this Section and a contingent plan for complying with subsection (b) of this Section in case not all contaminated subsoils can be practicably removed at closure; and

B) **It must prepare** a contingent post-closure plan under Section 725.218 for complying with subsection (b) of this Section in case not all contaminated subsoils can be practicably removed at closure.

2) The cost estimates calculated under Sections 725.212 and 725.244 for closure and post closure care of a drip pad subject to this subsection must include the cost of complying with the contingent closure plan and the contingent post closure plan, but are not required to include the cost of expected closure under subsection (a) of this Section.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART AA: AIR EMISSION STANDARDS FOR PROCESS VENTS

Section 725.930 Applicability

a) This Subpart **AA** applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 725.101).

b) Except for Section 725.934(d) and (e), this Subpart **AA** applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw (parts per million by weight), if these operations are conducted in one of the following:

1) A unit that is subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705;

2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 35 Ill. Adm. Code 722.134(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located on a hazardous waste management facility.
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otherwise subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705; or

3) A unit that is exempt from permitting under the provisions of 35 Ill. Adm. Code 722.134(a) (i.e., a "90-day" tank or container) and which is not a recycling unit under the requirements of 35 Ill. Adm. Code 721.106.

BOARD NOTE: The requirements of Sections 725.932 through 725.936 apply to process vents on hazardous waste recycling units previously exempt under 35 Ill. Adm. Code 721.106(c)(1). Other exemptions under 35 Ill. Adm. Code 721.104 and 725.101(c) are not affected by these requirements.

c) Agency decisions pursuant to this Part must be made in writing, are in the nature of permit decisions pursuant to Section 39 of the Environmental Protection Act and may be appealed to the Board pursuant to 35 Ill. Adm. Code 105.

d) The requirements of this Subpart AA do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this Subpart AA are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60, 61, or 63. The documentation of compliance under regulations at 40 CFR 60, 61, or 63 must be kept with, or made readily available with, the facility operating record.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.931 Definitions

As used in this Subpart AA, all terms not defined in this Subpart AA have the meaning given them in 35 Ill. Adm. Code 724.931, the Resource Conservation and Recovery Act, and 35 Ill. Adm. Code 720 through 726.

"BTU" means British thermal unit.

"ft" means foot.

"h" means hour.

"kg" means kilogram.
Section 725.932 Standards: Process Vents

a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least 10 ppmw shall do either of the following:

1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr); or

2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of subsection (a) of this Section, the closed-vent
system and control device must meet the requirements of Section 725.933.

c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices must be based on either engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of Section 725.934(c).

d) When an owner or operator and the Agency do not agree on determinations of vent emissions or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in Section 725.934(c) must be used to resolve the disagreement.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.933 Standards: Closed-Vent Systems and Control Devices

a) Compliance Required.

1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this Part must comply with the provisions of this Section.

2) Implementation Schedule.

A) The owner or operator of an existing facility that cannot install a closed-vent system and control device to comply with the provisions of this Subpart on the effective date that the facility becomes subject to the provisions of this Subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subpart for installation and startup.

B) Any unit that begins operation after December 21, 1990, and which is subject to the provisions of this Subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected
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The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this Subpart AA must comply with all requirements of this Subpart AA as soon as practicable but no later than 30 months after the effective date of the amendment. When control equipment required by this Subpart AA cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator must prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subpart AA. The owner or operator must enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

D) An owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart AA after December 8, 1997, due to an action other than those described in subsection (a)(2)(iii) of this Section must comply with all applicable requirements immediately (i.e., the facility or unit must have control devices installed and operating on the date the facility or unit becomes subject to this Subpart AA; the 30-month implementation schedule does not apply).

b) A control device involving vapor recovery (e.g., a condenser or adsorber) must be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Section 725.932(a)(1) for all affected process vents is attained at an efficiency less than 95 weight percent.

c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) must be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760
degrees Celsius (° C). If a boiler or process heater is used as the control device, then the vent stream must be introduced into the flame combustion zone of the boiler or process heater.

d) Flares.

1) A flare must be designed for and operated with no visible emissions as determined by the methods specified in subsection (e)(1) of this Section except for periods not to exceed a total of five minutes during any two consecutive hours.

2) A flare must be operated with a flame present at all times, as determined by the methods specified in subsection (f)(2)(c) of this Section.

3) A flare must be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted, or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted must be determined by the methods specified in subsection (e)(2) of this Section.

4) Exit Velocity.

A) A steam-assisted or nonassisted flare must be designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this Section, less than 18.3 m/s (60 ft/s), except as provided in subsections (d)(4)(B) and (d)(4)(C) of this Section.

B) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this Section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1000 Btu/scf).

C) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3) of this Section, less than the velocity, V as determined by the method specified in subsection (e)(4) and less than 122 m/s (400 ft/s) is allowed.
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5) An air-assisted flare must be designed and operated with an exit velocity less than the velocity, $V_a$, as determined by the method specified in subsection (e)(5) of this Section.

6) A flare used to comply with this Section must be steam-assisted, air-assisted, or nonassisted.

e) Compliance determination and equations.

1) Reference Method 22 in 40 CFR 60, incorporated by reference in 35 Ill. Adm. Code 720.111(b), must be used to determine the compliance of a flare with the visible emission provisions of this Subpart AA. The observation period is two hours and must be used according to Method 22.

2) The net heating value of the gas being combusted in a flare must be calculated using the following equation:

$$H_T = K \sum_{i=1}^{n} (C_i \times H_i)$$

Where:

- $H_T$ is the net heating value of the sample in MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mole is 20°C.
- $K = 1.74 \times 10^{-7} (1/\text{ppm}) (\text{g mol/scm}) (\text{MJ/kcal})$ where the standard temperature for (g mol/scm) is 20°C.
- $\Sigma X_i$ means the sum of the values of $X$ for each component $i$, from $i=1$ to $n$.
- $C_i$ is the concentration of sample component $i$ in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR 60, and for carbon monoxide, by ASTM D 1946-90, incorporated by reference in 35 Ill. Adm. Code 720.111(a); and.
- $H_i$ is the net heat of combustion of sample component $i$, kcal/gmol at 25°C and 760 mm Hg. The heats of
3) The actual exit velocity of a flare must be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR 60, incorporated by reference in 35 Ill. Adm. Code 720.111(b), as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

4) The maximum allowed velocity in m/s, V for a flare complying with subsection (d)(4)(C) of this Section must be determined by the following equation:

\[ \log_{10}(V_{\text{max}}) = \frac{H_T + 28.8}{31.7} \]

Where:

\[ \log_{10} \] means logarithm to the base 10; and

\[ H_T \] is the net heating value as determined in subsection (e)(2) of this Section.

5) The maximum allowed velocity in m/s, V for an air-assisted flare must be determined by the following equation:

\[ V = 8.706 + 0.7084 \ H_T \]

Where:

\[ H_T \] is the net heating value as determined in subsection (e)(2) of this Section.

f) The owner or operator \textbf{must} monitor and inspect each control device required to comply with this Section to ensure proper operation and maintenance of the control device by implementing the following requirements:

1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow
from each affected process vent to the control device at least once every hour. The flow indicator sensor must be installed in the vent stream at the nearest feasible point to the control device inlet but before being combined with other vent streams.

2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must have accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. The temperature sensor must be installed at a location in the combustion chamber downstream of the combustion zone.

B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. One temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

D) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. The temperature sensor must be installed at a location in the furnace downstream of the combustion zone.

E) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure parameters that indicate good combustion operating practices are being used.
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F) For a condenser, either of the following:

i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

ii) A temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5°C, whichever is greater. The temperature sensor must be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

G) For a carbon adsorption system, such as a fixed-bed carbon adsorber that regenerates the carbon bed directly in the control device, either of the following:

i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or

ii) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

3) Inspect the readings from each monitoring device required by subsections (f)(1) and (f)(2) of this Section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this Section.

g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device must replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Section 725.935(b)(4)(C)(vi).

h) An owner or operator using a carbon adsorption system, such as a carbon canister,
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that does not regenerate the carbon bed directly onsite in the control device must replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency must be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Section 725.935(b)(4)(C)(vii), whichever is longer.

2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Section 725.935(b)(4)(C)(vii).

i) An owner or operator of an affected facility seeking to comply with the provisions of this Part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

j) A closed-vent system must meet either of the following design requirements:

1) A closed-vent system must be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined by the methods specified at Section 725.934(b), and by visual inspections; or

2) A closed-vent system must be designed to operate at a pressure below atmospheric pressure. The system must be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

k) The owner or operator shall monitor and inspect each closed-vent system required to comply with this Section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:
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1) Each closed-vent system that is used to comply with subsection (j)(1) of this Section must be inspected and monitored in accordance with the following requirements:

A) An initial leak detection monitoring of the closed-vent system must be conducted by the owner or operator on or before the date that the system becomes subject to this Section. The owner or operator must monitor the closed-vent system components and connections using the procedures specified in Section 725.934(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

B) After initial leak detection monitoring required in subsection (k)(1)(A) of this Section, the owner or operator must inspect and monitor the closed-vent system as follows:

   i) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) must be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator must monitor a component or connection using the procedures specified in Section 725.934(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

   ii) Closed-vent system components or connections other than those specified in subsection (k)(1)(B)(i) of this Section must be monitored annually and at other times as requested by the Agency/Regional Administrator, except as provided for in subsection (n) of this Section, using the procedures specified in Section 725.934(b) to demonstrate that the components or connections operate with no detectable emissions.

C) In the event that a defect or leak is detected, the owner or operator must repair the defect or leak in accordance with the
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requirements of subsection (k)(3) of this Section.

D) The owner or operator **must** maintain a record of the inspection and monitoring in accordance with the requirements specified in Section 725.935.

2) Each closed-vent system that is used to comply with subsection (j)(2) of this Section must be inspected and monitored in accordance with the following requirements:

A) The closed-vent system must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

B) The owner or operator **must** perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this Section. Thereafter, the owner or operator **must** perform the inspections at least once every year.

C) In the event that a defect or leak is detected, the owner or operator **must** repair the defect in accordance with the requirements of subsection (k)(3) of this Section.

D) The owner or operator **must** maintain a record of the inspection and monitoring in accordance with the requirements specified in Section 725.935.

3) The owner or operator **must** repair all detected defects as follows:

A) Detectable emissions, as indicated by visual inspection or by an instrument reading greater than 500 ppmv above background, must be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in subsection (k)(3)(C) of this Section.

B) A first attempt at repair must be made no later than five calendar days after the emission is detected.

C) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a
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process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment must be completed by the end of the next process unit shutdown.

D) The owner or operator **must** maintain a record of the defect repair in accordance with the requirements specified in Section 725.935.

l) A closed-vent system or control device used to comply with provisions of this Subpart **AA** must be operated at all times when emissions may be vented to it.

m) The owner or operator using a carbon adsorption system to control air pollutant emissions **must** document that all carbon removed that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the volatile organic concentration of the carbon:

1) It is regenerated or reactivated in a thermal treatment unit that meets one of the following:

   A) The owner or operator of the unit has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of **Subpart X of 35 Ill. Adm. Code 724.**

   B) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Subparts AA and CC of this Part or 35 Ill. Adm. Code 724; or

   C) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR 61 or 40 CFR 63, **incorporated by reference in 35 Ill. Adm. Code 720.111(b).**

2) It is incinerated in a hazardous waste incinerator for which the owner or operator has done either of the following:

   A) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of **Subpart O of 35 Ill. Adm. Code 724.**
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B) The owner or operator has designed and operates the incinerator in accordance with the interim status requirements of Subpart O of this Part.

3) It is burned in a boiler or industrial furnace for which the owner or operator has done either of the following:

A) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart H of 35 Ill. Adm. Code 726 Subpart H, or

B) The owner or operator has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726 Subpart H.

n) Any components of a closed-vent system that are designated, as described in Section 725.935(c)(9), as unsafe to monitor are exempt from the requirements of subsection (k)(1)(B)(ii) of this Section if both of the following conditions are fulfilled:

1) The owner or operator of the closed-vent system has determined that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (k)(1)(B)(ii) of this Section; and

2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in subsection (k)(1)(B)(ii) of this Section as frequently as practicable during safe-to-monitor times.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.934 Test Methods and Procedures

a) Each owner or operator subject to the provisions of this Subpart AA must comply with the test methods and procedures requirements provided in this Section.

b) When a closed-vent system is tested for compliance with no detectable emissions, as required in Section 725.933(k), the test must comply with the following
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requirements:


2) The detection instrument must meet the performance criteria of Reference Method 21.

3) The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

4) Calibration gases must be:
   A) Zero air (less than 10 ppm of hydrocarbon in air).
   B) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

5) The background level must be determined as set forth in Reference Method 21.

6) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible, as described in Reference Method 21.

7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

c) Performance tests to determine compliance with Section 725.932(a) and with the total organic compound concentration limit of Section 725.933(c) must comply with the following:

1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices must be conducted and data reduced in accordance with the following reference methods and calculation procedures:
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**Code 720.111(b)**, for organic content.

C) Each performance test must consist of three separate runs, each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs applies. The average must be computed on a time-weighed basis.

D) Total organic mass flow rates must be determined by the following equation:

\[
E_h = Q_{2sd} + \left( \sum_{i=1}^{n} C_i \times MW_i \right) \times 0.0416 \times 10^{-6}
\]

Where:

- \(E_h\) = The total organic mass flow rate, kg/h;
- \(Q_{2sd}\) = The volumetric flow rate of gases entering or exiting control device, dscm/h, as determined by Method 2 in 40 CFR 60, incorporated by reference in 35 Ill. Adm. Code 720.111(b);
- \(n\) = The number of organic compounds in the vent gas;
- \(C_i\) = The organic concentration in ppm, dry basis, of compound \(i\) in the vent gas, as determined by Method 18 in 40 CFR 60, incorporated by reference in 35 Ill. Adm. Code 720.111(b);
- \(MW_i\) = The molecular weight of organic compound \(i\) in the vent gas, kg/kg-mol;
- 0.0416 = The conversion factor for molar volume, kg-mol/m³, at 293 K and 760 mmHg, and;
- 10⁻⁶ = The conversion factor from ppm.

E) The annual total organic emission rate must be determined by the following equation:

\[
A = F \times H
\]
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Where:

A is total organic emission rate, kg/y;

F is the total organic mass flow rate, kg/h, as calculated in subsection (c)(1)(D) of this Section; and,

H is the total annual hours of operation for the affected unit.

F) Total organic emissions from all affected process vents at the facility must be determined by summing the hourly total organic mass emissions rates (F, as determined in subsection (c)(1)(D) of this Section) and by summing the annual total organic mass emission rates (A, as determined in subsection (c)(1)(E) of this Section) for all affected process vents at the facility.

2) The owner or operator shall record such process information as is necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction do not constitute representative conditions for the purpose of a performance test.

3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

A) Sampling ports adequate for the test methods specified in subsection (c)(1) of this Section.

B) Safe sampling platforms.

C) Safe access to sampling platforms.

D) Utilities for sampling and testing equipment.

4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs must apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irrereplaceable portion of the sample train, extreme meteorological conditions or other circumstances beyond the owner or operator's control, compliance may, upon the Agency's approval, be determined using the
average of the results of the two other runs.

d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this Subpart AA, the owner or operator shall make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

1) Direct measurement of the organic concentration of the waste using the following procedures:

   A) The owner or operator shall take a minimum of four grab samples of waste for each wastestream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

   B) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

   C) Each sample must be analyzed and the total organic concentration of the sample must be computed using Method 9060 or 8260 of SW-846, incorporated by reference under 35 Ill. Adm. Code 720.111(a).

   D) The arithmetic mean of the results of the analyses of the four samples apply for each wastestream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each wastestream managed in the unit.
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2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that must be used to support a determination under this subsection (d)(2) include the following:

A) Production process information documenting that no organic compounds are used;

B) Information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a wastestream having a total organic content less than 10 ppmw; or

C) Prior speciation analysis results on the same wastestream where it is documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted, annual average total organic concentrations less than 10 ppmw must be made as follows:

1) By the effective date that the facility becomes subject to the provisions of this Subpart AA or by the date when the waste is first managed in a waste management unit, whichever is later; and

2) For continuously generated waste, annually; or

3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

f) When an owner or operator and the Agency do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8260 in SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), must be used to resolve the dispute.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)
Section 725.935 Recordkeeping Requirements

a) Compliance Required.

1) Each owner or operator subject to the provisions of this Subpart AA must comply with the recordkeeping requirements of this Section.

2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this Subpart AA may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

b) Owners and operators must record the following information in the facility operating record:

1) For facilities that comply with the provisions of Section 725.933(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this Subpart AA.

2) Up-to-date documentation of compliance with the process vent standards in Section 725.932, including the following:

A) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

B) Information and data supporting determination of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic
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compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

3) Where an owner or operator chooses to use test date to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include the following:

A) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This must include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

B) A detailed engineering description of the closed-vent system and control device including the following:

i) Manufacturer's name and model number of control device;

ii) Type of control device;

iii) Dimensions of the control device;

iv) Capacity; and

v) Construction materials.

C) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.
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4) Documentation of compliance with Section 725.933 must include the following information:

A) A list of all information references and sources used in preparing the documentation.

B) Records, including the dates of each compliance test required by Section 725.933(j).

C) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of APTI Course 415 (incorporated by reference in 35 Ill. Adm. Code 720.111(a)) or other engineering texts, approved by the Agency, that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with subsections (b)(4)(C)(i) through (b)(4)(C)(vii) of this Section may be used to comply with this requirement. The design analysis must address the vent stream characteristics and control device operation parameters as specified below.

i) For a thermal vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations and flow rate. The design analysis must also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

ii) For a catalytic vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

iii) For a boiler or process heater, the design analysis must consider the vent stream composition, constituent concentrations and flow rate. The design analysis must also establish the design minimum and average flame zone temperatures, combustion zone residence time and description of method and location where the vent stream is
introduced into the combustion zone.

iv) For a flare, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also consider the requirements specified in Section 725.933(d).

v) For a condenser, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis must also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream and design average temperatures of the coolant fluid at the condenser inlet and outlet.

vi) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature. The design analysis must also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time and design service life of carbon.

vii) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature. The design analysis must also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed and design carbon replacement interval based on the total carbon working capacity of the control device and source operating
D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95% or greater unless the total organic concentration limit of Section 725.932(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Section 725.932(a) for affected process vents at the facility are attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement; and.

F) If performance tests are used to demonstrate compliance, all test results.

c) Design documentation and monitoring operating and inspection information for each closed-vent system and control device required to comply with the provisions of this Part must be recorded and kept up-to-date in the facility operating record. The information must include the following:

1) Description and date of each modification that is made to the closed-vent system or control device design.

2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Section 725.933(f)(1) and (f)(2).

3) Monitoring, operating and inspection information required by Section 725.933(f) through (k).

4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis, as specified below:
A) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760°C, any period when the combustion temperature is below 760°C.

B) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95% or greater, any period when the combustion zone temperature is more than 28°C below the design average combustion zone temperature established as a requirement of subsection (b)(4)(C)(i) of this Section.

C) For a catalytic vapor incinerator, any period when either of the following occurs:
   i) Temperature of the vent stream at the catalyst bed inlet is more than 28°C below the average temperature of the inlet vent stream established as a requirement of subsection (b)(4)(C)(ii) of this Section; or
   ii) Temperature difference across the catalyst bed is less than 80% of the design average temperature difference established as a requirement of subsection (b)(4)(C)(ii) of this Section.

D) For a boiler or process heater, any period when either of the following occurs:
   i) Flame zone temperature is more than 28°C below the design average flame zone temperature established as a requirement of subsection (b)(4)(C)(iii) of this Section; or
   ii) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subsection (b)(4)(C)(iii) of this Section.

E) For a flare, period when the pilot flame is not ignited.

F) For a condenser that complies with Section 725.933(f)(2)(F)(i), any period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the
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condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of subsection (b)(4)(C)(v) of this Section.

G) For a condenser that complies with Section 725.933(f)(2)(F)(ii), any period when either of the following occurs:

i) Temperature of the exhaust vent stream from the condenser is more than 6°C above the design average exhaust vent stream temperature established as a requirement of subsection (b)(4)(C)(v) of this Section; or

ii) Temperature of the coolant fluid exiting the condenser is more than 6°C above the design average coolant fluid temperature at the condenser outlet established as a requirement of subsection (b)(4)(C)(v) of this Section.

H) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Section 725.933(f)(2)(G)(i), any period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of subsection (b)(4)(C)(vi) of this Section.

I) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Section 725.933(f)(2)(G)(ii), any period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subsection (b)(4)(C)(vi) of this Section.

5) Explanation for each period recorded under subsection (c)(4) of this Section of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

6) For carbon adsorption systems operated subject to requirements specified in Section 725.933(g) or (h)(2), any date when existing carbon in the
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control device is replaced with fresh carbon.

7) For carbon adsorption systems operated subject to requirements specified in Section 725.933(h)(1), a log that records:

A) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

B) Date when existing carbon in the control device is replaced with fresh carbon.

8) Date of each control device startup and shutdown.

9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to Section 725.933(n) must record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Section 725.933(n), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

10) When each leak is detected as specified in Section 725.933(k), the following information must be recorded:

A) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

B) The date the leak was detected and the date of first attempt to repair the leak.

C) The date of successful repair of the leak.

D) Maximum instrument reading measured by Method 21 of 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), after it is successfully repaired or determined to be nonrepairable.

E) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.
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i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion: and.

d) Records of the monitoring, operating and inspection information required by subsections (c)(3) through (c)(10) of this Section must be maintained by the owner or operator for at least three years following the date of each occurrence, measurement, corrective action, or record.

e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Section 725.932, including supporting documentation as required by Section 725.934(d)(2), when application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced is used, must be recorded in a log that is kept in the facility operating record.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

SUBPART BB: AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS

Section 725.950 Applicability

a) The regulations in this Subpart BB apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 725.101).

b) Except as provided in Section 725.964(k), this Subpart BB applies to equipment
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that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

1) A unit that is subject to the RCRA permitting requirements of 35 Ill. Adm. Code 702, 703, and 705;

2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 35 Ill. Adm. Code 722.134(a) (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705; or

3) A unit that is exempt from permitting under the provisions of 35 Ill. Adm. Code 722.134(a) (i.e., a "90-day" tank or container) and which is not a recycling unit under the provisions of 35 Ill. Adm. Code 721.106.

c) Each piece of equipment to which this Subpart BB applies must be marked in such a manner that it can be distinguished readily from other pieces of equipment.

d) Equipment that is in vacuum service is excluded from the requirements of Sections 725.952 to 725.960, if it is identified as required in Section 725.964(g)(5).

e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of Sections 725.952 through 725.960 if it is identified as required in Section 725.964(g)(6).

BOARD NOTE: The requirements of Sections 725.952 through 725.964 apply to equipment associated with hazardous waste recycling units previously exempt under 35 Ill. Adm. Code 721.106(c)(1). Other exemptions under 35 Ill. Adm. Code 721.104 and 725.101(e) are not affected by these requirements.

f) This subsection (f) corresponds with 40 CFR 265.1050(f), which relates exclusively to a facility outside Illinois. This statement maintains structural consistency with the corresponding federal regulations.

g) Purged coatings and solvents from surface coating operations subject to the federal national emission standards for hazardous air pollutants (NESHAPs) for the surface coating of automobiles and light-duty trucks at Subpart III of 40 CFR
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63, incorporated by reference in 35 Ill. Adm. Code 720.111(b), are not subject to the requirements of this Subpart BB.

Agency decisions pursuant to this Part must be made in writing, are in the nature of permit decisions pursuant to Section 39 of the Environmental Protection Act and may be appealed to the Board pursuant to 35 Ill. Adm. Code 105. (Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.951 Definitions

As used in this Subpart BB, all terms have the meaning given them in Section 725.931, the Resource Conservation and Recovery Act and 35 Ill. Adm. Code 720 through 726. (Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.952 Standards: Pumps in Light Liquid Service

a) Monitoring

1) Each pump in light liquid service must be monitored monthly to detect leaks by the methods specified in Section 725.963(b), except as provided in subsections (d), (e) and (f) of this Section, below.

2) Each pump in light liquid service must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

b) Leaks

1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

2) If there are indications of liquids dripping from the pump seal, a leak is detected.

c) Repairs

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 725.959.
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2) A first attempt at repair (e.g., tightening the packing gland) must be made no later than 5 calendar days after each leak is detected.

d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of subsection (a) of this Section, above, provided the following requirements are met:

1) Each dual mechanical seal system must be as follows:

A) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressures; or

B) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section 725.960; or

C) Equipped with a system that purges the barrier fluid into a hazardous wastestream with no detectable emissions to the atmosphere.

2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

5) Alarms.

A) Each sensor as described in subsection (d)(3) of this Section, above, must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

B) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both; and.

6) Leaks.
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A) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in subsection (d)(5)(B) of this Section above, a leak is detected.

B) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 725.959.

C) A first attempt at repair (e.g., relapping the seal) must be made no later than five calendar days after each leak is detected.

e) Any pump that is designated, as described in Section 725.964(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a), (c) and (d) of this Section above, if the pump meets the following requirements:

1) Must have no externally actuated shaft penetrating the pump housing.

2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section 725.963(c); and.

3) Must be tested for compliance with subsection (e)(2) of this Section above, initially upon designation, annually and at other times as specified by the Agency pursuant to Section 725.950(e).

f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section 725.960, it is exempt from the requirements of subsections (a) through (e) of this Section above.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.953 Standards: Compressors

a) Each compressor must be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections (h) and (i) of this Section.
b) **The following must be true of each** compressor seal system, as required in subsection (a) of this Section,

1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure; or

2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section 725.960; or

3) Equipped with a system that purges the barrier fluid into a hazardous wastestream with no detectable emissions to atmosphere.

c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

d) Each barrier fluid system, as described in subsections (a) through (c) of this Section, must be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

e) **Inspections.**

1) Each sensor, as required in subsection (d) of this Section, must be checked daily or must be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly, unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

2) The owner or operator **shall** determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under subsection (e)(2) of this Section, a leak is detected.

g) **Repairs.**

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 725.959.
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2) A first attempt at repair (e.g., tightening the packing gland) must be made no later than five calendar days after each leak is detected.

h) A compressor is exempt from the requirements of subsections (a) and (b) of this Section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section 725.960, except as provided in subsection (i) of this Section.

i) Any compressor that is designated, as described in Section 725.964(g)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a) through (h) of this Section if the following is true of the compressor:

1) It is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 725.963(c).

2) It is tested for compliance with subsection (i)(1) of this Section initially upon designation, annually and other times as specified by the Agency pursuant to Section 725.950(e).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.954 Standards: Pressure Relief Devices in Gas/Vapor Service

a) Except during pressure releases, each pressure relief device in gas/vapor service must be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background as measured by the method specified in Section 725.963(c).

b) Actions following pressure release.

1) After each pressure release, the pressure relief device must be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in Section 725.959.

2) No later than five calendar days after the pressure release, the pressure
relief device must be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 725.963(c).

c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section 725.960 is exempt from the requirements of subsections (a) and (b) of this Section.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.956 Standards: Open-Ended Valves or Lines

a) Equipment.

1) Each open-ended valve or line must be equipped with a cap, blind flange, plug, or a second valve.

2) The cap, blind flange, plug, or second valve must seal the open end at all times except during operations requiring hazardous wastestream flow through the open-ended valve or line.

b) Each open-ended valve or line equipped with a second valve must be operated in a manner such that the valve on the hazardous wastestream end is closed before the second valve is closed.

c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but must comply with subsection (a) of this Section at all other times.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.957 Standards: Valves in Gas/Vapor or Light Liquid Service

a) Each valve in gas/vapor or light liquid service must be monitored monthly to detect leaks by the methods specified in Section 725.963(b) and must comply with subsections (b) through (e) of this Section, except as provided in subsections (f), (g), and (h) of this Section, and in Sections 725.961 and 725.962.

b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.
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c) Monitoring Frequency.

1) Any valve for which a leak is not detected for two successive months must be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

2) If a leak is detected, the valve must be monitored monthly until a leak is not detected for two successive months.

d) Leak repair.

1) When a leak is detected, it must be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section 725.959.

2) A first attempt at repair must be made no later than five calendar days after each leak is detected.

e) First attempts at repair include, but are not limited to the following best practices where practicable:

1) Tightening of bonnet bolts;

2) Replacement of bonnet bolts;

3) Tightening of packing gland nuts; or

4) Injection of lubricant into lubricated packing.

f) Any valve that is designated, as described in Section 725.964(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsection (a) of this Section if the valve fulfills the following requirements:

1) It has no external actuating mechanism in contact with the hazardous wastestream;

2) It is operated with emissions less than 500 ppm above background as determined by the method specified in Section 725.963(c); and.
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3) It is tested for compliance with subsection (f)(2) initially upon designation, annually, and at other times as specified by the Agency pursuant to Section 725.950(e).

g) Any valve that is designated, as described in Section 725.964(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of subsection (a), if the following conditions are fulfilled:

1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (a) of this Section; and.

2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

h) Any valve that is designated, as described in Section 725.964(h)(2), as a difficult-to-monitor valve is exempt from the requirements of subsection (a), if the following conditions are fulfilled:

1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two meters above a support surface;

2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990; and

3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.958 Standards: Pumps, Valves, Pressure Relief Devices, Flanges, and Other Connectors

a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service and flanges and other connectors must be monitored within five days by the method specified in Section 725.963(b), if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.
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b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

c) Repairs:

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 725.959.

2) The first attempt at repair must be made no later than five calendar days after each leak is detected.

d) First attempts at repair include, but are not limited to, the best practices described under Section 725.957(e).

e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of subsection (a) of this Section and from the recordkeeping requirements of Section 725.964.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.959 Standards: Delay of Repair

a) Delay of repair of equipment for which leaks have been detected is allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment must occur before the end of the next hazardous waste management unit shutdown.

b) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

c) Delay of repair for valves is allowed if the following conditions are fulfilled:

1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair; and.

2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section
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d) Delay of repair for pumps is allowed if the following conditions are met:

1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system; and

2) Repair is completed as soon as practicable, but not later than six months after the leak was detected.

e) Delay of repair beyond a hazardous waste management unit shutdown is allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown is not allowed unless the next hazardous waste management unit shutdown occurs sooner than six months after the first hazardous waste management unit shutdown.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.960 Standards: Closed-Vent Systems and Control Devices

a) An owner or operator of a closed-vent system or control device subject to this Subpart BB must comply with the provisions of Section 725.933.

b) Implementation Schedule.

1) The owner or operator of an existing facility that cannot install a closed-vent system and control device to comply with the provisions of this Subpart BB on the effective date that the facility becomes subject to the provisions of this Subpart BB must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subpart BB for installation and startup.

2) Any unit that begins operation after December 21, 1990, and which is subject to the provisions of this Subpart BB when operation begins, must comply with the rules immediately (i.e., the unit must have control devices
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3) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this Subpart BB must comply with all requirements of this Subpart BB as soon as practicable but no later than 30 months after the effective date of the amendment. When control equipment required by this Subpart BB cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator must prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subpart BB. The owner or operator must enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

4) An owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart BB due to an action other than those described in subsection (b)(3) of this Section must comply with all applicable requirements immediately (i.e., the facility or unit must have control devices installed and operating on the date the facility or unit becomes subject to this Subpart BB; the 30-month implementation schedule does not apply).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.961 Percent Leakage Alternative for Valves

a) An owner or operator subject to the requirements of Section 725.957 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than two percent of the valves to leak.

b) The following requirements must be met if an owner or operator decides to comply with the alternative standard of allowing two percent of valves to leak:

1) An owner or operator must notify the Agency that the owner or operator has elected to comply with the requirements of this Section.
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2) A performance test as specified in subsection (c) of this Section must be conducted initially upon designation, annually and other times as specified by the Agency pursuant to Section 725.950(e); and.

3) If a valve leak is detected it must be repaired in accordance with Section 725.957(d) and (e).

c) Performance tests must be conducted in the following manner:

1) All valves subject to the requirements in Section 725.957 within the hazardous waste management unit must be monitored within 1 week by the methods specified in Section 725.963(b);

2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected; and.

3) The leak percentage must be determined by dividing the number of valves subject to the requirements in Section 725.957 for which leaks are detected by the total number of valves subject to the requirements in Section 725.957 within the hazardous waste management unit.

d) If an owner or operator decides no longer to comply with this Section, the owner or operator shall notify the Agency in writing that the work practice standard described in Section 725.957(a) through (e) will be followed.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.962 Skip Period Alternative for Valves

a) Election.

1) An owner or operator subject to the requirements of Section 725.957 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subsections (b)(2) and (b)(3) of this Section.

2) An owner or operator must notify the Agency before implementing one of the alternative work practices.

b) Reduced Monitoring.
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1) An owner or operator shall comply with the requirements for valves, as described in Section 725.957, except as described in subsections (b)(2) and (b)(3) of this Section.

2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., the owner or operator may monitor for leaks once every six months) for the valves subject to the requirements in Section 725.957.

3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., the owner or operator may monitor for leaks once every year) for the valves subject to the requirements in Section 725.957.

4) If the percentage of valves leaking is greater than two percent, the owner or operator shall monitor monthly in compliance with the requirements in Section 725.957, but may again elect to use this Section after meeting the requirements of Section 725.957(c)(1).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.963 Test Methods and Procedures

a) Each owner or operator subject to the provisions of this Subpart BB shall comply with the test methods and procedures requirements provided in this Section.

b) Leak detection monitoring, as required in Sections 725.952 through 725.962, must comply with the following requirements:


2) The detection instrument must meet the performance criteria of Reference Method 21.

3) The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.
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4) Calibration gases must be as follows:

A) Zero air (less than 10 ppm of hydrocarbon in air);

B) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane;

5) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

c) When equipment is tested for compliance with no detectable emissions, as required in Sections 725.952(e), 725.953(i), 725.954, and 725.957(f), the test must comply with the following requirements:

1) The requirements of subsections (b)(1) through (b)(4) of this Section apply;

2) The background level must be determined as set forth in Reference Method 21;

3) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21;

4) This arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

d) In accordance with the waste analysis plan required by Section 725.113(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:


2) Method 9060 or 8260 of SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a); or
3) Application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that must be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same wastestream where it is also documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in subsection (d)(1) or (d)(2) of this Section.

f) When an owner or operator and the Agency do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in subsection (d)(1) or (d)(2) of this Section must be used to resolve the dispute.

g) Samples used in determining the percent organic content must be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents must either be obtained from standard reference texts or be determined by ASTM D 2879-92, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction must comply with the procedures of Section 725.934(c)(1) through (c)(4).

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.964 Recordkeeping Requirements

a) Lumping Units.
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1) Each owner or operator subject to the provisions of this Subpart BB must comply with the recordkeeping requirements of this Section.

2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this Subpart BB may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

b) Owners and operators must record the following information in the facility operating record:

1) For each piece of equipment to which this Subpart BB applies, the following:
   A) Equipment identification number and hazardous waste management unit identification;
   B) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan);
   C) Type of equipment (e.g., a pump or pipeline valve);
   D) Percent-by-weight total organics in the hazardous wastestream at the equipment;
   E) Hazardous waste state at the equipment (e.g., gas/vapor or liquid);
   F) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals");

2) For facilities that comply with the provisions of Section 725.933(a)(2), an implementation schedule as specified in that Section;

3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in Section 725.935(b)(3); and.
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4) Documentation of compliance with Section 725.960, including the detailed design documentation or performance test results specified in Section 725.935(b)(4).

c) When each leak is detected, as specified in Section 725.952, 725.953, 725.957, or 725.958, the following requirements apply:

1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Section 725.958(a), and the date the leak was detected, must be attached to the leaking equipment.

2) The identification on equipment except on a valve, may be removed after it has been repaired; and.

3) The identification on a valve may be removed after it has been monitored for two successive months as specified in Section 725.957(c) and no leak has been detected during those two months.

d) When each leak is detected, as specified in Sections 725.952, 725.953, 725.957, or 725.958, the following information must be recorded in an inspection log and must be kept in the facility operating record:

1) The instrument and operator identification numbers and the equipment identification number.

2) The date evidence of a potential leak was found in accordance with Section 725.958(a).

3) The date the leak was detected and the dates of each attempt to repair the leak.

4) Repair methods applied in each attempt to repair the leak.

5) "Above 10,000", if the maximum instrument reading measured by the methods specified in Section 725.963(b) after each repair attempt is equal to or greater than 10,000 ppm.

6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.
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7) Documentation supporting the delay of repair of a valve in compliance with Section 725.959(c);

8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown;

9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days; and

10) The date of successful repair of the leak.

e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section 725.960 must be recorded and kept up-to-date in the facility operating record as specified in Section 725.935(c)(1) and (c)(2), and monitoring, operating and inspection information in Section 725.935(c)(3) through (c)(8).

f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

g) The following information pertaining to all equipment subject to the requirements in Sections 725.952 through 725.960 must be recorded in a log that is kept in the facility operating record:

1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this Subpart BB.

2) List of Equipment.

A) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Sections 725.952(e), 725.953(i), and 725.957(f).

B) The designation of this equipment as subject to the requirements of Section 725.952(e), 725.953(i), or 725.957(f) must be signed by
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the owner or operator.

3) A list of equipment identification numbers for pressure relief devices required to comply with Section 725.954(a).

4) Compliance tests.
   A) The dates of each compliance test required in Sections 725.952(e), 725.953(i), 725.954, and 725.957(f).
   B) The background level measured during each compliance test.
   C) The maximum instrument reading measured at the equipment during each compliance test.

5) A list of identification numbers for equipment in vacuum service.

6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per year.

h) The following information pertaining to all valves subject to the requirements of Section 725.957(g) and (h) must be recorded in a log that is kept in the facility operating record:

1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve; and.
   
2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

i) The following information must be recorded in the facility operating record for valves complying with Section 725.962:

1) A schedule of monitoring; and.
   
2) The percent of valves found leaking during each monitoring period.

j) The following information must be recorded in a log that is kept in the facility
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operating record:

1) Criteria required in Sections 725.952(d)(5)(B) and 725.953(e)(2) and an explanation of the criteria; and

2) Any changes to these criteria and the reasons for the changes.

k) The following information must be recorded in a log that is kept in the facility operating record for use in determining exemptions, as provided in Section 725.950 and other specific Subparts:

1) An analysis determining the design capacity of the hazardous waste management unit;

2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in Section 725.960 and an analysis determining whether these hazardous wastes are heavy liquids; and

3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections 725.952 through 725.960. The record must include supporting documentation, as required by Section 725.963(d)(3) when application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections 725.952 through 725.960, then a new determination is required.

l) Records of the equipment leak information required by subsection (d) of this Section and the operating information required by subsection (e) of this Section need be kept only three years.

m) The owner or operator of any facility with equipment that is subject to this Subpart and to regulations at 40 CFR 60, 61, or 63, incorporated by reference in 35 Ill. Adm. Code 720.111(b), may elect to determine compliance with this Subpart BB by documentation of compliance either pursuant to Section 725.964 or by documentation of compliance with the regulations at 40 CFR 60, 61, or 63, pursuant to the relevant provisions of 40 CFR 60, 61, or 63. The documentation
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of compliance under the regulation at 40 CFR 60, 61, or 63 must be kept with or made readily available with the facility operating record.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART CC: AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

Section 725.980  Applicability

a) The requirements of this Subpart CC apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers that are subject to Subpart I, J, or K of this Part, except as Section 725.101 and subsection (b) of this Section provide otherwise.

b) The requirements of this Subpart CC do not apply to the following waste management units at the facility:

1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

2) A container that has a design capacity less than or equal to 0.1 m³ (3.5 ft³ or 26.4 gal).

3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required pursuant to the Act or Board regulations or under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar federal or State authorities.
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6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act (42 USC 2011 et seq.) and the Nuclear Waste Policy Act of 1982 (42 USC 10101 et seq.);

7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60, 61, or 63, incorporated by reference in 35 Ill. Adm. Code 720.111(b). For the purpose of complying with this subsection (b)(7), a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of Section 725.985(i), except as provided in Section 725.983(c)(5); and;

8) A tank that has a process vent, as defined in 35 Ill. Adm. Code 725.931.

c) For the owner and operator of a facility subject to this Subpart CC that has received a final RCRA permit prior to December 6, 1996, the following requirements apply:

1) The requirements of Subpart CC of 35 Ill. Adm. Code 724. Subpart CC must be incorporated into the permit when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705.

2) Until the date when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705, the owner and operator is subject to the requirements of this Subpart CC.

d) The requirements of this Subpart CC, except for the recordkeeping requirements specified in Section 725.990(i), are stayed for a tank or container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations, when the owner or operator of the unit meets all of the following conditions:

1) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self-accelerating
thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purposes of this subsection, "organic peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

2) The owner or operator prepares documentation, in accordance with Section 725.990(i), explaining why an undue safety hazard would be created if air emission controls specified in Sections 725.985 through 725.988 are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) of this Section; and.

3) The owner or operator notifies the Agency in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) of this Section are managed at the facility in tanks or containers meeting the conditions of subsection (d)(2) of this Section. The notification must state the name and address of the facility and be signed and dated by an authorized representative of the facility owner or operator.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.981 Definitions

As used in this Subpart CC and in 35 Ill. Adm. Code 724, all terms not defined herein will have the meanings given to them in the Act and 35 Ill. Adm. Code 720 through 726.

"Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste, as determined in accordance with the requirements of Section 725.984.

"Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover so that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).
"Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

"Cover" means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, and gauge wells) that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

"Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

"External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of a hazardous waste being managed in a tank with no fixed roof.

"Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

"Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

"Floating roof" means a cover consisting of a double-deck, pontoon single-deck, or internal floating cover that rests upon and is supported by the material being contained, and is equipped with a continuous seal.

"Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

"In light material service" means that the container is used to manage a material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20°C (1.2 inches H₂O at 68°F); and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20°C (1.2
inches H₂O at 68°F) is equal to or greater than 20 percent by weight.

"Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

"Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof, continuously around the circumference of the tank.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. A failure that is caused in part by poor maintenance or careless operation is not a malfunction.

"Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank at the maximum vapor pressure-causing conditions (i.e., temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of this Subpart CC, maximum organic vapor pressure is determined using the procedures specified in Section 725.984(c).

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets that are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and which is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

"No detectable organic emissions" means no escape of organics to the atmosphere, as determined using the procedure specified in Section 725.984(d).

"Point of waste origination" means as follows:

When the facility owner or operator is the generator of the hazardous waste, the "point of waste origination" means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste, as defined in 35 Ill. Adm. Code 721.

BOARD NOTE: In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the federal Clean Air Act in 40 CFR 60, 61, and 63, incorporated by reference in 35 Ill. Adm. Code.
When the facility owner and operator are not the generator of the hazardous waste, "point of waste origination" means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

"Point of waste treatment" means the point where a hazardous waste to be treated in accordance with Section 725.983(c)(2) exits the treatment process. Any waste determination must be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.

"Safety device" means a closure device, such as a pressure relief valve, frangible disc, fusible plug, or any other type of device, that functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this Subpart CC, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

"Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

"Vapor-mounted seal" means a continuous seal that is mounted so that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.

"Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds contained in a hazardous waste expressed in terms of parts per million (ppmw), as determined by direct measurement or by knowledge of the waste, in accordance with the requirements of Section 725.984. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole-
fraction-in-the-gas-phase/mole- fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8 x 10^{-6} atmospheres/gram-mole/m^3) at 25° C (77° F) must be included. Appendix F of this Part presents a list of compounds known to have a Henry's law constant value less than the cutoff level.

"Waste determination" means performing all applicable procedures in accordance with the requirements of Section 725.984 to determine whether a hazardous waste meets standards specified in this Subpart CC. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 725.984 to determine the average VO concentration of a hazardous waste at the point of waste origination, determining the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste, the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards, or determining the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

"Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", incorporated by reference in 35 Ill. Adm. Code 720.111(a). A waste stabilization process includes mixing the hazardous waste with binders or other materials and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification." This does not include the addition of absorbent materials to the surface of a waste to absorb free liquid without mixing, agitation, or subsequent curing.

(Source: Amended at 29 Ill. Reg. _____, effective __________)

Section 725.982 Schedule for Implementation of Air Emission Standards

a) An owner or operator of a facility in existence on December 6, 1996 and subject to Subpart I, J, or K of this Part must meet the following requirements:

1) The owner or operator install and begin operation of all control equipment required to comply with this Subpart CC and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with Section 725.983(c) by December 6, 1996,
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except as provided in subsection (a)(2) of this Section; and.

2) When control equipment or waste management units required to comply with this Subpart CC cannot be installed and in operation or modifications of production or treatment processes to satisfy exemption criteria in accordance with Section 725.983(c) cannot be completed by December 6, 1996, the owner or operator must do the followings:

A) Install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible but no later than December 8, 1997;

B) Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, waste management units, and production or treatment process modifications; the dates of initiation of on-site installation of the control equipment, or waste management units, and modifications of production or treatment processes; the dates of completion of the control equipment or waste management unit installation, and production or treatment process modifications; and the dates of performance of testing to demonstrate that the installed equipment or waste management units, and modified production or treatment processes, meet the applicable standards of this Subpart CC;

C) For a facility subject to the recordkeeping requirements of Section 725.173, the owner or operator must enter the implementation schedule specified in subsection (a)(2)(B) of this Section in the operating record no later than December 6, 1996; and.

D) For a facility not subject to Section 725.173 of this Section, the owner or operator must enter the implementation schedule specified in subsection (a)(2)(B) of this section in a permanent, readily available file located at the facility no later than December 6, 1996.

b) An owner or operator of a facility or unit in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to Subpart I, J, or K of this Part must meet the following requirements:
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1) The owner or operator must install and begin operation of all control equipment required to comply with this Subpart CC and complete modifications of production or treatment processes to satisfy exemption criteria of Section 725.983(c) by the effective date of the amendment, except as provided in subsection (b)(2) of this Section.

2) When control equipment or waste management units required to comply with this Subpart CC cannot be installed and begin operation or when modifications of production or treatment processes to satisfy the exemption criteria of Section 725.983(c) cannot be completed by the effective date of the amendment, the owner or operator must undertake the following actions:

A) Install and begin operation of the control equipment or waste management unit and complete modification of production or treatment processes as soon as possible, but no later than 30 months after the effective date of the amendment; and

B) Maintenance of implementation schedule.

i) For facilities subject to the recordkeeping requirements of Section 725.173, enter and maintain the implementation schedule specified in subsection (a)(2)(B) of this Section in the operating record no later than the effective date of the amendment, or

ii) For facilities not subject to Section 725.173, the owner or operator must enter and maintain the implementation schedule specified in subsection (a)(2)(B) of this Section in a permanent, readily available file located at the facility site no later than the effective date of the amendment.

c) The owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart CC after December 8, 1997 due to an action other than those described in subsection (b) of this Section must comply with all applicable requirements immediately (i.e., the owner or operator have control devices installed and operating on the date the facility or unit becomes subject to the requirements of this Subpart CC; the 30-month implementation schedule does not apply to the owner or operator of such a facility).

d) The Board will grant an adjusted standard pursuant to Section 28.1 of the Act and
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Subpart D of 35 Ill. Adm. Code 104106 that extends the implementation date for control equipment at a facility to a date later than December 8, 1997 when the facility owner or operator proves the following:

1) That special circumstances beyond the facility owner's or operator's control have delayed or will delay installation or operation of control equipment; and

2) That the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this Subpart CC.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)

Section 725.983 Standards: General

a) This Section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this Subpart CC.

b) The owner or operator must control air pollutant emissions from each hazardous waste management unit in accordance with the standards specified in Sections 725.985 through 725.988, as applicable to the hazardous waste management unit, except as provided for in subsection (c) of this Section.

c) A tank, surface impoundment, or container is exempted from standards specified in Sections 725.985 through 725.988, provided that all hazardous waste placed in the waste management unit is one of the following:

1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration must be determined by the procedures specified in Section 725.984(a). The owner or operator must review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:
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A) The process removes or destroys the organics contained in the hazardous waste to such a level that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit \( (C_t) \) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process must be determined using the procedures specified in Section 725.984(b).

B) The process removes or destroys the organics contained in the hazardous waste to such a level that the organic reduction efficiency \( (R) \) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment must be determined using the procedures specified in Section 725.984(b).

C) The process removes or destroys the organics contained in the hazardous waste to such a level that the actual organic mass removal rate \( (MR) \) for the process is equal to or greater than the required organic mass removal rate \( (RMR) \) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process must be determined using the procedures specified in Section 725.984(b).

D) The process is a biological process that destroys or degrades the organics contained in the hazardous waste so that either of the following conditions is met:

i) The organic reduction efficiency \( (R) \) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency \( (R_{bio}) \) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process must be determined using the procedures specified in Section 725.984(b).

ii) The total actual organic mass biodegradation rate \( (MR_{bio}) \) for all hazardous waste treated by the process is equal to or
greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process must be determined using the procedures specified in Section 725.984(b).  

E) The process is one that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

i) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is continuously managed in waste management units that use air emission controls in accordance with the standards specified in Section 725.985 through Section 725.988, as applicable to the waste management unit.

ii) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere.

BOARD NOTE: The USEPA considers a drain system that meets the requirements of subpart RR of 40 CFR 63, subpart RR, "National Emission Standards for Individual Drain Systems", to be a closed system.

iii) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual hazardous waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual hazardous waste stream at the point of waste origination must be determined using the procedures specified in Section 725.984(a). The average VO concentration of the hazardous waste at the point of waste treatment must be determined using the procedures specified in Section 725.984(b).
F) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination must be determined using the procedures specified in Section 724.983(b) and Section 724.983(a), respectively.

G) A hazardous waste incinerator for which either of the following conditions is true:

i) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart O of 35 Ill. Adm. Code 724; or

ii) The owner or operator has designed and operates the incinerator in accordance with the interim status requirements of Subpart O of this Part.

H) A boiler or industrial furnace for which either of the following conditions is true:

i) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart H of 35 Ill. Adm. Code 726; or

ii) The owner or operator has designed and operates the industrial furnace or incinerator in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726.

I) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of subsections (c)(2)(A) through (c)(2)(F) of this Section,
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the owner or operator must account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

i) If Method 25D in 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), is used for the analysis, one-half the blank value determined in the method at Section 4.4 of Method 25D or a value of 25 ppmw, whichever is less; and

ii) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the -liquid-phase (0.1 Y/X) (which can also be expressed as $1.8 \times 10^{-6}$ atmospheres/gram-mole/m$^3$) at 25°C.

3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of subsection (c)(2)(D) of this Section;

4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit fulfills either of the following two conditions:

A) It meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in Table T to 35 Ill. Adm. Code 728. Table T; or

B) The organic hazardous constituents in the waste have been treated by the treatment technology established by USEPA for the waste, as set forth in 35 Ill. Adm. Code 728.142(a), or treated by an equivalent method of treatment approved by the Agency pursuant to 35 Ill. Adm. Code 728.142(b); or

5) A tank used for bulk feed of hazardous waste to a waste incinerator, and all of the following conditions are met:

A) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under subpart FF of 40 CFR 61, subpart FF,
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"National Emission Standards for Benzene Waste Operations," incorporated by reference in 35 Ill. Adm. Code 720.111(a), for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams (11 tons) per year;

B) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and

C) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T–Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B, incorporated by reference in 35 Ill. Adm. Code 720.111(b). The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator must perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T–Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

d) The Agency may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container that is exempted from using air emission controls under the provisions of this Section as follows:

1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination must be performed using direct measurement in accordance with the applicable requirements of Section 725.984(a). The waste determination for a hazardous waste at the point of waste treatment must be performed in accordance with the applicable requirements of Section 725.984(b).

2) In performing a waste determination pursuant to subsection (d)(1) of this Section, the sample preparation and analysis must be conducted as follows:

A) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in subsection (d)(2)(B) of this Section;
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B) If the Agency determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Agency may choose an appropriate method.

3) Where the owner or operator is requested to perform the waste determination, the Agency may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

4) Where the results of the waste determination performed or requested by the Agency do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of subsection (d)(1) of this Section must be used to establish compliance with the requirements of this Subpart CC.

5) Where the owner or operator has used an averaging period greater than one hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Agency may elect to establish compliance with this Subpart CC by performing or requesting that the owner or operator perform a waste determination using direct measurement, based on waste samples collected within a 1-hour period as follows:

A) The average VO concentration of the hazardous waste at the point of waste origination must be determined by direct measurement in accordance with the requirements of Section 725.984(a).

B) Results of the waste determination performed or requested by the Agency showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with this Subpart CC, except in a case as provided for in subsection (d)(4)(C) of this Section.

C) Where the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than one hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined
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by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of Sections 725.984(a) and 725.990 must be considered by the Agency together with the results of the waste determination performed or requested by the Agency in establishing compliance with this Subpart CC.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.984 Waste Determination Procedures

a) Waste determination procedure for volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

1) An owner or operator must determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of Section 725.983(c)(1) from using air emission controls in accordance with standards specified in Section 725.985 through Section 725.988, as applicable to the waste management unit.

A) An owner or operator must make an initial determination of the average VO concentration of the waste stream before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of Section 725.983(c)(1) from using air emission controls. Thereafter, an owner or operator must make an initial determination of the average VO concentration of the waste stream for each averaging period that a hazardous waste is managed in the unit.

B) An owner or operator must perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limits specified in Section 725.983(c)(1).
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2) For a waste determination that is required by subsection (a)(1) of this Section, the average VO concentration of a hazardous waste at the point of waste origination must be determined using either direct measurement, as specified in subsection (a)(3) of this Section, or by knowledge of the waste, as specified in subsection (a)(4) of this Section.

3) Direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.

   A) Identification. The owner or operator **shall** identify and record the point of waste origination for the hazardous waste.

   B) Sampling. Samples of the hazardous waste stream must be collected at the point of waste origination in such a manner that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

      i) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but must not exceed one year.

      ii) A sufficient number of samples, but no fewer than four samples, must be collected for a hazardous waste determination. All of the samples for a given waste determination must be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.
iii) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste stream are collected so that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), or in Method 25D in 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

iv) Sufficient information, as specified in the "site sampling plan" required under subsection (a)(3)(B)(iii) of this Section, must be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

C) Analysis. Each collected sample must be prepared and analyzed in accordance with one or more of the methods listed in subsections (a)(3)(C)(i) through (a)(3)(C)(ix) of this Section, including the appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8 X 10^-6 atmospheres/gram-mole/m^3) at 25° C (77° F). Each of the analytical methods listed in subsections (a)(3)(C)(ii) through (a)(3)(C)(vii) of this Section has an associated list of approved chemical compounds for which USEPA considers
the method appropriate for measurement. If an owner or operator uses USEPA Method 624, 625, 1624, or 1625 in 40 CFR 136, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5, incorporated by reference in 35 Ill. Adm. Code 720.111(b), must be followed. If an owner or operator uses USEPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), to analyze one or more compounds that are not on that method's published list, the procedures in subsection (a)(3)(C)(viii) of this Section must be followed. At the owner's or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value that would have been obtained, had the waste samples been analyzed using Method 25D. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the constituent-specific adjustment factor ($f_{25D}$). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 $Y/X$ at 25° C contained in the waste. Constituent-specific adjustment factors ($f_{25D}$) can be obtained by contacting the USEPA, Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.


iii) Method 625 in 40 CFR 136, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b). Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in Table 7 of the method.

iv) Method 1624 in 40 CFR 136, appendix A, incorporated by
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viii) Any other USEPA standard method that has been validated in accordance with "Alternative Validation Procedure for USEPA Waste and Wastewater Methods," 40 CFR 63, appendix D, incorporated by reference in 35 Ill. Adm. Code 720.111(b). As an alternative, other USEPA standard methods may be validated by the procedure specified in subsection (a)(3)(C)(ix) of this Section.

ix) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR 63, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b). The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under Section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other Sections of Method 301 are not required.
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D) Calculations.

i) The average VO concentration (C) on a mass-weighted basis must be calculated by using the results for all waste determinations conducted in accordance with subsections (a)(3)(B) and (a)(3)(C) of this Section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

Where:

- \(\bar{C}\) = Average VO concentration of the hazardous waste at the point of waste origination on a mass-weighted basis, in ppmw.  
- \(i\) = Individual waste determination "i" of the hazardous waste.  
- \(n\) = Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed one year).  
- \(Q_i\) = Mass quantity of the hazardous waste stream represented by \(C_i\) in kg/hr.  
- \(Q_T\) = Total mass quantity of the hazardous waste during the averaging period, in kg/hr. and.  
- \(C_i\) = Measured VO concentration of waste determination "i", as determined in accordance with subsection (a)(3)(C) of this Section (i.e., the average of the four or more samples specified in subsection (a)(3)(B)(ii) of this Section), in ppmw.
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ii) For the purpose of determining \( C_i \), for individual waste samples analyzed in accordance with subsection (a)(3)(C) of this Section, the owner or operator must account for VO concentrations determined to be below the limit of detection of the analytical method by using the VO concentration determined according to subsection (a)(3)(G) of this Section.

E) Provided that the test method is appropriate for the waste as required under subsection (a)(3)(C) of this Section, the Agency must determine compliance based on the test method used by the owner or operator as recorded pursuant to Section 725.990(f)(1).

F) The quality assurance program elements required under subsections (a)(3)(C)(vi) and (a)(3)(C)(vii) of this Section are as follows:

i) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

ii) Measurement of the overall accuracy and precision of the specific procedures.


G) VO concentrations below the limit of detection must be considered to be as follows:

i) If Method 25D in 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), is used for the analysis, the VO concentration must be considered to be one-half the blank value determined in the method at Section 4.4 of Method 25D in 40 CFR 60, appendix A.

ii) If any other analytical method is used, the VO
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concentration must be considered to be one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8 x 10^-6 atmospheres/gram-mole/m^3) at 25°C.


4) Use of owner or operator knowledge to determine average VO concentration of a hazardous waste at the point of waste origination.

A) Documentation must be prepared that presents the information used as the basis for the owner's or operator's knowledge of the hazardous waste stream's average VO concentration. Examples of information that may be used as the basis for knowledge include the following: material balances for the source or process generating the hazardous waste stream; constituent-specific chemical test data for the hazardous waste stream from previous testing that are still applicable to the current waste stream; previous test data for other locations managing the same type of waste stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

B) If test data are used as the basis for knowledge, then the owner or operator must document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use organic concentration test data for the hazardous waste stream that are validated in accordance with Method 301 in 40 CFR 63, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), as the basis for knowledge of the waste.

C) An owner or operator using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous waste may adjust the test data to the corresponding average VO
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concentration value that would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b). To adjust these data, the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ($f_{25D}$).

D) In the event that the Agency and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement, as specified in subsection (a)(3) of this Section, must be used to establish compliance with the applicable requirements of this Subpart CC. The Agency may perform or request that the owner or operator perform this determination using direct measurement. The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of subsection (a)(3)(C) of this Section.

b) Waste determination procedures for treated hazardous waste.

1) An owner or operator must perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of Section 725.983(c)(2)(A) through (c)(2)(F) from using air emission controls in accordance with the standards specified in Sections 725.985 through 725.988, as applicable to the waste management unit.

A) An owner or operator must make an initial determination of the average VO concentration of the waste stream before the first time any portion of the material in the treated waste stream is placed in the waste management unit exempt under Section 725.983(c)(2), (c)(3), or (c)(4) from using air emission controls. Thereafter, an owner or operator must update the information used for the waste determination at least once every 12 months following the date of the initial waste determination.

B) An owner or operator must perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average
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VO concentration of the hazardous waste to increase to such a level that the applicable treatment conditions specified in Section 725.983(c)(2), (c)(3), or (c)(4) are not achieved.

2) The owner or operator shall designate and record the specific provision in Section 725.983(c)(2) under which the waste determination is being performed. The waste determination for the treated hazardous waste must be performed using the applicable procedures specified in subsections (b)(3) through (b)(9) of this Section.

3) Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.

A) Identification. The owner or operator shall identify and record the point of waste treatment for the hazardous waste.

B) Sampling. Samples of the hazardous waste stream must be collected at the point of waste treatment in such a manner that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

i) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but must not exceed one year.

ii) A sufficient number of samples, but no fewer than four samples, must be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination must be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the hazardous waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process.
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generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

iii) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste stream are collected so that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication No. SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), or in Method 25D in 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

iv) Sufficient information, as specified in the "site sampling plan" required under subsection (a)(3)(B)(iii) of this Section, must be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

C) Analysis. Each collected sample must be prepared and analyzed in accordance with one or more of the methods listed in subsections (b)(3)(C)(i) through (b)(3)(C)(ix) of this Section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of 35 Ill. Adm. Code 724.982(c)(2)(A) through (c)(2)(F) or Section 725.983(c)(2)(A) through (c)(2)(F) are met, then the waste samples must be prepared and analyzed using the same method or methods
as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase \((0.1 \, \text{Y/X})\) [which can also be expressed as \(1.8 \times 10^{-6}\) atmospheres/gram-mole/m³] at 25 degrees Celsius. Each of the analytical methods listed in subsections (b)(3)(C)(ii) through (b)(3)(C)(vii) of this Section has an associated list of approved chemical compounds, for which USEPA considers the method appropriate for measurement. If an owner or operator uses USEPA Method 624, 625, 1624, or 1625 in 40 CFR 136, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5, incorporated by reference in 35 Ill. Adm. Code 720.111(b), must be followed. If an owner or operator uses USEPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), to analyze one or more compounds that are not on that method's published list, the procedures in subsection (b)(3)(C)(viii) of this Section must be followed. At the owner's or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value that would have been obtained, had the waste samples been analyzed using Method 25D. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the constituent-specific adjustment factor \((f_{\text{m25D}})\). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25° C contained in the waste. Constituent-specific adjustment factors \((f_{\text{m25D}})\) can be obtained by contacting the USEPA, Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

i) Method 25D in 40 CFR 60, appendix A, incorporated by
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iii) Method 625 in 40 CFR 136, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b). Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in Table 7 of the method.


viii) Any other USEPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods", 40 CFR 63, appendix D, incorporated by reference in 35 Ill. Adm. Code 720.111(b). As an alternative, other USEPA standard methods may be validated by the procedure specified in subsection (b)(3)(C)(ix) of this Section.
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ix) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under Section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other Sections of Method 301 are not required.

D) Calculations. The average VO concentration (C) on a mass-weighted basis must be calculated by using the results for all samples analyzed in accordance with subsection (b)(3)(C) of this Section and the following equation:

\[ \overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i) \]

Where:

- \( \overline{C} \) = Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, in ppmw;
- \( i \) = Individual waste determination "i" of the hazardous waste;
- \( n \) = Total number of waste determinations of the hazardous waste collected for the averaging period (not to exceed one year);
- \( Q_i \) = Mass quantity of the hazardous waste stream represented by \( C_i \) in kg/hr;
- \( Q_T \) = Total mass quantity of hazardous waste during the averaging period, in kg/hr;
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\[ C_i = \begin{array}{c}
\text{Measured VO concentration of waste} \\
\text{determination } "i", \text{ as determined in} \\
\text{accordance with the requirements of} \\
\text{subsection (b)(3)(C) of this Section (i.e.,} \\
\text{the average of the four or more samples} \\
\text{specified in subsection (a)(3)(B)(ii) of} \\
\text{this Section), in ppmw.} 
\end{array} \]

E) Provided that the test method is appropriate for the waste as required under subsection (b)(3)(C) of this Section, compliance must be determined based on the test method used by the owner or operator as recorded pursuant to Section 725.990(f)(1).

4) Procedure to determine the exit concentration limit \( C_t \) for a treated hazardous waste.

A) The point of waste origination for each hazardous waste treated by the process at the same time must be identified.

B) If a single hazardous waste stream is identified in subsection (b)(4)(A) of this Section, then the exit concentration limit \( C_t \) must be 500 ppmw.

C) If more than one hazardous waste stream is identified in subsection (b)(4)(A) of this Section, then the average VO concentration of each hazardous waste stream at the point of waste origination must be determined in accordance with the requirements of subsection (a) of this Section. The exit concentration limit \( C_t \) must be calculated by using the results determined for each individual hazardous waste stream and the following equation:

\[
C_t = \frac{\sum_{x=1}^{m} (Q_x \times \bar{C}_x) + \sum_{y=1}^{n} (Q_y \times 500 \text{ ppmw})}{\sum_{x=1}^{m} Q_x + \sum_{y=1}^{n} Q_y}
\]
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Where:

\[ C_t = \text{Exit concentration limit for treated hazardous waste, in ppmw}; \]

\[ x = \text{Individual hazardous waste stream } x \text{ that has an average VO concentration less than 500 ppmw at the point of waste origination, as determined in accordance with the requirements of subsection (a) of this Section}; \]

\[ y = \text{Individual hazardous waste stream } y \text{ that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination, as determined in accordance with the requirements of subsection (a) of this Section}; \]

\[ m = \text{Total number of } x \text{ hazardous waste streams treated by process}; \]

\[ n = \text{Total number of } y \text{ hazardous waste streams treated by process}; \]

\[ Q_x = \text{Annual mass quantity of hazardous waste stream } x \text{, in kg/yr}; \]

\[ Q_y = \text{Annual mass quantity of hazardous waste stream } y \text{, in kg/yr}; \]

\[ C_x = \text{Average VO concentration of hazardous waste stream } x \text{ at the point of waste origination, as determined in accordance with the requirements of subsection (a) of this Section, in ppmw}. \]

5) Procedure to determine the organic reduction efficiency (R) for a treated hazardous waste.

A) The organic reduction efficiency (R) for a treatment process must be determined based on results for a minimum of three consecutive
All hazardous waste streams entering the process and all hazardous waste streams exiting the treatment process must be identified. The owner or operator must prepare a sampling plan for measuring these streams that accurately reflects the retention time of the hazardous waste in the process.

For each run, information must be determined for each hazardous waste stream identified in subsection (b)(5)(B) of this Section, using the following procedures:

i) The mass quantity of each hazardous waste stream entering the process \( (Q_b) \) and the mass quantity of each hazardous waste stream exiting the process \( (Q_a) \) must be determined.

ii) The average VO concentration at the point of waste origination of each hazardous waste stream entering the process \( (C_b) \) during the run must be determined in accordance with the requirements of subsection (a)(3) of this Section. The average VO concentration at the point of waste treatment of each hazardous waste stream exiting the process \( (C_a) \) during the run must be determined in accordance with the requirements of subsection (b)(3) of this Section.

The waste volatile organic mass flow entering the process \( (E_b) \) and the waste volatile organic mass flow exiting the process \( (E_a) \) must be calculated by using the results determined in accordance with subsection (b)(5)(C) of this Section and the following equations:

\[
E_b = \frac{1}{10^6} \sum_{j=1}^{m} (Q_{bj} \times \overline{C}_{bj})
\]

\[
E_a = \frac{1}{10^6} \sum_{j=1}^{m} (Q_{aj} \times \overline{C}_{aj})
\]
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Where:

\[ E_a = \text{Waste volatile organic mass flow existing} \]
\[ \text{the process, in kg/hr} \]
\[ E_b = \text{Waste volatile organic mass flow entering} \]
\[ \text{the process, in kg/hr} \]
\[ m = \text{Total number of runs (at least 3)} \]
\[ j = \text{Individual run "} j \text{"} \]
\[ Q_{bj} = \text{Mass quantity of hazardous waste entering} \]
\[ \text{the process during run "} j \text{"}, \text{in kg/yr} \]
\[ Q_{aj} = \text{Average mass quantity of waste exiting the} \]
\[ \text{process during run "} j \text{"}, \text{in kg/yr} \]
\[ \bar{C}_{aj} = \text{Average VO concentration of hazardous} \]
\[ \text{waste exiting the process during run "} j \text{"}, \text{as} \]
\[ \text{determined in accordance with the} \]
\[ \text{requirements of subsection (b)(3) of this} \]
\[ \text{Section, in ppmw.} \]
\[ \bar{C}_{bj} = \text{Average VO concentration of hazardous} \]
\[ \text{waste entering the process during run "} j \text{"}, \text{as} \]
\[ \text{determined in accordance with the} \]
\[ \text{requirements of subsection 725.984(a)(3) of} \]
\[ \text{this Section, in ppmw.} \]

\[ E) \quad \text{The organic reduction efficiency of the process must be calculated} \]
\[ \text{by using the results determined in accordance with subsection} \]
\[ \text{(b)(5)(D) of this Section and the following equation:} \]

\[ R = \frac{E_b - E_a}{E_b} \times 100\% \]

Where:

\[ R = \text{Organic reduction efficiency, in percent} \]
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Eb = Waste volatile organic mass flow entering the process as determined in accordance with the requirements of subsection (b)(5)(D) of this Section, in kg/hr.

Ea = Waste volatile organic mass flow exiting the process as determined in accordance with the requirements of subsection (b)(5)(D) of this Section, in kg/hr.

6) Procedure to determine the organic biodegradation efficiency (Rbio) for a treated hazardous waste.


B) The organic biodegradation efficiency (Rbio) must be calculated by using the following equation:

\[ R_{\text{bio}} = F_{\text{bio}} \times 100\% \]

Where:

\[ R_{\text{bio}} = \text{Organic biodegradation efficiency, in percent}. \]

\[ F_{\text{bio}} = \text{Fraction of organic biodegraded, as determined in accordance with the requirements of subsection (b)(6)(A) of this Section.} \]

7) Procedure to determine the required organic mass removal rate (RMR) for a treated hazardous waste.

A) All of the hazardous waste streams entering the treatment process must be identified.

B) The average VO concentration of the hazardous waste stream at the point of waste origination must be determined in accordance with the requirements of subsection (a) of this Section.
C) For each individual hazardous waste stream that has an average volatile organic concentration equal to or greater than 500 ppmw at the point of waste origination, the average volumetric flow rate of hazardous waste and the density of the hazardous waste stream at the point of waste origination must be determined.

D) The required organic mass removal rate (RMR) for the hazardous waste must be calculated by using the average VO concentration, average volumetric flow rate, and density determined for each individual hazardous waste stream, and the following equation:

\[
RMR = \sum_{y=1}^{n} \left[ V_y \times k_y \times \frac{C_y - 500 \text{ ppmw}}{10^6} \right]
\]

Where:

- \( RMR \) = Required organic mass removal rate, in kg/hr
- \( y \) = Individual hazardous waste stream "y" that has an average volatile organic (VO) concentration equal to or greater than 500 ppmw at the point of waste origination, as determined in accordance with the requirements of subsection (a) of this Section
- \( n \) = Total number of "y" hazardous waste streams treated by process
- \( V_y \) = Average volumetric flow rate of hazardous waste stream "y" at the point of waste origination, in m³/hr
- \( k_y \) = Density of hazardous waste stream "y", in kg/m³
- \( C_y \) = Average VO concentration of hazardous waste stream "y" at the point of waste origination
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origination, as determined in accordance with the requirements of subsection (a) of this Section, in ppmw.

8) Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

A) The actual organic mass removal rate (MR) must be determined based on results for a minimum of three consecutive runs. The sampling time for each run must be one hour.

B) The waste volatile organic mass flow entering the process ($E_b$) and the waste volatile organic mass flow exiting the process ($E_a$) must be determined in accordance with the requirements of subsection (b)(5)(D) of this Section.

C) The actual organic mass removal rate (MR) must be calculated by using the mass flow rate determined in accordance with the requirements of subsection (b)(8)(B) of this Section and the following equation:

$$ MR = E_b - E_a $$

Where:

$$ MR = \text{Actual organic mass removal rate, in kg/hr} $$

$$ E_b = \text{Waste volatile organic mass flow entering the process, as determined in accordance with the requirements of subsection (b)(5)(D) of this Section, in kg/hr} $$

$$ E_a = \text{Waste volatile organic mass flow exiting the process, as determined in accordance with the requirements of subsection (b)(5)(D) of this Section, in kg/hr} $$

9) Procedure to determine the actual organic mass biodegradation rate ($MR_{bio}$) for a treated hazardous waste.

A) The actual organic mass biodegradation rate ($MR_{bio}$) must be
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determined based on results for a minimum of three consecutive runs. The sampling time for each run must be one hour.

B) The waste organic mass flow entering the process ($E_b$) must be determined in accordance with the requirements of subsection (b)(5)(D) of this Section.


D) The actual organic mass biodegradation rate ($MR_{bio}$) must be calculated by using the mass flow rates and fraction of organic biodegraded, as determined in accordance with the requirements of subsections (b)(9)(B) and (b)(9)(C) of this Section, respectively, and the following equation:

$$MR_{bio} = E_b \times F_{bio}$$

Where:

$$MR_{bio} = \text{Actual organic mass biodegradation rate, in kg/hr}$$

$$E_b = \text{Waste organic mass flow entering the process, as determined in accordance with the requirements of subsection (b)(5)(D) of this Section, in kg/hr; and}$$

$$F_{bio} = \text{Fraction of organic biodegraded, as determined in accordance with the requirements of subsection (b)(9)(C) of this Section, in kg/hr.}$$

c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

1) An owner or operator must determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in Section 725.985(c).
2) An owner or operator must use either direct measurement, as specified in subsection (c)(3) of this Section, or knowledge of the waste, as specified by subsection (c)(4) of this Section, to determine the maximum organic vapor pressure that is representative of the hazardous waste composition stored or treated in the tank.

3) Direct measurement to determine the maximum organic vapor pressure of a hazardous waste.

A) Sampling. A sufficient number of samples must be collected to be representative of the waste contained in the tank. All samples must be conducted and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste are collected so that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,", USEPA Publication No. SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), or in Method 25D in 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

B) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous waste:


ii) Methods described in American Petroleum Institute Publication 2517, incorporated by reference in 35 Ill. Adm. Code 720.111(a);

iii) Methods obtained from standard reference texts;
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iv) ASTM Method D 2879-92, incorporated by reference in 35 Ill. Adm. Code 720.111(a); or

v) Any other method approved by the Agency.

4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous waste. Documentation must be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum organic vapor pressure of the hazardous waste is less than the maximum vapor pressure limit listed in Section 725.985(b)(1)(A) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

d) The procedure for determining no detectable organic emissions for the purpose of complying with this Subpart CC is as follows:

1) The test must be conducted in accordance with the procedures specified in Method 21 of 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b). Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices must be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to, any of the following: the interface of the cover and its foundation mounting, the periphery of any opening on the cover and its associated closure device, and the sealing seat interface on a spring-loaded pressure relief valve.

2) The test must be performed when the unit contains a hazardous waste having an organic concentration representative of the range of concentrations for the hazardous waste expected to be managed in the unit. During the test, the cover and closure devices must be secured in the closed position.

3) The detection instrument must meet the performance criteria of Method 21 of 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b), except the instrument response factor criteria in Section 3.1.2(a) of Method 21 must be for the average composition of the organic
constituents in the hazardous waste placed in the waste management unit, not for each individual organic constituent.

4) The detection instrument must be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

5) Calibration gases must be as follows:
   A) Zero air (less than 10 ppmv hydrocarbon in air), and
   B) A mixture of methane or n-hexane in air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.


7) Each potential leak interface must be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR 60, appendix A, incorporated by reference in 35 Ill. Adm. Code 720.111(b). In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface must be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet must be placed at approximately the center of the exhaust area to the atmosphere.

8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison must be as specified in subsection (d)(9) of this Section. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared
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with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.985 Standards: Tanks

a) The provisions of this Section apply to the control of air pollutant emissions from tanks for which Section 725.983(b) references the use of this Section for such air emission control.

b) The owner or operator must control air pollutant emissions from each tank subject to this Section in accordance with the following requirements, as applicable:

1) For a tank that manages hazardous waste which meets all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) of this Section, the owner or operator must control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in subsection (c) of this Section or the Tank Level 2 controls specified in subsection (d) of this Section.

A) The hazardous waste in the tank has a maximum organic vapor pressure that is less than the maximum organic vapor pressure limit for the tank's design capacity category, as follows:

i) For a tank design capacity equal to or greater than 151 m$^3$ (5333 ft$^3$ or 39,887 gal), the maximum organic vapor pressure limit for the tank is 5.2 kPa (0.75 psia or 39 mm Hg);

ii) For a tank design capacity equal to or greater than 75 m$^3$ (2649 ft$^3$ or 19,810 gal) but less than 151 m$^3$ (5333 ft$^3$ or 39,887 gal), the maximum organic vapor pressure limit for the tank is 27.6 kPa (4.0 psia or 207 mm Hg); or

iii) For a tank design capacity less than 75 m$^3$ (2649 ft$^3$ or 19,810 gal), the maximum organic vapor pressure limit for the tank is 76.6 kPa (11.1 psia or 574 mm Hg).
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B) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with subsection (b)(1)(A) of this Section.

C) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in Section 725.981.

2) For a tank that manages hazardous waste that does not meet all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) of this Section, the owner or operator must control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of subsection (d) of this Section. Examples of tanks required to use Tank Level 2 controls include the following: a tank used for a waste stabilization process and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category, as specified in subsection (b)(1)(A) of this Section.

c) An owner or operator controlling air pollutant emissions from a tank using Tank Level 1 controls must meet the requirements specified in subsections (c)(1) through (c)(4) of this Section:

1) The owner or operator must determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure must be determined using the procedures specified in Section 725.984(c). Thereafter, the owner or operator must perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in subsection (b)(1)(A) of this Section, as applicable to the tank.

2) The tank must be equipped with a fixed roof designed to meet the following specifications:

A) The fixed roof and its closure devices must be designed to form a
continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

B) The fixed roof must be installed in such a manner that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

C) Either of the following must be true of each opening in the fixed roof and of any manifold system associated with the fixed roof must be either:

i) The opening or manifold system is equipped with a closure device designed to operate so that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

ii) The opening or manifold system is connected by a closed-vent system that is vented to a control device. The control device must remove or destroy organics in the vent stream, and it must be operating whenever hazardous waste is managed in the tank, except as provided for in subsection (c)(2)(E).

D) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and which will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices must include the following: organic vapor permeability; the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.
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E) The control device operated pursuant to subsection (c)(2)(C) of this Section needs not remove or destroy organics in the vent stream under the following conditions:

i) During periods when it is necessary to provide access to the tank for performing the activities of subsection (c)(2)(E)(ii) of this Section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device; and

ii) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for the removal of accumulated sludge or other residues from the bottom of the tank.

BOARD NOTE: Subsections (c)(2)(E)(i) and (c)(2)(E)(ii) are derived from 40 CFR 265.985(c)(2)(iii)(B)(1) and (c)(2)(iii)(B)(2), which the Board has codified here to comport with Illinois Administrative Code format requirements.

3) Whenever a hazardous waste is in the tank, the fixed roof must be installed with each closure device secured in the closed position, except as follows:

A) Opening of closure devices or removal of the fixed roof is allowed at the following times:

i) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

ii) To remove accumulated sludge or other residues from the
B) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device that vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device must be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens must be established so that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations; applicable regulations; fire protection and prevention codes; standard engineering codes and practices; or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

C) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

4) The owner or operator must inspect the air emission control equipment in accordance with the following requirements.

A) The fixed roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

B) The owner or operator must perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year,
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except under the special conditions provided for in subsection (l) of this Section.

C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this Section.

D) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 725.990(b).

d) An owner or operator controlling air pollutant emissions from a tank using Tank Level 2 controls must use one of the following tanks:

1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in subsection (e) of this Section;

2) A tank equipped with an external floating roof in accordance with the requirements specified in subsection (f) of this Section;

3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in subsection (g) of this Section;

4) A pressure tank designed and operated in accordance with the requirements specified in subsection (h) of this Section; or

5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in subsection (i) of this Section.

e) The owner or operator that controls air pollutant emissions from a tank using a fixed roof with an internal floating roof must meet the requirements specified in subsections (e)(1) through (e)(3) of this Section.

1) The tank must be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

A) The internal floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.
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B) The internal floating roof must be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

i) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in Section 725.981; or

ii) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

C) The internal floating roof must meet the following specifications:

i) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface;

ii) Each opening in the internal floating roof must be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains;

iii) Each penetration of the internal floating roof for the purpose of sampling must have a slit fabric cover that covers at least 90 percent of the opening;

iv) Each automatic bleeder vent and rim space vent must be gasketed;

v) Each penetration of the internal floating roof that allows for passage of a ladder must have a gasketed sliding cover; and

vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof must have a flexible fabric sleeve seal or a gasketed sliding cover.

2) The owner or operator **must** operate the tank in accordance with the following requirements:
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A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be continuous and must be completed as soon as practical.

B) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports; and.

C) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof must be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

3) The owner or operator must inspect the internal floating roof in accordance with the procedures specified as follows:

A) The floating roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, the following: when the internal floating roof is not floating on the surface of the liquid inside the tank; when liquid has accumulated on top of the internal floating roof; when any portion of the roof seals have detached from the roof rim; when holes, tears, or other openings are visible in the seal fabric; when the gaskets no longer close off the hazardous waste surface from the atmosphere; or when the slotted membrane has more than 10 percent open area.

B) The owner or operator must inspect the internal floating roof components as follows, except as provided in subsection (e)(3)(C) of this Section:

i) Visually inspect the internal floating roof components through openings on the fixed roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

ii) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least once every 10 years.
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C) As an alternative to performing the inspections specified in subsection (e)(3)(B) of this Section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every five years.

D) Prior to each inspection required by subsection (e)(3)(B) or (e)(3)(C) of this Section, the owner or operator must notify the Agency in advance of each inspection to provide the Agency with the opportunity to have an observer present during the inspection. The owner or operator must notify the Agency of the date and location of the inspection as follows:

i) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the owner or operator so that it is received by the Agency at least 30 calendar days before refilling the tank, except when an inspection is not planned, as provided for in subsection (e)(3)(D)(ii) of this Section.

ii) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator must notify the Agency as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least seven calendar days before refilling the tank.

E) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (k) of this Section.
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F) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 725.990(b).

4) Safety devices, as defined in Section 725.981, may be installed and operated as necessary on any tank complying with the requirements of this subsection (e).

f) The owner or operator that controls air pollutant emissions from a tank using an external floating roof must meet the requirements specified in subsections (f)(1) through (f)(3) of this Section.

1) The owner or operator must design the external floating roof in accordance with the following requirements:

A) The external floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

B) The floating roof must be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

i) The primary seal must be a liquid-mounted seal or a metallic shoe seal, as defined in Section 725.981. The total area of the gaps between the tank wall and the primary seal must not exceed 212 square centimeters (cm²) per meter (10.0 in² per foot) of tank diameter, and the width of any portion of these gaps must not exceed 3.8 centimeters (cm) (1.5 inches). If a metallic shoe seal is used for the primary seal, the metallic shoe seal must be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters (24 inches) above the liquid surface.

ii) The secondary seal must be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal must not exceed 21.2 cm² per meter (1.0 in²) per foot) of tank diameter, and the
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width of any portion of these gaps must not exceed 1.3 cm (0.5 inch); and.

C) The external floating roof must meet the following specifications:

i) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof must provide a projection below the liquid surface.

ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be equipped with a gasketed cover, seal, or lid.

iii) Each access hatch and each gauge float well must be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

iv) Each automatic bleeder vent and each rim space vent must be equipped with a gasket.

v) Each roof drain that empties into the liquid managed in the tank must be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

vi) Each unslotted and slotted guide pole well must be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

vii) Each unslotted guide pole must be equipped with a gasketed cap on the end of the pole.

viii) Each slotted guide pole must be equipped with a gasketed float or other device that closes off the liquid surface from the atmosphere; and.

ix) Each gauge hatch and each sample well must be equipped with a gasketed cover.

2) The owner or operator must operate the tank in accordance with the
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following requirements:

A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be continuous and must be completed as soon as practical;

B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be secured and maintained in a closed position at all times except when the closure device must be open for access;

C) Covers on each access hatch and each gauge float well must be bolted or fastened when secured in the closed position;

D) Automatic bleeder vents must be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports;

E) Rim space vents must be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting;

F) The cap on the end of each unslotted guide pole must be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank;

G) The cover on each gauge hatch or sample well must be secured in the closed position at all times except when the hatch or well must be opened for access; and,

H) Both the primary seal and the secondary seal must completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

3) The owner or operator **must** inspect the external floating roof in accordance with the procedures specified as follows:

A) The owner or operator **must** measure the external floating roof seal gaps in accordance with the following requirements:
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i) The owner or operator **must** perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every five years.

ii) The owner or operator **shall** perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

iii) If a tank ceases to hold hazardous waste for a period of one year or more, subsequent introduction of hazardous waste into the tank must be considered an initial operation for the purposes of subsections (f)(3)(A)(i) and (f)(3)(A)(ii) of this Section.

iv) The owner or operator **must** determine the total surface area of gaps in the primary seal and in the secondary seal individually using the procedure set forth in subsection (f)(4)(D) of this Section.

v) In the event that the seal gap measurements do not conform to the specifications in subsection (f)(1)(B) of this Section, the owner or operator must repair the defect in accordance with the requirements of subsection (k) of this Section.

vi) The owner or operator **must** maintain a record of the inspection in accordance with the requirements specified in Section 725.990(b).

B) The owner or operator **must** visually inspect the external floating roof in accordance with the following requirements:

i) The floating roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to any of the following: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of
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the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

ii) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this Section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (l) of this Section.

iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this Section; and-

iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Section 725.990(b).

C) Prior to each inspection required by subsection (f)(3)(A) or (f)(3)(B) of this Section, the owner or operator shall notify the Agency in advance of each inspection to provide the Agency with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Agency of the date and location of the inspection as follows:

i) Prior to each inspection to measure external floating roof seal gaps as required under subsection (f)(3)(A) of this Section, written notification must be prepared and sent by the owner or operator so that it is received by the Agency at least 30 calendar days before the date the measurements are scheduled to be performed.

ii) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the owner or operator so that it is received by the Agency at least 30 calendar days before refilling the tank except when an
inspection is not planned, as provided for in subsection (f)(3)(C)(iii) of this Section; and.

iii) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator must notify the Agency as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least seven calendar days before refilling the tank; and.

D) Procedure for determining gaps in the primary seal and in the secondary seal for the purposes of subsection (f)(3)(A)(iv) of this Section:

i) The seal gap measurements must be performed at one or more floating roof levels when the roof is floating off the roof supports; and.

ii) Seal gaps, if any, must be measured around the entire perimeter of the floating roof in each place where a 0.32-cm (1/4-inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location; and.

iii) For a seal gap measured under this subsection (f)(3), the gap surface area must be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance; and.

iv) The total gap area must be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal
diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type, as specified in subsection (f)(1)(B) of this Section.


4) Safety devices, as defined in Section 725.981, may be installed and operated as necessary on any tank complying with the requirements of this subsection (f).

g) The owner or operator that controls air pollutant emissions from a tank by venting the tank to a control device must meet the requirements specified in subsections (g)(1) through (g)(3) of this Section.

1) The tank must be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

A) The fixed roof and its closure devices must be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

B) Each opening in the fixed roof not vented to the control device must be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices must be designed to operate so that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device must be designed to operate with no detectable organic emissions.

C) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the
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atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices must include the following: organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

D) The closed-vent system and control device must be designed and operated in accordance with the requirements of Section 725.988.

2) Whenever a hazardous waste is in the tank, the fixed roof must be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

A) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

i) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

ii) To remove accumulated sludge or other residues from the bottom of a tank.

B) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator must inspect and monitor the air emission control equipment in accordance with the following procedures:
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A) The fixed roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to any of the following: visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

B) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 725.988.

C) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this Section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection (l) of this Section.

D) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (k) of this Section.

E) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Section 725.990(b).

h) The owner or operator that controls air pollutant emissions by using a pressure tank must meet the following requirements:

1) The tank must be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

2) All tank openings must be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in Section 725.984(d).

3) Whenever a hazardous waste is in the tank, the tank must be operated as a closed-vent system that does not vent to the atmosphere, except under
either of the following two conditions:

A) The tank does not need to be operated as a closed-vent system at those times when the opening of a safety device, as defined in Section 725.981, is required to avoid an unsafe condition.  

B) The tank does not need to be operated as a closed-vent system at those times when the purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of Section 724.987.

i) The owner or operator that controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device must meet the requirements specified in subsections (i)(1) through (i)(4) of this Section.

1) The tank must be located inside an enclosure. The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure, as specified in "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B, incorporated by reference in 35 Ill. Adm. Code 720.111(b). The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator must perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

2) The enclosure must be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in Section 725.988.

3) Safety devices, as defined in Section 725.981, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of subsections (i)(1) and (i)(2) of this Section.
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4) The owner or operator **must** inspect and monitor the closed-vent system and control device, as specified in Section 725.988.

j) The owner or operator **must** transfer hazardous waste to a tank subject to this Section in accordance with the following requirements:

1) Transfer of hazardous waste, except as provided in subsection (j)(2) of this Section, to the tank from another tank subject to this Section or from a surface impoundment subject to Section 725.986 must be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of subpart RR of 40 CFR 63, subpart RR, "National Emission Standards for Individual Drain Systems," incorporated by reference in 35 Ill. Adm. Code 720.111(b)

2) The requirements of subsection (j)(1) of this Section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

A) The hazardous waste meets the average VO concentration conditions specified in Section 725.983(c)(1) at the point of waste origination.

B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Section 725.983(c)(2)

C) The hazardous waste meets the requirements of Section 725.983(c)(4).

k) The owner or operator **must** repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(4), (e)(3), (f)(3), or (g)(3) of this Section as follows:

1) The owner or operator **must** make first efforts at repair of the defect no later than five calendar days after detection, and repair must be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (k)(2) of this Section.
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2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator must repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect must be completed before the process or unit resumes operation.

l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this Subpart CC, subsequent inspection and monitoring may be performed at intervals longer than one year under the following special conditions:

1) Where inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

A) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required;

B) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable Section of this Subpart CC, as frequently as practicable during those times when a worker can safely access the cover;

2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this Section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.986 Standards: Surface Impoundments

a) The provisions of this Section apply to the control of air pollutant emissions from surface impoundments for which Section 725.983(b) of this Subpart CC references the use of this Section for such air emission control.
b) The owner or operator **must** control air pollutant emissions from the surface impoundment by installing and operating either of the following:

1) A floating membrane cover in accordance with the provisions specified in subsection (c) of this Section; or

2) A cover that is vented through a closed-vent system to a control device in accordance with the requirements specified in subsection (d) of this Section.

c) The owner or operator that controls air pollutant emissions from a surface impoundment using a floating membrane cover must meet the requirements specified in subsections (c)(1) through (c)(3) of this Section.

1) The surface impoundment must be equipped with a floating membrane cover designed to meet the following specifications:

   A) The floating membrane cover must be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid; or

   B) The cover must be fabricated from a synthetic membrane material that is either of the following:

      i) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm) (0.10 inch); or

      ii) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in subsection (c)(1)(B)(i) of this Section and chemical and physical properties that maintain the material integrity for the intended service life of the material; or

   C) The cover must be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings; or

   D) Except as provided for in subsection (c)(1)(E) of this Section, each
E) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain must be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.\footnote{and.}

F) The closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices must include the following: the organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover must float on the liquid and each closure device must be secured in the closed position, except as follows:

A) Opening of closure devices or removal of the cover is allowed at the following times:

i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly replace the cover and secure the closure device in the closed position, as applicable; or.
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ii) To remove accumulated sludge or other residues from the bottom of surface impoundment; and.

B) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator must inspect the floating membrane cover in accordance with the following procedures:

A) The floating membrane cover and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

B) The owner or operator must perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except for the special conditions provided for in subsection (g) of this Section.

C) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (f) of this Section.

D) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 725.990(c).

d) The owner or operator that controls air pollutant emissions from a surface impoundment using a cover vented to a control device must meet the requirements specified in subsections (d)(1) through (d)(3) of this Section.

1) The surface impoundment must be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the
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following requirements:

A) The cover and its closure devices must be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

B) Each opening in the cover not vented to the control device must be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices must be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device must be designed to operate with no detectable organic emissions using the procedure specified in Section 725.984(d).

C) The cover and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere to the extent practical and which will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices must include the following: the organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

D) The closed-vent system and control device must be designed and operated in accordance with the requirements of Section 725.988.

2) Whenever a hazardous waste is in the surface impoundment, the cover must be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

A) Venting to the control device is not required, and opening of
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closure devices or removal of the cover is allowed at the following times:

i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment. or

ii) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

B) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

A) The surface impoundment cover and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

B) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 725.988.

C) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this Section. Thereafter, the owner or operator shall perform the inspections at least...
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once every year except for the special conditions provided for in subsection (g) of this Section.

D) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (f) of this Section; and.

E) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 725.990(c).

e) The owner or operator must transfer hazardous waste to a surface impoundment subject to this Section in accordance with the following requirements:

1) Transfer of hazardous waste, except as provided in subsection (e)(2) of this Section, to the surface impoundment from another surface impoundment subject to this Section or from a tank subject to Section 725.985 must be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of subpart RR of 40 CFR 63, Subpart RR, "National Emission Standards for Individual Drain Systems," incorporated by reference in 35 Ill. Adm. Code 720.111(b); and.

2) The requirements of subsection (e)(1) of this Section do not apply when transferring a hazardous waste to the surface impoundment under any of the following conditions:

A) The hazardous waste meets the average VO concentration conditions specified in Section 725.983(c)(1) at the point of waste origination.

B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Section 725.983(c)(2); or.

C) The hazardous waste meets the requirements of Section 725.983(c)(4).
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f) The owner or operator must repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(3) or (d)(3) of this Section as follows:

1) The owner or operator shall make first efforts at repair of the defect no later than five calendar days after detection, and repair must be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (f)(2) of this Section.

2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect must be completed before the process or unit resumes operation.

g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this Subpart CC, subsequent inspection and monitoring may be performed at intervals longer than one year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable Section of this Subpart CC as frequently as practicable during those times when a worker can safely access the cover.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.987 Standards: Containers

a) The provisions of this Section apply to the control of air pollutant emissions from containers for which Section 725.983(b) references the use of this Section for
b) General requirements.

1) The owner or operator must control air pollutant emissions from each container subject to this Section in accordance with the following requirements, as applicable to the container, except when the following special provisions for waste stabilization processes specified in subsection (b)(2) of this Section apply to the container:

   A) For a container having a design capacity greater than 0.1 m³ (26 gal) and less than or equal to 0.46 m³ (120 gal), the owner or operator must control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c) of this Section:

   B) For a container having a design capacity greater than 0.46 m³ (120 gal) that is not in light material service, the owner or operator must control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c) of this Section:

   C) For a container having a design capacity greater than 0.46 m³ (120 gal) that is in light material service, the owner or operator must control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in subsection (d) of this Section:

   2) When a container having a design capacity greater than 0.1 m³ (26 gal) is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator must control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in subsection (e) of this Section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

c) Container Level 1 standards.

1) A container using Container Level 1 controls is one of the following:

   A) A container that meets the applicable USDOT regulations on
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packaging hazardous materials for transportation, as specified in subsection (f) of this Section.

B) A container equipped with a cover and closure devices that form a continuous barrier over the container openings so that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

C) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container so that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

2) A container used to meet the requirements of subsection (c)(1)(B) or (c)(1)(C) of this Section must be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices must include the following: the organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator must install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

A) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:
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i) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator *must* promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation; and.

ii) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator *must* promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

i) For the purpose of meeting the requirements of this Section, an empty container, as defined in 35 Ill. Adm. Code 721.107(b), may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container); and.

ii) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container, as defined in 35 Ill. Adm. Code 721.107(b), the owner or operator *must* promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

C) Opening of a closure device or cover is allowed when access inside
the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

D) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device that vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the design specifications of the container. The device must be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens must be established so that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

E) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

4) The owner or operator of containers using Container Level 1 controls must inspect the containers and their covers and closure devices as follows:

A) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., it does not
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meet the conditions for an empty container as specified in 35 Ill. Adm. Code 721.107(b)), the owner or operator must visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection must be conducted on or before the date on which the container is accepted at the facility (i.e., the date when the container becomes subject to the Subpart CC container standards). For the purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest incorporated by reference in Appendix A to 35 Ill. Adm. Code 722.Appendix A (USEPA Forms 8700-22 and 8700-22A), as required under Section 725.171. If a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (c)(4)(C) of this Section;

B) In the case when a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection (c)(4)(C) of this Section; and

C) When a defect is detected in the container, cover, or closure devices, the owner or operator must make first efforts at repair of the defect no later than 24 hours after detection, and repair must be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste must be removed from the container and the container must not be used to manage hazardous waste until the defect is repaired.

5) The owner or operator must maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m³ (120 gal) or greater, which do not meet applicable USDOT regulations, as specified in subsection (f) of this Section, are not managing hazardous
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waste in light material service.

d) Container Level 2 standards.

1) A container using Container Level 2 controls is one of the following:

A) A container that meets the applicable USDOT regulations on packaging hazardous materials for transportation as specified in subsection (f) of this Section;

B) A container that operates with no detectable organic emissions, as defined in Section 725.981, and determined in accordance with the procedure specified in subsection (g) of this Section; and;

C) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR 60, appendix A, Method 27, incorporated by reference in 35 Ill. Adm. Code 720.111(b), in accordance with the procedure specified in subsection (h) of this Section.

2) Transfer of hazardous waste into or out of a container using Container Level 2 controls must be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials. Examples of container loading procedures that the USEPA considers to meet the requirements of this subsection (d)(2) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator must install all covers and closure devices for the container, and secure and maintain each closure device in the closed position, except as follows:

A) Opening of a closure device or cover is allowed for the purpose of
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adding hazardous waste or other material to the container as follows:

i) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator must promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation;

ii) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator must promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first;

B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

i) For the purpose of meeting the requirements of this Section, an empty container as defined in 35 Ill. Adm. Code 721.107(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container);

ii) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 35 Ill. Adm. Code 721.107(b), the owner or operator must promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container,
OPENING OF CLOSURE DEVICES OR COVERS

C) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

D) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device that vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device must be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens must be established so that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

E) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:
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A) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., it does not meet the conditions for an empty container as specified in 35 Ill. Adm. Code 721.107(b)), the owner or operator must visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection must be conducted on or before the date on which the container is accepted at the facility (i.e., the date when the container becomes subject to the Subpart CC container standards). For the purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest incorporated by reference in Appendix A to 35 Ill. Adm. Code 722. If a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (d)(4)(C) of this Section.

B) In the case when a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator must visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (d)(4)(C) of this Section.

C) When a defect is detected in the container, cover, or closure devices, the owner or operator must make first efforts at repair of the defect no later than 24 hours after detection, and repair must be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste must be removed from the container and the container must not be used to manage hazardous waste until the defect is repaired.
e) Container Level 3 standards.

1) A container using Container Level 3 controls is one of the following:

A) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of subsection (e)(2)(B) of this Section; or.

B) A container that is vented inside an enclosure that is exhausted through a closed-vent system to a control device in accordance with the requirements of subsections (e)(2)(A) and (e)(2)(B) of this Section.

2) The owner or operator must meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

A) The container enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B, incorporated by reference in 35 Ill. Adm. Code 720.111(b). The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually; and.

B) The closed-vent system and control device must be designed and operated in accordance with the requirements of Section 725.988.

3) Safety devices, as defined in Section 725.981, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of subsection (e)(1) of this Section.

4) Owners and operators using Container Level 3 controls in accordance with
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the provisions of this Subpart CC must inspect and monitor the closed-vent systems and control devices, as specified in Section 725.988.

5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this Subpart CC must prepare and maintain the records specified in Section 725.990(d).

6) The transfer of hazardous waste into or out of a container using Container Level 3 controls must be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that USEPA considers to meet the requirements of this subsection (e)(6) include using any one of the following: the use of a submerged-fill pipe or other submerged-fill method to load liquids into the container; the use of a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or the use of a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

f) For the purpose of compliance with subsection (c)(1)(A) or (d)(1)(A) of this Section, containers must be used that meet the applicable USDOT regulations on packaging hazardous materials for transportation as follows:


3) For the purpose of complying with this Subpart CC, no exceptions to the 49 CFR 178 or 179 regulations are allowed, except as provided for in
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subsection (f)(4) of this Section; and

4) For a lab pack that is managed in accordance with the requirements of 49 CFR 178 for the purpose of complying with this Subpart CC, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

g) To determine compliance with the no detectable organic emissions requirements of subsection (d)(1)(B) of this Section, the procedure specified in Section 725.984(d) must be used.

1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, must be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

2) The test must be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices must be secured in the closed position.

h) The procedure for determining a container to be vapor-tight using Method 27 of 40 CFR 60, appendix A for the purpose of complying with subsection (d)(1)(C) of this Section is as follows:


2) A pressure measurement device must be used that has a precision of ±2.5 mm (0.10 inch) water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness; and.

3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals (0.11 psig) within five minutes after it is pressurized to a minimum of 4,500 Pascals (0.65 psig), then the container is determined to be vapor-tight.
Section 725.988 Standards: Closed-Vent Systems and Control Devices

a) This Section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this Subpart CC.

b) The closed-vent system must meet the following requirements:

1) The closed-vent system must route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection (c) of this Section.

2) The closed-vent system must be designed and operated in accordance with the requirements specified in Section 725.933(j).

3) When the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device must be equipped with either a flow indicator as specified in subsection (b)(3)(A) of this Section or a seal or locking device as specified in subsection (b)(3)(B) of this Section. For the purpose of complying with this subsection, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

A) If a flow indicator is used to comply with this subsection (b)(3), the indicator must be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For the purposes of this subsection, a flow indicator means a device that indicates the presence of either gas or vapor flow in the bypass line.

B) If a seal or locking device is used to comply with this subsection (b)(3), the device must be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle or damper lever) when the bypass device is in the closed position such that
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the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator must visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

4) The closed-vent system must be inspected and monitored by the owner or operator in accordance with the procedure specified in Section 725.933(k).

c) The control device must meet the following requirements:

1) The control device must be one of the following devices:

   A) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

   B) An enclosed combustion device designed and operated in accordance with the requirements of Section 725.933(c); or

   C) A flare designed and operated in accordance with the requirements of Section 725.933(d).

2) The owner or operator that elects to use a closed-vent system and control device to comply with the requirements of this Section must comply with the requirements specified in subsections (c)(2)(A) through (c)(2)(G) of this Section.

   A) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of subsection (c)(1)(A), (c)(1)(B), or (c)(1)(C) of this Section, as applicable, must not exceed 240 hours per year.

   B) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) of this Section for control devices do not apply during periods of planned routine maintenance.

   C) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) of this Section for control devices do not apply during a control device system malfunction.
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D) The owner or operator **must** demonstrate compliance with the requirements of subsection (c)(2)(A) of this Section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of subsection (c)(1)(A), (c)(1)(B), or (c)(1)(C) of this Section, as applicable, must not exceed 240 hours per year) by recording the information specified in Section 725.990(e)(1)(E).

E) The owner or operator **must** correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

F) The owner or operator **must** operate the closed-vent system so that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally), except in cases when it is necessary to vent the gases, vapors, or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

3) The owner or operator using a carbon adsorption system to comply with subsection (c)(1) of this Section **must** operate and maintain the control device in accordance with the following requirements:

A) Following the initial startup of the control device, all activated carbon in the control device must be replaced with fresh carbon on a regular basis in accordance with the requirements of Section 725.933(g) or 725.933(h).

B) All carbon that is a hazardous waste and that is removed from the control device must be managed in accordance with the requirements of Section 725.933(m), regardless of the average volatile organic concentration of the carbon.

4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subsection (c)(1) of this Section **must** operate and maintain the control device in accordance with the requirements of Section 725.933(i).
5) The owner or operator shall demonstrate that a control device achieves the performance requirements of subsection (c)(1) of this Section as follows:

A) An owner or operator **must** demonstrate using either a performance test, as specified in subsection (c)(5)(C) of this Section, or a design analysis, as specified in subsection (c)(5)(D) of this Section, the performance of each control device except for the following:

i) A flare;

ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

iii) A boiler or process heater into which the vent stream is introduced with the primary fuel;

iv) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 and has designed and operates in accordance with the requirements of **Subpart H of** 35 Ill. Adm. Code 726. **Subpart H;** or

v) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of **Subpart H of** 35 Ill. Adm. Code 726. **Subpart H.**

B) An owner or operator **must** demonstrate the performance of each flare in accordance with the requirements specified in Section 725.933(e).  

C) For a performance test conducted to meet the requirements of subsection (c)(5)(A) of this Section, the owner or operator **must** use the test methods and procedures specified in Section 725.934(c)(1) through (c)(4).

D) For a design analysis conducted to meet the requirements of subsection (c)(5)(A) of this Section, the design analysis must meet the requirements specified in Section 725.935(b)(4)(C); and-
E) The owner or operator must demonstrate that a carbon adsorption system achieves the performance requirements of subsection (c)(1) of this Section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

6) If the owner or operator and the Agency do not agree on a demonstration of control device performance using a design analysis, then the disagreement must be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of subsection (c)(5)(C) of this Section. The Agency may choose to have an authorized representative observe the performance test.

7) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 725.933(f)(2) and (k). The readings from each monitoring device required by Section 725.933(f)(2) must be inspected at least once each operating day to check control device operation. Any necessary corrective measures must be immediately implemented to ensure the control device is operated in compliance with the requirements of this Section.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.989 Inspection and Monitoring Requirements

a) The owner or operator must inspect and monitor air emission control equipment used to comply with this Subpart in accordance with the requirements specified in Sections 725.985 through 725.988.

b) The owner or operator must develop and implement a written plan and schedule to perform the inspections and monitoring required by subsection (a) of this Section. The owner or operator must incorporate this plan and schedule into the facility inspection plan required under Section 725.115.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.990 Recordkeeping Requirements
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a) Each owner or operator of a facility subject to the requirements in this Subpart CC must record and maintain the information specified in subsections (b) through (j) of this Section, as applicable to the facility. Except for air emission control equipment design documentation and information required by subsection (j) of this Section, records required by this Section must be maintained in the operating record for a minimum of three years. Air emission control equipment design documentation must be maintained in the operating record until the air emission control equipment is replaced or is otherwise no longer in service. Information required by subsections (i) and (j) of this Section must be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in Sections 725.985 through 725.988, in accordance with the conditions specified in Section 725.980(d) or (b)(7), respectively.

b) The owner or operator of a tank using air emission controls in accordance with the requirements of Section 725.985 shall prepare and maintain records for the tank that include the following information:

1) For each tank using air emission controls in accordance with the requirements of Section 725.985 of this Subpart CC, the owner or operator shall record the following information:

   A) A tank identification number (or other unique identification description as selected by the owner or operator); and.

   B) A record for each inspection required by Section 725.985 that includes the following information:

      i) Date inspection was conducted; and.

      ii) For each defect detected during the inspection, the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Section 725.985, the owner or operator also record the reason for the delay and the date that completion of repair of the defect is expected; and.

2) In addition to the information required by subsection (b)(1) of this Section, the owner or operator shall record the following information, as
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applicable to the tank:

A) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in Section 725.985(c) must prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of Section 725.985(c). The records must include the date and time the samples were collected, the analysis method used, and the analysis results.

B) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in Section 725.985(e) must prepare and maintain documentation describing the floating roof design.

C) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in Section 725.985(f) must prepare and maintain the following records:

i) Documentation describing the floating roof design and the dimensions of the tank; and.

ii) Records for each seal gap inspection required by Section 725.985(f)(3) describing the results of the seal gap measurements. The records must include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Section 725.985(f)(1), the records must include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

D) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in Section 725.985(i) must prepare and maintain the following records:

i) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total
enclosure as specified in "Procedure T–Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B, incorporated by reference in 35 Ill. Adm. Code 720.111(b); and ii) Records required for the closed-vent system and control device in accordance with the requirements of subsection (e) of this Section.

c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of Section 725.986 must prepare and maintain records for the surface impoundment that include the following information:

1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator);

2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Section 725.986(c);

3) A record for each inspection required by Section 725.986 that includes the following information:

   A) Date inspection was conducted;

   B) For each defect detected during the inspection the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Section 725.986(f), the owner or operator must also record the reason for the delay and the date that completion of repair of the defect is expected;

4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator must prepare and maintain the records specified in subsection (e) of this Section.
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d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of Section 725.987 must prepare and maintain records that include the following information:

1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T–Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B, incorporated by reference in 35 Ill. Adm. Code 720.111(b); and.

2) Records required for the closed-vent system and control device in accordance with the requirements of subsection (e) of this Section.

e) The owner or operator using a closed-vent system and control device in accordance with the requirements of Section 725.988 must prepare and maintain records that include the following information:

1) Documentation for the closed-vent system and control device that includes the following documentation:

   A) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in subsection (e)(1)(B) of this Section or by performance tests as specified in subsection (e)(1)(C) of this Section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

   B) If a design analysis is used, then design documentation, as specified in Section 725.935(b)(4). The documentation must include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Section 725.935(b)(4)(C) and certification by the owner or operator that the control equipment meets the applicable specifications.

   C) If performance tests are used, then a performance test plan as specified in Section 725.935(b)(3) and all test results.
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D) Information as required by Section 725.935(c)(1) and (c)(2), as applicable.

E) An owner or operator must record, on a semiannual basis, the information specified in subsections (e)(1)(E)(i) and (e)(1)(E)(ii) of this Section for those planned routine maintenance operations that would require the control device not to meet the requirements of Section 725.988(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable:

i) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next six-month period. This description must include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods;

ii) A description of the planned routine maintenance that was performed for the control device during the previous six-month period. This description must include the type of maintenance performed and the total number of hours during those six months that the control device did not meet the requirements of Section 725.988(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable, due to planned routine maintenance;

F) An owner or operator must record the following information specified in subsections (e)(1)(F)(i) through (e)(1)(F)(iii) of this Section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Section 725.988(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable:

i) The occurrence and duration of each malfunction of the control device system;

ii) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning;

iii) Actions taken during periods of malfunction to restore a
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malfunctioning control device to its normal or usual manner of operation; and-

G) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Section 725.988(c)(3)(B).

f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of Section 725.983(c) must prepare and maintain the following records, as applicable:

1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in Section 725.983(c)(1) or 725.984(c)(2)(A) through (c)(2)(F), the owner or operator must record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator must record the date, time, and location that each waste sample is collected in accordance with the applicable requirements of Section 725.984; and of this Subpart.

2) For tanks, surface impoundments, or containers exempted under the provisions of Section 725.983(c)(2)(G) or (c)(2)(H), the owner or operator must record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to Section 725.985(l) must record in a log that is kept in the facility operating record the following information: the identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor", the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

h) The owner or operator of a facility that is subject to this Subpart CC and to the control device standards in subpart VV of 40 CFR 60, Subpart VV, or subpart V of 40 CFR 61, Subpart V, incorporated by reference in 35 Ill. Adm. Code 270.111, may elect to demonstrate compliance with the applicable Sections of this Subpart by documentation either pursuant to this Subpart CC, or pursuant to the provisions of subpart VV of 40 CFR 60, Subpart VV or subpart V of 40 CFR 61.
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Subpart V, to the extent that the documentation required by 40 CFR 60 or 61 duplicates the documentation required by this Section.

i) For each tank or container not using air emission controls specified in Sections 725.985 through 725.988 in accordance with the conditions specified in Section 725.980(d), the owner or operator must record and maintain the following information:

1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Section 725.980(d)(1).

2) A description of how the hazardous waste containing the organic peroxide compounds identified pursuant to subsection (i)(1) are managed at the facility in tanks and containers. This description must include the following information:

A) For the tanks used at the facility to manage this hazardous waste, sufficient information must be provided to describe each tank: a facility identification number for the tank, the purpose and placement of this tank in the management train of this hazardous waste, and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

B) For containers used at the facility to manage this hazardous waste, sufficient information must be provided to describe the following for each container: a facility identification number for the container or group of containers; the purpose and placement of this container or group of containers in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified pursuant to subsection (i)(1) of this Section in the tanks or containers identified pursuant to subsection (i)(2) of this Section would create an undue safety hazard if the air emission controls specified in Sections 725.985 through 725.988 were installed and operated on these waste management units. This explanation must include the following information:

A) For tanks used at the facility to manage this hazardous waste, sufficient information must be provided to explain: how use of the
required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this Subpart CC, would not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

B) For containers used at the facility to manage this hazardous waste, sufficient information must be provided to explain: how use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this Subpart CC, would not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

j) For each hazardous waste management unit not using air emission controls specified in Sections 725.985 through 725.988 in accordance with the provisions of Section 725.980(b)(7), the owner and operator shall record and maintain the following information:

1) The certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60, 61, or 63.

2) An identification of the specific federal requirements codified under 40 CFR 60, 61, or 63 with which the waste management unit is in compliance.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART DD: CONTAINMENT BUILDINGS

Section 725.1100 Applicability
The requirements of this Subpart DD apply to owners or operators who store or treat hazardous waste in units designed and operated under Section 725.1101. These provisions will become effective on February 18, 1993. The owner or operator is not subject to the definition of land disposal in 35 Ill. Adm. Code 728.102 provided that the following is true of the unit:

a) It is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to any of the following causes:

1) Pressure gradients;
2) Settlement, compression, or uplift;
3) Physical contact with the hazardous wastes to which they are exposed;
4) Climatic conditions; or
5) The stresses of daily operation including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

b) It has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

c) If used to manage liquids, the unit has the following design features:

1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier; and
2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and
3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under subsection 725.1101(b)(4);
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d) It has sufficient controls to permit fugitive dust emissions to meet the no visible emission standard in subsection 725.1101(c)(1)(D); and

e) It is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.1101 Design and Operating Standards

a) All containment buildings must comply with the following design and operating standards:

1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (e.g. precipitation, wind, run on) and to assure containment of managed wastes.

2) The floor and containment walls of the unit, including the secondary containment system if required under subsection (b) of this Section, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The containment building must meet the structural integrity requirements established by professional organizations generally recognized by the industry such as the American Concrete Institute [ACI] and the American Society of Testing Materials [ASTM]. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for lightweight doors and windows that meet these criteria:

A) They provide an effective barrier against fugitive dust emissions under subsection (c)(1)(D) of this Section below; and

B) The unit is designed and operated in a fashion that assures that
wastes will not actually come in contact with these openings;

3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail, and.

4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include the following design features:

1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).

2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:

   A) The primary barrier must be sloped to drain liquids to the associated collection system; and

   B) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

   A) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum, as follows:

   i) It is constructed with a bottom slope of 1
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percent or more; and

ii) 

It is constructed of a granular drainage material with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-3}$ m$^2$/sec or more.

B) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

C) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 725.293(d)(1). In addition, the containment building must meet the requirements of subsections 725.293(b) and (c) to be an acceptable secondary containment system for a tank.)

4) For existing units other than 90-day generator units, USEPA may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this Subpart DD. In making this demonstration, the owner or operator must do each of the following:

A) Provide written notice to USEPA of their request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing systems, and specific plans for retrofitting the unit with secondary containment;

B) Respond to any comments from USEPA on these plans within 30 days; and
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C) Fulfill the terms of the revised plans, if such plans are approved by USEPA.

c) Owners or operators of all containment buildings must do each of the following:

1) Use controls and practice to ensure containment of the hazardous waste within the unit, and at a minimum do each of the following:

   A) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

   B) Maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

   C) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

   D) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR 60, Appendix A, Method 22 – Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR 60, Subpart 292 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit;

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2) Obtain certification by a qualified registered professional engineer (PE) that the containment building design meets the requirements of subsections (a) through (c) of this Section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators that who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit.

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly. In addition however, the owner or operator must do the following:

A) Upon detection of a condition that has caused to a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must do the following:

i) Enter a record of the discovery in the facility operating record;

ii) Immediately remove the portion of the containment building affected by the condition from service;

iii) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

iv) Within seven days after the discovery of the condition, notify the Agency in writing of the condition, and within 14 working days, provide a written notice to the Agency with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work;

B) The Agency must review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.
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C) Upon completing all repairs and cleanup the owner and operator must notify the Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)(iv) of this Section; and above.

4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

d) For containment buildings that contain areas both with and without secondary containment, the owner or operator must do the following:

1) Design and operate each area in accordance with the requirements enumerated in subsections (a) through (c) of this Section above;

2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

e) Notwithstanding any other provision of this Subpart DD, the Agency shall not require secondary containment for a permitted containment building where the owner operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(Source: Amended at 29 Ill. Reg. _______, effective ____________)

Section 725.1102 Closure and Post-Closure Care

a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated
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with waste and leachate, and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(e) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in 725.Subparts G and H of this Part.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) of this Section above, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (35 Ill. Adm. Code 725.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all the requirements for landfills specified in 725.Subparts G and H of this Part.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

SUBPART EE: HAZARDOUS WASTE MUNITIONS AND EXPLOSIVES STORAGE

Section 725.1200 Applicability

The requirements of this Subpart EE apply to owners or operators who store munitions and explosive hazardous wastes, except as Section 725.101 provides otherwise.

BOARD NOTE: Depending on explosive hazards, hazardous waste munitions and explosives may also be managed in other types of storage units, including containment buildings (Subpart DD of this Part), tanks (Subpart J of this Part), or containers (Subpart I of this Part); see 35 Ill. Adm. Code 726.305 for storage of waste military munitions.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.1201 Design and Operating Standards

a) An owner or operator of a hazardous waste munitions and explosives storage unit must shall design and operate the unit with containment systems, controls, and monitoring that fulfill each of the following requirements:

1) The owner or operator minimizes the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous
decomposition products, or contaminated run-off to the soil, groundwater, surface water, and atmosphere;

2) The owner or operator provides a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

3) For wastes stored outdoors, the owner or operator provides that the waste and containers will not be in standing precipitation;

4) For liquid wastes, the owner or operator provides a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area or a vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (e.g., additional containment, such as overpacking or removal from the waste area); and

5) The owner or operator provides monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

b) Hazardous waste munitions and explosives stored under this Subpart EE may be stored in one of the following:

1) Earth-covered magazines. The owner or operator of an earth-covered magazine must fulfill each of the following requirements:

   A) The magazine is constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

   B) The magazine is so designed and constructed that it fulfills each of the following requirements:

      i) The magazine is of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;

      ii) The magazine provides working space for personnel and equipment in the unit; and
iii) The magazine can withstand movement activities that occur in the unit; and

C) The magazine is located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

2) Above-ground magazines. Above-ground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

3) Outdoor or open storage areas. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

c) An owner or operator must store hazardous waste munitions and explosives in accordance with a Standard Operating Procedure that specifies procedures which ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of Section 725.114, the preparedness and prevention procedures of Subpart C of this Part, and the contingency plan and emergency procedures requirements of Subpart D of this Part, then the Standard Operating Procedure may be used to fulfill those requirements.

d) An owner or operator must package hazardous waste munitions and explosives to ensure safety in handling and storage.

e) An owner or operator must inventory hazardous waste munitions and explosives at least annually.

f) An owner or operator must inspect and monitor hazardous waste munitions and explosives and their storage units as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 725.1202 Closure and Post-Closure Care

a) At closure of a magazine or unit that stored hazardous waste under this Subpart
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

EE, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in Subparts G and H of this Part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (see 35 Ill. Adm. Code 724.410).

(Source: Amended at 29 Ill. Reg. ______, effective _____________)
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 725. APPENDIX A Recordkeeping Instructions


(Source: Amended at 29 Ill. Reg. ______, effective ____________)
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 725. APPENDIX C  USEPA Interim Primary Drinking Water Standards


(Source: Amended at 29 Ill. Reg. ______, effective ___________)
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 725. APPENDIX D  Tests for Significance


(Source: Amended at 29 Ill. Reg. _______, effective ___________)
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 725. APPENDIX E  Examples of Potentially Incompatible Waste


(Source: Amended at 29 Ill. Reg. ______, effective ____________)
Section 725. APPENDIX F Compounds with Henry's Law Constant Less Than 0.1 Y/X (at 25°C)

<table>
<thead>
<tr>
<th>Compound name</th>
<th>CAS No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetaldehyde</td>
<td>107-89-1</td>
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<tr>
<td>Acetamide</td>
<td>60-35-5</td>
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<tr>
<td>2-Acetylaminofluorene</td>
<td>53-96-3</td>
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<tr>
<td>3-Acetyl-5-hydroxypiperidine</td>
<td></td>
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<tr>
<td>3-Acetylpyperidine</td>
<td>618-42-8</td>
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<tr>
<td>1-Acetyl-2-thiourea</td>
<td>591-08-2</td>
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<tr>
<td>Acrylamide</td>
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<td>Acrylic acid</td>
<td>79-10-7</td>
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<tr>
<td>Adenine</td>
<td>73-24-5</td>
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<tr>
<td>Adipic acid</td>
<td>124-04-9</td>
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<tr>
<td>Adiponitrile</td>
<td>111-69-3</td>
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<tr>
<td>Alachlor</td>
<td>15972-60-8</td>
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<td>116-06-3</td>
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<td>Ametryn</td>
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<td>4-Aminobiphenyl</td>
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<td>4-Aminopyridine</td>
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<td>Aniline</td>
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<td>o-Anisidine</td>
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<td>Anthraquinone</td>
<td>84-65-1</td>
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<td>Atrazine</td>
<td>1912-24-9</td>
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<td>Benzenearsonic acid</td>
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<td>Benzenesulfonic acid</td>
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<td>Benzidine</td>
<td>92-87-5</td>
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<td>Benzo(a)anthracene</td>
<td>56-55-3</td>
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<tr>
<td>Benzo(k)fluoranthene</td>
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<td>Benzoic acid</td>
<td>65-85-0</td>
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<td>Benzo(g,h,i)pyrene</td>
<td>191-24-2</td>
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<tr>
<td>Benzo(a)pyrene</td>
<td>50-32-8</td>
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<tr>
<td>Benzyl alcohol</td>
<td>100-51-6</td>
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<tr>
<td>γ-BHC</td>
<td>58-89-9</td>
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<tr>
<td>Bis(2-ethylhexyl)phthalate</td>
<td>117-81-7</td>
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<tr>
<td>Bromochloromethyl acetate</td>
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<tr>
<td>Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile)</td>
<td>1689-84-5</td>
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<tr>
<td>Butyric acid</td>
<td>107-92-6</td>
</tr>
<tr>
<td>Caprolactam (hexahydro-2H-azepin-2-one)</td>
<td>105-60-2</td>
</tr>
</tbody>
</table>
POLLUTION CONTROL BOARD
NOTICE OF PROPOSED AMENDMENTS

Catechol (o-dihydroxybenzene) 120-80-9
Cellulose 9004-34-6
Cell wall
Chlorhydrin (3-Chloro-1,2-propanediol) 96-24-2
Chloroacetic acid 79-11-8
2-Chloroacetophenone 93-76-5
p-Chloroaniline 106-47-8
p-Chlorobenzophenone 134-85-0
Chlorobenzilate 510-15-6
p-Chloro-m-cresol (6-chloro-m-cresol) 59-50-7
3-Chloro-2,5-diketopyrroolidine
Chloro-1,2-ethane diol 106-48-9
4-Chlorophenol 95-57-8 & 106-48-9
Chlorophenol polymers (2-chlorophenol & 4-chlorophenol) 5344-82-1
1-(o-Chlorophenyl)thiourea 218-01-9
Chrysene 77-92-9
Citric acid 8001-58-9
m-Cresol 108-39-4
o-Cresol 106-44-5
p-Cresol 1319-77-3
4-Cumylphenol 27576-86-6
Cyanide 57-12-5
4-Cyanomethyl benzoate 333-41-5
Diazinon 53-70-3
Dibenzo(a,h)anthracene 84-74-2
Dibutylphthalate 111-42-2
2,5-Dichloroaniline (N,N'-dichloroaniline) 95-82-9
2,6-Dichlorobenzonitrile 1194-65-6
2,6-Dichloro-4-nitroaniline 99-30-9
2,5-Dichlorophenol 333-41-5
3,4-Dichlorotetrahydrofuran 3511-19-9
Dichlorvos (DDVP) 62-73-7
Diethanolamine 111-42-2
N,N-Diethylaniline 91-66-7
Diethylene glycol 111-46-6
Diethylene glycol dimethyl ether (dimethyl Carbitol) 111-96-6
Diethylene glycol monobutyl ether (butyl Carbitol) 112-34-5
Diethylene glycol monoethyl ether acetate (Carbitol acetate) 112-15-2
Diethylene glycol monoethyl ether (Carbitol Cellosolve) 111-90-0
POLLUTION CONTROL BOARD

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Diethylene glycol monomethyl ether (methyl Carbitol) 111-77-3
N,N'-Diethylhydrazine 1615-80-1
Diethyl(4-methylumbelliferyl)thionophosphate 299-45-6
Diethylphosphorothioate 126-75-0
N,N'-Diethylpropionamide 15299-99-7
Dimethoate 60-51-5
2,3-Dimethoxystrychnidin-10-one 357-57-3
4-Dimethylaminoazobenzene 60-11-7
7,12-Dimethylbenz(a)anthracene 57-97-6
3,3-Dimethylbenzidine 119-93-7
Dimethylcarbamoyl chloride 79-44-7
Dimethyldisulfide 624-92-0
Diethylformamide 68-12-2
1,1-Dimethylhydrazine 57-14-7
Dimethylphthalate 131-11-3
Dimethylsulfoxide 67-68-5
4,6-Dinitro-o-cresol 534-52-1
1,2-Diphenyldrazine 122-66-7
Dipropylene glycol (1,1'-oxydi-2-propanol) 110-98-5
Endrin 72-20-8
Epinephrine 51-43-4
mono-Ethanolamine 141-43-5
Ethyl carbamate (urethane) 51-79-6
Ethylene glycol 107-21-1
Ethylene glycol monobutyl ether (butyl Cellosolve) 111-76-2
Ethylene glycol monooctyl ether (Cellosolve) 110-80-5
Ethylene glycol monoethyl ether acetate (Cellosolve acetate) 111-15-9
Ethylene glycol monomethyl ether (methyl Cellosolve) 109-86-4
Ethylene glycol monophenyl ether (phenyl Cellosolve) 122-99-6
Ethylene glycol monopropyl ether (propyl Cellosolve) 2807-30-9
Ethylene thiourea (2-imidazolidinethione) 9-64-57
4-Ethylmorpholine 100-74-3
3-Ethylphenol 620-17-7
Fluoroacetic acid, sodium salt 62-74-8
Formaldehyde 50-00-0
Formamide 75-12-7
Formic acid 64-18-6
Fumaric acid 110-17-8
Glutaric acid 110-94-1
Glycerin (Glycerol) 56-81-5
POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Chemical Name</th>
<th>CAS Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glycidol</td>
<td>556-52-5</td>
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<tr>
<td>Glycinamide</td>
<td>598-41-4</td>
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<td>Glyphosate</td>
<td>1071-83-6</td>
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<tr>
<td>Guthion</td>
<td>86-50-0</td>
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<td>Hexamethylene-1,6-diisocyanate (1,6-diisocyanatohexane)</td>
<td>822-06-0</td>
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<td>Hexamethyl phosphoramid</td>
<td>680-31-9</td>
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<td>Hexanoic acid</td>
<td>142-62-1</td>
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<td>Hydrazine</td>
<td>302-01-2</td>
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<td>Hydrocyanic acid</td>
<td>74-90-8</td>
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<td>Hydroquinone</td>
<td>123-31-9</td>
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<td>Hydroxy-2-propionitrile (hydracrylonitrile)</td>
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<td>Indeno(1,2,3-cd)pyrene</td>
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<td>Lead subacetate (lead acetate, monobasic)</td>
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<td>Methomyl</td>
<td>16752-77-5</td>
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<td>p-Methoxyphenol</td>
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<td>4,4'-Methylene-bis-(2-chloroaniline)</td>
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<td>4,4'-Methylenediphenyl diisocyanate (diphenyl methane diisocyanate)</td>
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<td>5-Methylfurfural</td>
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<td>Methyliminodiacetic acid</td>
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<td>Methyl methane sulfonate</td>
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<td>Methylparathion</td>
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<td>Monomethylformamide (N-methylformamide)</td>
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<td>α-Naphthol</td>
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<td>β-Naphthol</td>
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<td>β-Naphthylamine</td>
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<td>Chemical</td>
<td>CAS Number</td>
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<td>Neopentyl glycol</td>
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<tr>
<td>o-Nitroaniline</td>
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<td>2-Nitrophenol</td>
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<td>4-Nitrophenol</td>
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<td>Nitrosoguanidine</td>
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<td>Oxalic acid</td>
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<td>Parathion</td>
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<td>Phenacetin</td>
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<td>Phenylacetic acid</td>
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<td>o-Phenylene diamine</td>
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<td>Phenyl mercuric acetate</td>
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<td>Phthalic anhydride</td>
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<td>α-Picoline (2-methyl pyridine)</td>
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<td>1,3-Propane sulfone</td>
<td>1120-71-4</td>
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<td>β-Propiolactone</td>
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<td>Proporur (Baygon)</td>
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<td>Pyrene</td>
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<td>Pyridinium bromide</td>
<td>39416-48-3</td>
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<td>Quinoline</td>
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<td>Resorcinol</td>
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<td>Simazine</td>
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<tr>
<td>Tetraethylthiophosphate</td>
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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Chemical Name</th>
<th>CAS Number</th>
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</thead>
<tbody>
<tr>
<td>Tetraethylenepentamine</td>
<td>112-57-2</td>
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<td>Thiofanox</td>
<td>39196-18-4</td>
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<td>Thiosemicarbazide</td>
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<td>2,4-Toluenediamine</td>
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<td>3,4-Toluenediamine</td>
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<td>2,4-Toluene diisocyanate</td>
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<td>p-Toluic acid</td>
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<td>m-Toluidine</td>
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<td>1,1,2-Trichloro-1,2,2-trifluoroethane</td>
<td>76-13-1</td>
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<td>Triethanolamine</td>
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<td>Triethylene glycol dimethyl ether</td>
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<td>Tripropylene glycol</td>
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<td>Warfarin</td>
<td>81-81-2</td>
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<tr>
<td>3,4-Xylenol (3,4-dimethylphenol)</td>
<td>95-65-8</td>
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</tbody>
</table>

(Source: Amended at 29 Ill. Reg. _______, effective ____________)
DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

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

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

3) **Section Numbers:** Proposed Action:
   
<table>
<thead>
<tr>
<th>Section Numbers</th>
<th>Proposed Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>140.13</td>
<td>Amendment</td>
</tr>
<tr>
<td>140.24</td>
<td>Amendment</td>
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</tbody>
</table>

4) **Statutory Authority:** Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) **Complete Description of the Subjects and Issues Involved:** These proposed amendments provide clarification to the definition of "vendor" and further describe the Department's relationship with alternate payees.

   In Section 140.13, the definition for "vendor" is expanded to include "provider" as an interchangeable term that has the same meaning as "vendor".

   In Section 140.24, several changes are being proposed concerning alternate payees. The proposed amendment further defines the circumstances under which the Department may permit individual practitioners in the Medical Assistance Program to designate an alternate payee and describes who may serve as an alternate payee. The changes preclude the designation of a payee or alternate payee that appoints, employs, or contracts with any person who is otherwise sanctioned under and state or federal healthcare program. Finally, alternate payees are required to accept and forward, to the provider, any remittance advice.

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

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

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

9) **Are there any other proposed amendments pending on this Part?** Yes

   **Sections** | **Proposed Action** | **Illinois Register Citation**
   |----------------|---------------------|
   | 140.523        | Amendment           | August 27, 2004 (28 Ill. Reg.12066)

10) **Statement of Statewide Policy Objective:** These proposed amendments do not affect units of local government.
DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Scattoloni
Office of the General Counsel, Rules Section
Illinois Department of Public Aid
201 South Grand Avenue East, Third Floor
Springfield, Illinois 62763-0002
(217)524-0081

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

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

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Providers of medical services in the Department's Medical Assistance Program

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

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2004

The full text of the Proposed Amendments begins on the next page:
### DEPARTMENT OF PUBLIC AID

**NOTICE OF PROPOSED AMENDMENTS**

**TITLE 89: SOCIAL SERVICES**

**CHAPTER I: DEPARTMENT OF PUBLIC AID**

**SUBCHAPTER d: MEDICAL PROGRAMS**

**PART 140**

**MEDICAL PAYMENT**

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SUBPART B: MEDICAL PROVIDER PARTICIPATION

Section 140.13 Definitions

"Department Policy". For purposes of this Part, "Department policy" shall mean the written requirements of the Department set forth in the Medical Assistance Program Handbooks, and the Department's written manuals, bulletins and releases. It shall also include any additional policy statements transmitted in writing to a vendor.

"Entity". For purposes of this Part, "entity" means any person, firm, corporation, partnership, association, agency, institution, or other legal organization.

"Investor". For purposes of this Part, "investor" shall mean any entity that owns (directly or indirectly) five percent or more of the shares of stock or other evidences of ownership of a vendor, or holds (directly or indirectly) five percent or more of the debt of a vendor, or owns and holds (directly or indirectly) three percent or more of the combined debt and equity of a vendor.

"Management Responsibility". For purposes of this Part, a person with management responsibility includes a person vested with discretion or judgment who either alone or in conjunction with others, conducts, administers or oversees
either the general concerns of the vendor; or a portion of the vendor's concerns. A person with management responsibility shall specifically include the pharmacist in a pharmacy, the medical director of a laboratory, the administrator of a hospital or nursing home, the dispatcher in a transportation vendor, dispatchers and all individuals in charge of day to day operations of a non-emergency transportation vendor, the person or persons responsible for preparation and submittal of billings for services to the Department, and the manager of a group practice, clinic or shared health facility.

"Non-Emergency Transportation Vendor". For purposes of this Part, non-emergency transportation vendor shall mean any transportation provider identified in Section 140.490(a) other than those identified in Section 140.490(a)(1) and (a)(6).

"Technical or Other Advisor". For purposes of this Part, "technical or other advisor" shall mean any entity that provides any form of advice to a vendor regarding the vendor's business or participation in the Medical Assistance Program in return for compensation, directly or indirectly, in any form.

"Vendor". For purposes of this Part, "vendor" or "provider" shall mean a person, firm, corporation, association, agency, institution, or other legal entity that provides receiving payment or applying for authorization to receive payment for goods or services to a recipient or recipients, and is enrolled to participate in the Medical Assistance Program pursuant to 89 Ill. Adm. Code 140.11 and 140.12.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)

Section 140.24 Payment Procedures

a) Payment of valid claims will be made by a State warrant (check) issued through the Office of the State Comptroller.

b) All providers of medical services must designate a payee when enrolling in the Department's Illinois Medical Assistance Program.

1) Providers enrolled as business entities are limited to one payee. A business entity is defined as any firm, corporation, partnership, agency, institution or other legal organization organized for the purpose of providing medically related professional services. A provider enrolled as a business entity may designate the corporate or partnership name as the payee. The mailing address for the payee must be the provider's service
address, or the designated address of the provider's corporate or partnership office, or a designated address that will accept and forward the remittance advice to the business entity.

2) Providers enrolled as individual practitioners are allowed to have more than one payee. An individual practitioner is defined as an individual person licensed by an authorized state agency to provide medical services. Payment may be mailed to an individual practitioner at one of the following addresses that will accept and forward the remittance advice to the individual practitioner:

A) The provider's service address; or

B) The provider's residence; or

C) The provider's designated address; or

D) The address of the provider's designated alternate payee pursuant to subsection (d) of this Section; or

E) The address of the entity specified according to an arrangement under Section 140.27(c) or (d).

c) A long term care facility and its corporate or partnership owner may request the facility's warrant be sent directly to the business office address of the corporate or partnership owner. After approval is given, the warrant will be issued in the name of the facility or corporate name doing business under the facility name, but sent to the business office address of the corporate or partnership owner rather than the facility.

d) Individual practitioners may request the Department to designate an alternate payee. The Department may permit such a request if the Department determines that such designation is consistent with the provision of medical services to eligible recipients and the Department shall permit individual practitioners to designate an alternate payee if one of the following conditions is met:

1) The individual medical practitioner has a contractual/salary arrangement, as a condition of employment with a hospital or professional school. A professional school is defined as a college or university offering a degree to qualify individuals for licensure to perform medical services; or

2) The individual practitioner is a student in a medical school program accredited by the American Medical Association or the American Osteopathic Association, and has a contractual/salary arrangement, as a condition of enrollment in the medical school program.
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2) The individual medical practitioner has a contractual/salary arrangement with or is employed by is part of a practitioner owned group practice. The practitioner owned group practice must be owned by consisting of three or more full-time licensed individual practitioners who are eligible to participate in the Medical Assistance Program; or of the equivalent thereof.

3) The medical practitioner is employed by a practitioner who requires, as a condition of employment, that the fees be turned over to the employer.

34) The individual medical practitioner has a contractual/salary arrangement or is employed by a governmental entity that requires, as a condition of employment, that the fees be turned over to the governmental entity; or.

45) The individual medical practitioner has a contractual/salary arrangement or is employed by a community mental health agency that is certified by the Department of Human Services under 59 Ill. Adm. Code 132. The community mental health agency must be and is enrolled as a provider in the Illinois Medical Assistance Program; or.

56) The individual medical practitioner has a contractual/salary arrangement or is employed by a Federally Qualified Health Center, rural Health Center or Encounter Rate Clinic that is enrolled as a provider in the Department’s Medical Assistance Program; or.

6) The individual practitioner has a contractual/salary arrangement or is employed by a hospital affiliate, as defined by the Hospital Licensing Act [210 ILCS 85].

e) The Department will not permit the designation of a payee or alternate payee that appoints, employs, or contracts with any person as an owner, officer, director, or individual with management or advisory responsibility who is terminated, suspended, or barred or has voluntarily withdrawn as a result of a settlement agreement, from any state or federal healthcare program.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
ILLINOIS REGISTER

05

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

1) **Heading of the Part:** Licensing

2) **Code Citation:** 11 Ill. Adm. Code 502

3) **Section Number:** 502.350
   **Proposed Action:** Amend

4) **Statutory Authority:** 230 ILCS 5/9(b)

5) **A Complete Description of the Subjects and Issues Involved:** Currently, Section 502.350 requires new applicants to demonstrate to the Board that he or she has knowledge and skills of a farrier. This rulemaking proposal requires new applicants to pass both oral and practical examinations and that the exams be administered by 2 licensed farriers with at least 3 years experience.

6) **Will this proposed amendment replace emergency amendments currently in effect?** No

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

8) **Do these proposed amendment contain incorporation by reference?** No

9) **Are there any other proposed amendments pending in this Part?** No

10) **Statement of Statewide Policy Objectives:** No local governmental units will be required to increase expenditures.

11) **Time, Place and Manner in which interested persons may comment on this proposed rulemaking:** Written comments should be submitted, within 45 days after this notice, to:

    Mickey Ezzo  
    Illinois Racing Board  
    100 West Randolph, Suite 7-701  
    Chicago, Illinois 60601  
    (312) 814-5017

12) **Initial Regulatory Flexibility Analysis:**

    A) **Types of small business affected:** None

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

NOTICE OF PROPOSED AMENDMENT

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: it was not anticipated when they were submitted.

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

NOTICE OF PROPOSED AMENDMENT

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER c: RULES APPLICABLE TO ALL OCCUPATION LICENSEES

PART 502
LICENSING

SUBPART A: PROCEDURE

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SUBPART B: STATUTORY GROUNDS FOR DENIAL OF A LICENSE

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<td>502.100</td>
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SUBPART C: GENERAL CRITERIA

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SUBPART D: OWNERS
NOTICE OF PROPOSED AMENDMENT

ILLINOIS RACING BOARD

Section 502.120 Owners

SUBPART E: TRAINERS AND ASSISTANT TRAINERS

Section 502.200 Trainers and Assistant Trainers
Section 502.210 Prospective Trainers or Assistant Trainers
Section 502.220 Workers' Compensation

SUBPART F: JOCKEYS AND APPRENTICE JOCKEYS

Section 502.230 Jockeys and Apprentice Jockeys
Section 502.235 Apprentice Jockeys, Criteria for Eligibility
Section 502.238 Apprentice Contract or Certificate

SUBPART G: DRIVERS

Section 502.250 Harness Driver
Section 502.260 Prospective Harness Drivers
Section 502.270 "Q" Licenses
Section 502.280 "P" Licenses
Section 502.290 "A" Licenses

SUBPART H: OTHER LICENSEES

Section 502.300 Veterinarians
Section 502.320 Veterinary Assistant
Section 502.350 Farriers (Blacksmiths)
Section 502.380 Exercise Riders
Section 502.400 Pony Person
Section 502.450 Stable Foreman
Section 502.500 Jockey Agents
Section 502.600 Authorized Agents
Section 502.650 Tack Shop Operators and Other Vendors
Section 502.660 Vendor Helper
NOTICE OF PROPOSED AMENDMENT

SUBPART I: CONFLICTS OF INTEREST

Section
502.800  General Provisions
502.820  Dual Licensing
502.830  Limitations on License
502.840  Husbands and Wives
502.850  Transfer of a Horse

AUTHORITY: Implementing Section 15 and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b) and 15].


SUBPART H: OTHER LICENSEES

Section 502.350  Farriers (Blacksmiths)

An applicant for a farrier's license shall have been licensed previously by the Board or another racing jurisdiction or shall show proof of having passed a farrier's examination administered by a state agency. A horseshoer's license from another racing jurisdiction where he was administered and passed a farrier's examination may be accepted as evidence of experience and qualifications. Farriers who have never been licensed by the Board or another racing jurisdiction shall be required to; or who cannot show proof of having passed a farrier's examination shall establish by
ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

demonstration to the stewards or their designees that the applicant has the knowledge and skills of a farrier.

a) Pass an oral and practical examination. The practical examination shall consist of shoeing a horse and working in the fire to make a bar shoe and a shoe with a sticker and a block.

b) The oral and practical examinations shall be administered by 2 licensed farriers with at least 3 years experience each and witnessed by a Steward or the Steward's designee.

(Source: Amended at 29 Ill. Reg. _____, effective ____________)


NOTICE OF PROPOSED AMENDMENT

1) **Heading of the Part:** Conditions of Employment

2) **Code Citation:** 80 Ill. Adm. Code 630

3) **Section Number:** 630.315  **Proposed Action:** Amendment

4) **Statutory Authority:** Implementing and authorized by the State Treasurer Employment Code [15 ILCS 510].

5) **A Complete Description of the Subjects and Issues Involved:** This amendment updates the Treasurer’s internal rules governing personnel, in order to conform to changes in law and adopt best practices.

6) **Will this proposed rulemaking replace an emergency rulemaking currently in effect?** No

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

8) **Does this proposed amendments contain incorporations by reference?** No

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

10) **Statement of Statewide Policy Objectives (if applicable):** This rulemaking does not create or expand a State mandate.

11) **Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:** Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

    Daniel Yabut  
    Legal Division  
    The Honorable Judy Baar Topinka  
    Office of the Illinois State Treasurer  
    100 W. Randolph, Suite 15-600  
    Chicago IL 60601  
    (312) 814-8950

    If because of a physical disability you are unable to put comments into writing, you may make them orally to the person listed above.
12) 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

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: This rulemaking was not anticipated by the Treasurer’s Office when the two most recent regulatory agendas were published.

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

NOTICE OF PROPOSED AMENDMENT

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

PART 630
CONDITIONS OF EMPLOYMENT

SUBPART A: GRIEVANCE PROCEDURE

Section
630.110 Grievance – Definition
630.120 Limitation
630.130 Abandonment – Extension
630.140 Grievance Committee
630.150 Representation

SUBPART B: LEAVES OF ABSENCE

Section
630.210 Sick Leave
630.220 Accumulation of Sick Leave
630.230 Leave for Personal Business
630.240 Leave of Absence Without Pay
630.250 Leaves of Absence – Special
630.270 Leave to Take Exempt Position
630.280 Military, Job Corps, and Peace Corps Leave
630.290 Leave for Annual Military Reserve Training or Special Duty
630.300 Leave for Military Physical Examinations
630.310 Election to Public Office
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630.320 Employee Rights After Leave
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630.360 Holiday During Vacation
630.370 Eligibility for Holiday Pay
630.380 Holidays – Regional or Special

SUBPART C: VACATION
NOTICE OF PROPOSED AMENDMENT

Section 630.410 Eligibility

SUBPART D: WORK SCHEDULES

Section 630.510 Work Schedules

SUBPART E: OVERTIME

Section
630.610 Overtime
630.620 Compensatory Time
630.630 Compensatory Time Schedule
630.640 Overtime Compensation in Cash
630.650 Overtime – Accumulation
630.660 Overtime Payable Upon Death

AUTHORITY: Implementing and authorized by the State Treasurer Employment Code [15 ILCS 510].


SUBPART B: LEAVES OF ABSENCE

Section 630.315 Disaster Service Leave

Any employee, except those in temporary, emergency or per diem status, who is a certified disaster service volunteer of the American Red Cross or assigned to the Illinois Emergency Management Agency in accordance with the Illinois Emergency Management Agency Act [20 ILCS 3305], the Emergency Management Assistance Compact Act [45 ILCS 151], or other applicable administrative rules may be granted leave with pay for up to 20 working days in any 12 month period. The leave may be granted upon request of the American Red Cross or the Illinois Emergency Management Agency and upon approval of the Treasurer. Disasters must be disasters designated at Level III and above occurring within Illinois.

(Source: Amended at 29 Ill. Reg. ______, effective ____________)
NOTICE OF ADOPTED AMENDMENTS

1) **Heading of the Part**: Aid to the Aged, Blind or Disabled

2) **Code Citation**: 89 Ill. Adm. Code 113

3) **Section Numbers**
   - 113.1 Amendment
   - 113.245 Amendment
   - 113.264 New Section

4) **Statutory Authority**: Implementing Article III and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. III and 12-13]

5) **Effective Date of Amendments**: December 16, 2004

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

7) **Do these amendments contain incorporations by reference?** No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency’s principal office and is available for public inspection.

9) **Notice of Proposal published in Illinois Register**: August 6, 2004; 28 Ill. Reg. 10885

10) **Has JCAR Issued a Statement of Objection to these amendments?** No

11) **Difference between proposal and final version**: No substantive changes were made in the text of the proposed amendments.

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 these amendments replace emergency amendments currently in effect?** Yes

14) **Are there any amendments pending on this Part?** Yes

<table>
<thead>
<tr>
<th>Section Number</th>
<th>Proposed Action</th>
<th>Illinois Register Citation</th>
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<tr>
<td>113.260</td>
<td>Amendment</td>
<td>28 Ill. Reg. 12400; September 3, 2001</td>
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</table>

15) **Summary and purpose of amendments**: Pursuant to provisions of PA 93-741 (effective 7/15/04), this rulemaking provides AABD cash eligibility to persons who have been
DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

found ineligible for Supplemental Security Income (SSI) due to the expiration of the seven-year period of eligibility for refugees and asylees pursuant to 8 USC 1612(a)(2). As a result of these amendments, a special needs allowance of $500 per month will be provided to these individuals until July 1, 2006.

16) Information and questions regarding these adopted amendments shall be directed to:

Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor Harris Bldg.
Springfield, Illinois 62762
217/785-9772

The full text of Adopted Amendments begins on the next page:
DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 113
AID TO THE AGED, BLIND OR DISABLED

SUBPART A: GENERAL PROVISIONS

Section 113.1 Description of the Assistance Program
113.5 Incorporation By Reference

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section 113.9 Client Cooperation
113.10 Citizenship
113.20 Residence
113.30 Age
113.40 Blind
113.50 Disabled
113.60 Living Arrangement
113.70 Institutional Status
113.80 Social Security Number

SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section 113.100 Unearned Income
113.101 Budgeting Unearned Income
113.102 Budgeting Unearned Income of Applicants Receiving Income on Date of Application And/Or Date of Decision
113.103 Initial Receipt of Unearned Income
113.104 Termination of Unearned Income
113.105 Unearned Income In-Kind
113.106 Earmarked Income
113.107 Lump Sum Payments and Income Tax Refunds
113.108 Protected Income (Repealed)
113.109 Earned Income (Repealed)
DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

113.110 Budgeting Earned Income (Repealed)
113.111 Protected Income
113.112 Earned Income
113.113 Exempt Unearned Income
113.114 Budgeting Earned Income of Applicants Receiving Income On Date of Application And/Or Date of Decision
113.115 Initial Employment
113.116 Budgeting Earned Income For Contractual Employees
113.117 Budgeting Earned Income For Non-contractual School Employees
113.118 Termination of Employment
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113.130 Income From Work/Study/Training Programs
113.131 Earned Income From Self-Employment
113.132 Earned Income From Roomer and Boarder
113.133 Earned Income From Rental Property
113.134 Earned Income In-Kind
113.139 Payments from the Illinois Department of Children and Family Services
113.140 Assets
113.141 Exempt Assets
113.142 Asset Disregard
113.143 Deferral of Consideration of Assets
113.154 Property Transfers For Applications Filed Prior To October 1, 1989 (Repealed)
113.155 Property Transfers For Applications Filed On Or After October 1, 1989 (Repealed)
113.156 Court Ordered Child Support Payments of Parent/Step-Parent
113.157 Responsibility of Sponsors of Non-citizens Entering the Country Prior to 8/22/96
113.158 Responsibility of Sponsors of Non-citizens Entering the Country On or After 08/22/96
113.160 Assignment of Medical Support Rights

SUBPART D: PAYMENT AMOUNTS

Section
113.245 Payment Levels for AABD
113.246 Personal Allowance
113.247 Personal Allowance Amounts
113.248 Shelter
113.249 Utilities and Heating Fuel
113.250 Laundry
DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

113.251 Telephone
113.252 Transportation, Lunches, Special Fees
113.253 Allowances for Increase in SSI Benefits
113.254 Nursing Care or Personal Care in Home Not Subject to Licensing
113.255 Sheltered Care/Personal or Nursing Care in a Licensed Group Care Facility
113.256 Shopping Allowance
113.257 Special Allowances for Blind and Partially Sighted (Blind Only)
113.258 Home Delivered Meals
113.259 AABD Fuel and Utility Allowances By Area
113.260 Sheltered Care/Personal or Nursing Care Rates
113.261 Cases in Licensed Intermediate Care Facilities, Licensed Skilled Nursing Facilities, DMHDD Facilities and All Other Licensed Medical Facilities
113.262 Meeting the Needs of an Ineligible Dependent with Client's Income
113.263 Service Animals
113.264 Refugees Ineligible for SSI

SUBPART E: OTHER PROVISIONS

Section
113.300 Persons Who May Be Included In the Assistance Unit
113.301 Grandfathered Cases
113.302 Interim Assistance (Repealed)
113.303 Special Needs Authorizations
113.304 Retrospective Budgeting
113.305 Budgeting Schedule
113.306 Purchase and Repair of Household Furniture (Repealed)
113.307 Property Repairs and Maintenance
113.308 Excess Shelter Allowance
113.309 Limitation on Amount of AABD Assistance to Recipients from Other States (Repealed)
113.320 Redetermination of Eligibility
113.330 Attorney's Fees for VA Appellants (Repealed)

SUBPART F: INTERIM ASSISTANCE

Section
113.400 Description of the Interim Assistance Program
113.405 Pending SSI Application (Repealed)
113.410 More Likely Than Not Eligible for SSI (Repealed)
113.415 Non-Financial Factors of Eligibility (Repealed)
DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

113.420  Financial Factors of Eligibility (Repealed)
113.425  Payment Levels for Chicago Interim Assistance Cases (Repealed)
113.430  Payment Levels for all Interim Assistance Cases Outside Chicago (Repealed)
113.435  Medical Eligibility (Repealed)
113.440  Attorney's Fees for SSI Applicants (Repealed)
113.445  Advocacy Program for Persons Receiving Interim Assistance (Repealed)
113.450  Limitation on Amount of Interim Assistance to Recipients from Other States (Repealed)
113.500  Attorney's Fees for SSI Appellants (Renumbered)


DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

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SUBPART A: GENERAL PROVISIONS

Section 113.1 Description of the Assistance Program

The Aid to the Aged, Blind, or Disabled program provides financial assistance, medical assistance and social services to individuals who have been determined to be aged, blind or disabled as defined by the Social Security Administration. Financial aid is available under this program only for persons who are receiving Supplemental Security Income (SSI) or who have been found ineligible for SSI on the basis of income and who meet all other eligibility standards. In addition, financial aid is available under this program to persons who meet all other eligibility standards and who do not receive SSI who are:

a) Non-citizens age 65 or older who meet the citizenship requirements of 89 Ill. Admin. Code 113.10, were legally present in the United States on August 22, 1996, and who have been found "not disabled" by the Social Security Administration; or

b) Persons who are ineligible for SSI due to the expiration of the period of eligibility for refugees and asylees pursuant to 8 USC 1612(a)(2).

(Source: Amended at 29 Ill. Reg. 648, effective December 16, 2004)
Section 113.245 Payment Levels for AABD

a) Payment Levels for AABD cases are determined by using individual allowances.

b) Allowances which may be included for eligible cases are contained in Sections 113.246 to 113.258.

(Source: Amended at 29 Ill. Reg. 648, effective December 16, 2004)

Section 113.264 Refugees Ineligible for SSI

Until July 1, 2006, an allowance not to exceed $500 is authorized to be provided to persons who are ineligible for SSI due to the expiration of the period of eligibility for refugees and asylees pursuant to 8 USC 1612(a)(2). No other allowances will be authorized.

(Source: Added at 29 Ill. Reg. 648, effective December 16, 2004)
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED REPEALER

1) **Heading of the Part:** Rulemaking Procedures

2) **Code Citation:** 92 Ill. Adm. Code 102

3) **Section Numbers:**

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<td>102.11</td>
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<td>102.31</td>
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4) **Statutory Authority:** Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

5) **Effective Date of Rulemaking:** December 20, 2004

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 repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) **Notice of Proposal published in Illinois Register:** October 8, 2004; 28 Ill. Reg. 13339

10) **Has JCAR issued a Statement of Objection to this repealer?** No

11) **Differences between proposal and final version:** None

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** No changes were necessary.

13) **Will this rulemaking replace an emergency rulemaking currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and Purpose of repealer:** By this Notice, the Department has repealed this Part in its entirety. The Department determined that this Part is no longer useful or necessary.
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED REPEALER

Since the federal hazardous materials transportation regulations are now applicable to intrastate as well as interstate movements of hazardous materials, the Department has little or no discretion with respect to the Illinois Hazardous Materials Transportation Regulations (IHMTR). Further, since the Department is not at liberty to amend the IHMTR pursuant to a petition for rulemaking submitted to the Department, interested parties are encouraged to submit comments to the U.S. DOT in order to effect amendments to the IHMTR. Finally, since the procedural language found in this Part is so similar to the procedural provisions contained in the Illinois Administrative Procedure Act [5 ILCS 100], this Part was no longer necessary.

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

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois 62794-9212
217/785-1181
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

1) **Heading of the Part**: Procedures

2) **Code Citation**: 92 Ill. Adm. Code 107

3) **Section Numbers**: Adopted Action:

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<td>107.601</td>
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4) **Statutory Authority**: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)] and Section 3-704(b) of the Illinois Vehicle Code [625 ILCS 5/3-704(b)]

5) **Effective Date of Amendments**: December 20, 2004

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

7) **Do these amendments contain incorporations by reference?** Yes

8) **A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department’s Division of Traffic Safety and is available for public inspection.**

9) **Notice of Proposal published in Illinois Register**: October 1, 2004; 28 Ill. Reg. 13151

10) **Has JCAR issued a Statement of Objection to these amendments?** No

11) **Differences between proposal and final version**: Various nonsubstantive technical changes were made in agreement with JCAR.

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** Yes
13) Will these amendments replace any emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of amendments: By this Notice, the Department has repealed those Sections in “Subpart B: Exemptions” that address intrastate exemptions issued by the Department. These Sections are no longer necessary in this Part since the Department terminated all intrastate exemptions effective September 30, 1997. The exemptions were terminated due to changes in the federal authority governing intrastate transportation of placarded hazardous materials. The Research and Special Programs Administration, under the US DOT, adopted a rule at 62 FR 1208, January 8, 1997, that became effective October 1, 1997, providing for the regulation at the federal level of interstate shippers and carriers of placarded hazardous materials. Since the January 8, 1997, federal rule would have caused the preemption of all existing Department exemptions as of October 1, 1997, the Department took action one day prior to terminate them. Since exemptions issued by the US DOT are now the only exemptions available to regulated parties, this rulemaking was necessary to update the Part so it reflects current practice.

Additionally, the Department amended Section 107.601 to update the incorporation by reference of 49 CFR 107, subpart G, to the October 1, 2004 edition, the most recent edition of 49 CFR.

16) Information and questions regarding these adopted amendments shall be directed to:

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois 62794-9212

217/785-1181

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

NOTICE OF ADOPTED AMENDMENTS

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 107
PROCEDURES

SUBPART A: GENERAL PROVISIONS

Section
107.1 Purpose and Scope
107.3 Definitions
107.5 Request for Confidential Treatment
107.11 Service
107.13 Subpoenas

SUBPART B: EXEMPTIONS

Section
107.101 Purpose and Scope (Repealed)
107.102 Persons Holding Federal Exemptions
107.103 Applications for Exemptions for Persons Transporting Hazardous Materials Not Governed by the Federal Hazardous Materials Regulations (Repealed)
107.105 Application for Renewal (Repealed)
107.107 Initial Application Review (Repealed)
107.109 Processing of Application (Repealed)
107.111 Party to an Exemption (Repealed)
107.117 Withdrawal (Repealed)
107.119 Termination (Repealed)
107.121 Appeal (Repealed)
107.123 Availability for Public Inspection (Repealed)

SUBPART D: ENFORCEMENT

Section
107.301 Responsibility for Enforcement
107.303 Purpose and Scope
107.305 Investigations
107.307 Inspection and Examination of Records and Properties
107.308 Notice of Apparent Violation
107.309 Stopping of Vehicles
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107.310 Department Review of Notice of Apparent Violation
107.311 Warning Letter
107.313 Civil Penalties Generally
107.314 Maximum Penalties
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107.316 Reply
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107.320 Presiding Officer's Decision
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107.324 Failure to Pay Civil Penalty
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107.343 Imminent Hazards
107.371 Criminal Penalties Generally
107.373 Referral for Prosecution

SUBPART E: REGISTRATION OF PERSONS WHO OFFER OR TRANSPORT HAZARDOUS MATERIALS

Section
107.601 Incorporation by Reference of 49 CFR 107, subpart G

107.APPENDIX A Standard Conditions Applicable to Exemptions, Packages, Containers, Shipments

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)] and Section 3-704(b) of the Illinois Vehicle Code [625 ILCS 5/3-704(b)].
DEPARTMENT OF TRANSPORTATION

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SUBPART B: EXEMPTIONS

Section 107.101 Purpose and Scope (Repealed)

This subpart prescribes procedures by which persons who are not subject to the federal Hazardous Materials Regulations, but who are subject to the requirements of these regulations may obtain administrative relief therefrom in the form of an exemption. Exemptions provided for in this subpart will be granted only where they insure equivalent levels of safety or levels of safety consistent with the public interest and the policy of the Illinois Hazardous Materials Transportation Act.

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.103 Applications for Exemptions for Persons Transporting Hazardous Materials Not Governed by the Federal Hazardous Materials Regulations (Repealed)

a) Any person who is subject to the requirements of the IHMTR and who transports hazardous materials not governed by the federal Hazardous Materials Regulations may apply to the Director for an exemption from the IHMTR.

b) Each application filed under this Section for an exemption must:

1) Be submitted to: Division of Traffic Safety, Illinois Department of Transportation, 3215 Executive Park Drive, P. O. Box 19212, Springfield, Illinois 62794-9212;

2) Set forth the text or substance of the IHMTR from which the exemption is sought;

3) State the name, address, and telephone number of the applicant;
4) Include a detailed description of the proposal, including when appropriate, drawings, plans, calculations, procedures, test results, previous exemptions, approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used, and a description of the modifications, and any other supporting information;

5) State the chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture;

6) Describe all relevant shipping and accident experience;

7) Specify the proposed mode of transportation, identify any increased risks that are likely to result if the exemption is granted, and specify the safety control measures which the applicant considers necessary or appropriate to compensate for those increased risks;

8) State that the transportation described in the proposal is not governed by the federal Hazardous Materials Regulations;

9) State why the applicant believes the proposal, including any safety control measures specified by the applicant, will achieve a level of safety which:

A) Is at least equal to that specified in the IHMTR from which the exemption is sought; or

B) If the IHMTR do not contain a specified level of safety, will be consistent with the public interest and will adequately protect against the risks of life and property which are inherent in the transportation of hazardous materials in commerce;

10) If the applicant seeks to have the application processed on a priority basis, set forth the supporting facts and reasons; and

11) To permit timely consideration, an application should be submitted at least 60 days before the requested effective date.
Section 107.105 Application for Renewal (Repealed)

a) Each application for the renewal of an exemption issued under this Subpart must:

1) Be submitted to: Division of Traffic Safety, Illinois Department of Transportation, 3215 Executive Park Drive, P.O. Box 19212, Springfield, Illinois 62794-9212;

2) Identify the exemption for which a renewal is requested;

3) State the name, address, and telephone number of the applicant;

4) Include:

A) A certification by the applicant that the descriptions, technical information, and safety assessment submitted in the original application, or as may have been updated by any subsequent application for renewal, remain accurate and correct, or

B) Such amendments to the previously submitted descriptions, technical information and safety assessment as is necessary to update them and assure their accuracy and correctness;

5) Include a statement describing all relevant shipping and all accident experience that has occurred in connection with the exemption since its issuance or most recent renewal, or if no accidents have been experienced, a certification to that effect. This statement must include the approximate number of shipments made or packages shipped, as the case may be, and the number of shipments or packages involved in any loss of contents, including loss by venting when transporting a compressed or cold temperature gas.

b) To permit timely consideration, an application for renewal should be submitted at least 60 days before the expiration date of the exemption.
e) If, at least 60 days prior to the expiration of an existing exemption of a continuing nature, the holder files an application for renewal which is complete and conforms with the requirements of this Section, the exemption will not be considered to have expired until the application for renewal has been finally determined.

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.107 Initial Application Review (Repealed)

In the case of a written application for an exemption submitted as provided in Section 107.103(b) or the renewal of an exemption submitted as provided in Section 107.105, the Director reviews the application to determine whether it is complete and conforms with the requirements of this subpart. If an application is returned, the applicant will be informed in what respects the application is incomplete.

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.109 Processing of Application (Repealed)

a) After an application for an exemption or renewal of an exemption is determined to be complete, the Director docket the application.

b) No public hearing, argument, or other formal processing is held directly on an application filed under this section. However, during the processing of an application the Director may require the applicant to supply additional information.

c) If the Director determines that the application does not contain adequate justification, he denies it and notifies the applicant in writing, together with the reasons therefor.

d) If the Director determines that the application contains adequate justification, he grants it subject to the conditions set forth in Appendix A to this Subpart and such other terms as he considers necessary, and notifies the applicant in writing.

e) If the Director determines that an application concerns a matter of such general applicability and future effect as to warrant being made the subject of rulemaking, he may initiate rulemaking under 92 Ill. Adm. Code 102 of this Subchapter in addition to or in lieu of granting or denying the application.
Section 107.111 Party to an Exemption (Repealed)

a) Any person who desires to apply for the same or substantially the same exemption for which another person has made application may be made a party to that application by filing his own application with the Director, accompanied by a request to have his application considered with the application for exemption of the other person.

b) Each application filed under this Section must:

1) Be submitted to: Division of Traffic Safety, Illinois Department of Transportation, 3215 Executive Park Drive, P. O. Box 19212, Springfield, Illinois 62794-9212;

2) Identify the exemption application or exemption to which the applicant seeks to become a party; and

3) State the name, address and telephone number of the applicant.

Section 107.117 Withdrawal (Repealed)

a) An applicant may withdraw an application at any time prior to it being finally determined.

b) Except for documents for which confidential treatment was requested by the applicant, withdrawal of an application does not authorize the removal of any related records from the dockets or files of the Division.

Section 107.119 Termination (Repealed)

a) An exemption and any renewal thereof terminates according to its terms but not later than two years after the date of issuance unless terminated sooner pursuant to paragraph (b) or (c) of this section.
b) The Director may suspend an exemption if he determines that:

1) An activity under the exemption is not being performed in accordance with the terms of the exemption; or

2) On the basis of information not available at the time it was granted, an amendment to the terms of the exemption is necessary to adequately protect against risks to life and property.

e) The Director terminates an exemption if he determines that—

1) The exemption is no longer consistent with the public interest;

2) The exemption is no longer necessary because of an amendment to the regulations; or

3) The exemption was granted on the basis of false, fraudulent, or misleading representations or information.

d) Unless the Director believes that immediate suspension or termination is necessary to abate the risk of an imminent hazard, he notifies the holder in writing of the reasons therefor and provides the holder an opportunity to show why the exemption should not be suspended or terminated, before he suspends or terminates an exemption under paragraph (b) or (c) of this section.

(Source: Repealed at 29 Ill. Reg. 671, effective December 20, 2004)

Section 107.121 Appeal (Repealed)

Any applicant for an exemption or the renewal of an exemption aggrieved by an action taken by the Director under this subpart and any holder of an exemption suspended or terminated by the Director under Section 107.119(b) or (c) may file an appeal with the Secretary. The appeal must be filed within 30 days of service of notification of that action, suspension or termination. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate process is completed by the issuance of an order by the Secretary granting or denying the appeal.

(Source: Repealed at 29 Ill. Reg. 671, effective December 20, 2004)
DEPARTMENT OF TRANSPORTATION

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Section 107.123  Availability for Public Inspection (Repealed)

a) Information relevant to an application under this Part, including the application and supporting data, memoranda of any informal meetings with the applicant, and the grant or denial of the application is available for public inspection and copying, except as specified in subsection (b) of this Section, at the Division of Traffic Safety, Illinois Department of Transportation, 3215 Executive Park Drive, P. O. Box 19212, Springfield, Illinois 62794-9212.

b) Information made available for inspection does not include materials which the Director determines should be withheld from public disclosure under Section 107.5.

(Source: Repealed at 29 Ill. Reg. 671, effective December 20, 2004)

SUBPART E: REGISTRATION OF PERSONS WHO OFFER OR TRANSPORT HAZARDOUS MATERIALS

Section 107.601  Incorporation by Reference of 49 CFR 107, subpart G

a) 49 CFR 107, subpart G is hereby incorporated by reference as that subpart of the Hazardous Materials Transportation Regulations was in effect on October 1, 2003. No later amendments to or editions of 49 CFR 107, subpart G are incorporated.

b) The following interpretations of, additions to and deletions from 49 CFR 107, subpart G shall apply for the purposes of this Subpart.

1) Any reference to "this part" in the incorporated material shall mean 92 Ill. Adm. Code 107.

2) Any reference to "this chapter" or "this subchapter" in the incorporated material shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

3) Any reference to a section in the incorporated material shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

(Source: Amended at 29 Ill. Reg. 671, effective December 20, 2004)
NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Hazardous Materials Transportation: General Information, Regulations and Definitions

2) Code Citation: 92 Ill. Adm. Code 171

3) Section Numbers: Adopted Action:
   171.1 Repeal
   171.2 Repeal
   171.3 Amend
   171.13 New Section
   171.1000 Amend

4) Statutory Authority: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

5) Effective Date of Amendments: December 20, 2004

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

7) Do these amendments contain incorporations by reference? Yes

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department’s Division of Traffic Safety and is available for public inspection.


10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: No substantive differences. A technical correction was made in agreement with JCAR.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were necessary.

13) Will these amendments replace an emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? No
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

15) **Summary and purpose of amendments:** By this Notice, the Department has updated the incorporation by reference of 49 CFR 171 to the October 1, 2004 edition, the most recent edition of 49 CFR. The following summaries provide descriptions of federal rulemakings that are applicable to this Part, that became effective since October 1, 2003, and that are included in the October 1, 2004 edition of 49 CFR 171. Therefore, the Department has incorporated changes made by the following Dockets:

- **Docket HM-223 (68 FR 61906, October 30, 2003)** Clarified that were published in the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. Also, listed the HMR pre-transportation functions to which the HMR apply.

- **Docket HM-229–223 (68 FR 67746, December 3, 2003)** Revised Clarity, the incident reporting requirements of the Hazardous Materials Regulations (HMR) to specific functions and the activities, including hazardous materials incident report form. Major changes include collecting more specific information on the incident reporting form; expanding reporting exceptions; expanding reporting requirements to persons other than carriers; reporting undeclared shipments of hazardous materials; loading and reporting non-release incidents involving cargo tanks.

- **Docket HM-189U (68 FR 75734, December 31, 2003)** Amended the HMR to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. The amendments made minor editorial changes and imposed no new requirements.

- **Docket HM-230 (69 FR 3632, January 26, 2004)** Amended requirements in the HMR pertaining to the transportation of radioactive materials based on changes contained in the International Atomic Energy Agency publication. Harmonized requirements of the HMR with international standards for radioactive materials.


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Additionally, the Department repealed Sections 171.1 and 171.2 and incorporated the corresponding federal sections by reference at Section 171.1000(a). This action was taken pursuant to the final rule of October 30, 2003 [68 FR 61906] that substantively amended the federal HMR governing the unloading, loading and storage of hazardous materials. Therefore, the Department has incorporated by reference 49 CFR 171.1 and 171.2 at Section 171.1000(a) with the following exceptions:

49 CFR 171.1(f)(3) – The Department replaced language to clarify that preemption provisions are contained only in the federal HMR.

49 CFR 171.1(g) – The Department did not incorporate provisions that refer to federal penalties for noncompliance. Instead, the Department added language at Section 171.1000(b)(9) that refers to penalty guidelines established in 92 Ill. Adm. Code 107.

At Section 171.1000(b)(10) - The Department added language that states that all references to “approvals, exemptions or registration” in 49 CFR 171.2 should be read to refer to the federal HMR. The Department does not issue approvals or exemptions and does not require registration other than what is required by US DOT.

The Department added a new Section 171.13 to address imminent danger and the Illinois State Police’s authority to stop any vehicle that posed an imminent danger to the public. This provision previously existed in Section 171.1 that the Department repealed.

The Department has updated language at Section 171.1000(b)(6) to clarify references to the HMR in any federal language incorporated by reference.

49 CFR 171.1(g) – not incorporating language that refers to federal penalties for noncompliance. Adding language, in its place, at Section 171.1000(b)(10) that refers to penalty guidelines established in 92 Ill. Adm. Code 107.

The Department also corrected a reference to 49 CFR in Section 171.3 that was incorrectly referenced as 92 Ill. Adm. Code.

Finally, The Department is proposing to add a new Section at 171.13 to address imminent danger and Illinois State Police’s authority to stop any vehicle that poses an imminent danger to the public. This language was moved from the newly repealed Section 171.1 to create a new Section 171.13.
The Department has inserted “174, 175 or” at Section 171.1000 (b)(4) that was inadvertently omitted in a previous rulemaking.

16) Information and questions regarding these adopted amendments shall be directed to:

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois 62794-9212

217/785-1181

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

NOTICE OF ADOPTED AMENDMENTS

TITLE 92: TRANSPORTATION

CHAPTER I: DEPARTMENT OF TRANSPORTATION

SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 171

HAZARDOUS MATERIALS TRANSPORTATION: GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

Section

171.1 Purpose and Scope (Repealed)
171.2 General Transportation Requirements (Repealed)
171.3 Hazardous Waste
171.4 Exemptions (Renumbered)
171.5 Agricultural Exception (Repealed)
171.6 Agricultural Exception (Renumbered)
171.7 Matter Incorporated by Reference (Repealed)
171.8 Definitions and Abbreviations (Repealed)
171.9 Rules of Construction (Repealed)
171.12 Import and Export Shipments (Repealed)
171.13 Imminent Danger
171.14 Specification Markings (Repealed)
171.15 Incident Reporting Requirements (Repealed)
171.17 Exemptions
171.18 Continuation of Effectiveness of Existing Bureau of Explosives Registrations (Repealed)
171.19 Approvals or Authorizations Issued by the Bureau of Explosives (Repealed)
171.21 Retailer Exception
171.22 Agricultural Exception
171.1000 Incorporation by Reference of 49 CFR 171

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

Section 171.1 Purpose and Scope (Repealed)

This Subchapter prescribes the requirements of the Illinois Department of Transportation governing the transportation of hazardous materials in commerce by highway within the State of Illinois.

(Source: Repealed at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.2 General Transportation Requirements (Repealed)

a) No person may offer or accept a hazardous material for transportation in commerce by highway in Illinois unless that person complies with Subpart E of 92 Ill. Adm. Code 107 and the hazardous material is properly classed, described, packaged, marked, labeled, placarded and in the condition for shipment as required and authorized by these regulations or an exemption or approval issued by U.S. DOT.

b) Unless specifically excepted by these regulations, no person may accept for transportation or transport a hazardous material in commerce by highway in Illinois unless that person complies with Subpart E of 92 Ill. Adm. Code 107 and the hazardous material is handled and transported in accordance with this Subchapter or an exemption or approval issued by U.S. DOT.

c) No person may offer, accept, or transport a hazardous material in commerce by highway in Illinois, regardless of the quantity of hazardous material in the shipment or on the vehicle, if that material poses an imminent danger to the public. The State Police are authorized to stop any vehicle that constitutes an imminent danger. For the purpose of this Section, an imminent danger exists if, in the opinion of the State Police officer or the representative of the Department at
DEPARTMENT OF TRANSPORTATION

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the scene, the offer, acceptance, or transportation of that hazardous material is likely to cause death, serious illness, or severe personal injury.

(Source: Repealed at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.3 Hazardous Waste

a) No person may offer for transportation or transport a hazardous waste in commerce (as defined in 49 CFR 171.8) by highway in Illinois except in accordance with the requirements of this Subchapter.

b) No person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person:

1) has marked each motor vehicle used to transport hazardous waste in accordance with 49 CFR 390.21 or 49 CFR 1058.2 even though placards may not be required;

2) complies with the requirements for manifests set forth in 49 CFR 172.205; and

3) delivers, as designated on the manifest by the generator, the entire quantity of the waste received from the generator or a transporter to:

A) the designated facility or, if not possible, to the designated alternate facility;

B) the designated subsequent carrier; or

C) a designated place outside the United States.

c) If a discharge of hazardous waste or other hazardous material occurs during transportation, and an official of a State or local government or a Federal agency, acting within the scope of his official responsibilities, determines that immediate removal of the waste is necessary to prevent further consequence, that official may authorize the removal of the waste without the preparation of a manifest.

(Source: Amended at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.13 Imminent Danger
No person may offer, accept, or transport a hazardous material in commerce by highway in Illinois, regardless of the quantity of hazardous material in the shipment or on the vehicle, if that material poses an imminent danger to the public. The State Police are authorized to stop any vehicle that constitutes an imminent danger. For the purpose of this Section, an imminent danger exists if, in the opinion of the State Police officer or the representative of the Department at the scene, the offer, acceptance, or transportation of that hazardous material is likely to cause death, serious illness, or severe personal injury.

(Source: Added at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.1000  Incorporation by Reference of 49 CFR 171

a) As Part 171 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates the following sections of 49 CFR 171 by reference, as those sections of the federal hazardous materials transportation regulations were in effect on October 1, 2004, as amended at 68 FR 57629, October 6, 2003, and as amended at 69 FR 34604, June 22, 2004 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of those sections of 49 CFR 171 are incorporated.

171.1  Applicability of Hazardous Materials Regulations (HMR) to persons and functions
171.2  General Requirements
171.4  Marine Pollutants
171.7  Reference Material
171.8  Definitions and Abbreviations
171.9  Rules of Construction
171.10  Units of Measure
171.11  Use of ICAO Technical Instructions
171.12  Import and Export Shipments
171.12a  Canadian Shipments and Packagings
171.14  Transitional Provisions for Implementing Certain Requirements
171.15  Immediate Notice of Certain Hazardous Materials Incidents
DEPARTMENT OF TRANSPORTATION

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171.16   Detailed Hazardous Materials Incident Reports
171.19   Approvals or Authorizations Issued by the Bureau of Explosives
171.20   Submission of Examination Reports

b) The following interpretations of, additions to and deletions from the above incorporated sections of 49 CFR 171 shall apply for purposes of this Part.

1) All references to "this part" in the incorporated federal regulations shall mean Part 171 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

4) All references to part 174, 175 or 176 or to sections therein shall be read to refer to that part or sections in the federal regulations.

5) All references to shipments of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

6) All references to "these regulations" or the Hazardous Materials Regulations (HMR) in the incorporated federal regulations shall be read to refer to the Illinois Hazardous Materials Transportation Regulations, 92 Ill. Adm. Code 107 through 180.

7) All references to a "settlement agreement", in these regulations, means a written understanding between the Department and the person being charged.

8) 49 CFR 171.1(f)(3) is not incorporated by reference and is replaced by the following:
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

Preemption determination procedures are in subpart C of 49 CFR 107.

9) 49 CFR 171.1(g) is not incorporated by reference and is replaced by the following:

Each person who knowingly violates a requirement of the federal hazardous materials transportation law, an order issued under the federal hazardous materials transportation law, subchapter A of Chapter I of 49 CFR, an exemption or approval issued under subchapter A or C of Chapter I of 49 CFR, or the Illinois Hazardous Materials Transportation Regulations is liable for penalties established and set forth in 92 Ill. Adm. Code 107.314 and 107.371.

10) All references to approvals, exemptions or registration referred to in 49 CFR 171.2 shall be read to refer to the federal hazardous materials regulations.

(Source: Amended at 29 Ill. Reg. 671, effective December 20, 2004)
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part:** Hazardous Materials Table and Hazardous Materials Communications

2) **Code Citation:** 92 Ill. Adm. Code 172

3) **Section Number:** 172.2000

   **Adopted Action:** Amend

4) **Statutory Authority:** Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

5) **Effective Date of Amendments:** December 20, 2004

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

7) **Does this amendment contain incorporations by reference?** Yes

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department’s Division of Traffic Safety and is available for public inspection.

9) **Notice of Proposal published in Illinois Register:** October 1, 2004; 28 Ill. Reg. 13173

10) **Has JCAR issued a Statement of Objection to this amendment?** No

11) **Differences between proposal and final version:** Various nonsubstantive technical corrections were made in agreement with JCAR.

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** Yes

13) **Will this amendment replace an emergency amendment currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **A complete description of the subjects and issues involved:** By this Notice, the Department has updated the incorporation by reference of 49 CFR 172 to the October 1, 2004 edition, the most recent edition of 49 CFR. The following summaries provide descriptions of federal rulemakings that are applicable to this Part, that became effective since October 1, 2003, and that are included in the October 1, 2004 edition of 49 CFR
172. Therefore, the Department has incorporated changes made by the following Dockets:

Docket HM-189U (68 FR 75734, December 31, 2003) Amended the hazardous materials regulations (HMR) to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. The amendments made minor editorial changes and imposed no new requirements.


Docket HM-215E (69 FR 20831, April 19, 2004) Extended the compliance date of the air eligibility marking requirement, that was previously adopted on July 31, 2003, from October 1, 2004 to October 1, 2006.

Docket HM-189X (69 FR 41967, July 13, 2004) Corrected errors in the Hazardous Materials Table at 49 CFR 172.101 that were inadvertently removed in a previous rulemaking.

Docket HM-189W (69 FR 54042, September 7, 2004) Corrected editorial errors, made minor regulatory changes and improved the clarity of certain provisions for the HMR.


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

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois  62794-9212

217/785-1181

The full text of the Adopted Amendment begins on the next page:
Section 172.1000 General
172.2000 Incorporation by Reference of 49 CFR 172
172.2215 Permanent Shipping Papers (Repealed)

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].


Section 172.2000 Incorporation by Reference of 49 CFR 172

a) As Part 172 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 172 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1,
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

2004, 2003, as amended at 68 FR 57629, October 6, 2003, and as amended at 69 FR 34604, June 22, 2004 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 172 are incorporated.

b) The following interpretations of, additions to and deletions from 49 CFR 172 shall apply for purposes of this Part.

1) All references to "this part" in the incorporated federal regulations shall mean Part 172 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

4) All references to part 174, 175 or 176, or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.

5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

6) Any changes to 49 CFR 172 made effective by U.S. DOT Rulemaking Docket HM-187 (49 FR 21933 (May 24, 1984)) covering small arms ammunition are not incorporated.

(Source: Amended at 29 Ill. Reg. 681, effective December 20, 2004)
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part:** Shippers General Requirements for Shipments and Packagings

2) **Code Citation:** 92 Ill. Adm. Code 173

3) **Section Number:** 173.3000  
   **Adopted Action:** Amend

4) **Statutory Authority:** Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

5) **Effective Date of Amendment:** December 20, 2004

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

7) **Does this amendment contain incorporations by reference?** Yes

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department’s Division of Traffic Safety and is available for public inspection.

9) **Notice of Proposal published in Illinois Register:** October 1, 2004; 28 Ill. Reg. 13178

10) **Has JCAR issued a Statement of Objection to this amendment?** No

11) **Differences between proposal and final version:** A nonsubstantive technical change was made in agreement with JCAR.

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** Yes

13) **Will this amendment replace an emergency amendment currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and purpose of amendment:** By this Notice, the Department has updated the incorporation by reference of 49 CFR 173 to the October 1, 2004 edition, the most recent edition of 49 CFR. The following summaries provide descriptions of federal rulemakings that are applicable to this Part, that became effective since October 1, 2003, and that are included in the October 1, 2004 edition of 49 CFR 173. Therefore, the Department has incorporated changes made by the following Dockets:
NOTICE OF ADOPTED AMENDMENT

Docket HM-223 (68 FR 61906, October 30, 2003) Clarified that were published in the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. Also, listed the HMR pre-transportation functions to which the HMR apply.

Docket HM-189U (68 FR 75734, December 31, 2003) Amended the HMR to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. The amendments made minor editorial changes and imposed no new requirements.


Docket HM-189W (69 FR 54042, September 7, 2004) Corrected editorial errors, made minor regulatory changes and improved the clarity of certain provisions for the HMR.


Docket HM-223 (68 FR 61906, October 30, 2003) Clarifying the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. Also lists HMR pre-transportation functions to which the HMR apply.

Docket HM-230 (69 FR 3632, January 26, 2004) Amending the requirements pertaining to the transportation of radioactive materials based on changes contained in the Atomic Energy Association publication. Harmonizing the HMR with international standards for radioactive materials.

Information and questions regarding this adopted amendment shall be directed to:

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois  62794-9212
217/785-1181
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

The full text of the Adopted Amendment begins on the next page:
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TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 173
SHIPPERS GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Section
173.2000 General
173.3000 Incorporation by Reference of 49 CFR 173

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].


Section 173.3000 Incorporation by Reference of 49 CFR 173

a) As Part 173 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 173 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2004, as amended at 68 FR 57629, October 6, 2003, and as amended at 69 FR 34604, June 22, 2004 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 173 are incorporated.
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b) The following interpretations of, additions to and deletions from 49 CFR 173 shall apply for purposes of this Part.

1) All references to "this part" in the incorporated federal regulations shall mean Part 173 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

4) All references to part 174, 175 or 176 or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.

5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

6) Any changes to 49 CFR 173 made effective by U.S. DOT Rulemaking Docket HM-187 (49 FR 21933 (May 24, 1984)) covering small arms ammunition are not incorporated.

7) 49 CFR 173.8(d)(3) is not incorporated by reference and is replaced by the following:

A non-specification metal tank having a capacity of less than 450 liters (119 gallons) is authorized in Illinois for the transportation of flammable liquid petroleum products by an intrastate motor carrier subject to the following conditions:

A) Containers shall be tanks constructed of 18 gauge or heavier steel or equivalent gauge aluminum.

B) Tanks shall be securely fastened to prevent separation from the vehicle.
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C) Tanks shall be electrically bonded to the frame of the vehicle.

D) Tanks shall be protected against leakage or damage in the event of a turnover.

E) Tanks may not be drained by gravity. Top mounted pumps must be designed and labeled for use with flammable and combustible liquids. No top mounted pump shall be higher than the highest point of the vehicle or permanently attached appurtenances (i.e., roll bars).

F) Flammable liquid petroleum products being transported on a single vehicle may not exceed 450 liters (119 gallons).

G) Flammable liquid petroleum product is offered for transportation and transported in conformance with all other applicable requirements of this Subchapter.

AGENCY NOTE: To clarify the provisions of 49 CFR 173.315(a) Note 17 (7), the transportation of anhydrous ammonia was permitted within Illinois prior to January 1, 1981 as follows: Only specifications MC-330 and MC-331 cargo tanks with a design pressure of 250 p.s.i.g., that had been in anhydrous ammonia service in Illinois prior to February 1, 1979, could continue in such service subject to continued qualification as required by all design and testing requirements specified by 49 CFR 180. Non-specification cargo tanks, other than nurse tanks (49 CFR 173.314(m)), were not authorized in Illinois for anhydrous ammonia service. All specifications MC-330 and MC-331 cargo tanks placed in such service after February 1, 1979 had to meet all requirements for the specification, including a minimum design service of 265 p.s.i.g.

AGENCY NOTE: To clarify the provisions of 49 CFR 173.315(k)(6), the transportation of liquefied petroleum gas within Illinois prior to January 1, 1981 was as follows: Non-specification cargo tanks used to transport liquefied petroleum gas were not authorized for intrastate transportation within Illinois prior to January 1, 1981.

(Source: Amended at 29 Ill. Reg. 685, effective December 20, 2004)
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1) **Heading of the Part:** Carriage by Public Highway

2) **Code Citation:** 92 Ill. Adm. Code 177

3) **Section Number:**
   - Adopted Action:
     - 177.2000 Amend

4) **Statutory Authority:** Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

5) **Effective Date of Amendment:** December 20, 2004

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

7) **Does this amendment contain incorporations by reference?** Yes

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department’s Division of Traffic Safety and is available for public inspection.

9) **Notice of Proposal Published in Illinois Register:** October 1, 2004; 28 Ill. Reg. 13184

10) **Has JCAR issued a Statement of Objection to this amendment?** No

11) **Differences between proposal and final version:** A nonsubstantive technical correction was made in agreement with JCAR.

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** Yes

13) **Will this amendment replace an emergency amendment currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and Purpose of Amendment:** By this Notice, the Department has updated the incorporation by reference of 49 CFR 177 to the October 1, 2004 edition, the most recent edition of 49 CFR. The following summaries provide descriptions of federal rulemakings that are applicable to this Part, that became effective since October 1, 2003, and that are included in the October 1, 2004 edition of 49 CFR 177. Therefore, the Department has incorporated changes made by the following Dockets:
DEPARTMENT OF TRANSPORTATION

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Docket HM—223 (68 FR 61906, October 30, 2003)  Clarified the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. Also, listed the HMR pre-transportation functions to which the HMR apply.

Docket HM-189U (68 FR 75734, December 31, 2003)  Amended the HMR to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. The amendments made minor editorial changes and imposed no new requirements.


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

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois 62794-9212

217/785-1181

The full text of the Adopted Amendment begins on the next page:
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TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 177
CARRIAGE BY PUBLIC HIGHWAY

Section 177.1000 General
177.2000 Incorporation by Reference of 49 CFR 177

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].


Section 177.2000 Incorporation by Reference of 49 CFR 177

a) As Part 177 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 177 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2003, as amended at 68 FR 57629, October 6, 2003 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 177 are incorporated.

b) The following interpretations of, additions to and deletions from 49 CFR 177 shall apply for purposes of this Part.
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1) All references to "this part" in the incorporated federal regulations shall mean Part 177 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

4) All references to part 174, 175 or 176, or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.

5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

6) All references to motor vehicles engaged in interstate commerce shall be deemed to include any motor vehicle engaged in commerce within the State of Illinois.

(Source: Amended at 29 Ill. Reg. 691, effective December 20, 2004)
## NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part**: Specifications for Packagings  
2) **Code Citation**: 92 Ill. Adm. Code 178  

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3) **Statutory Authority**: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]  
4) **Effective Date of Amendment**: December 20, 2004  
5) **Does this rulemaking contain an automatic repeal date?** No  
6) **Does this amendment contain incorporations by reference?** Yes  
7) **A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department’s Division of Traffic Safety and is available for public inspection.**  
8) **Has JCAR issued a Statement of Objection to this amendment?** No  
9) **Differences between proposal and final version**: Several nonsubstantive technical corrections were made in agreement with JCAR.  
10) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** Yes  
11) **Will this amendment replace an emergency amendment currently in effect?** No  
12) **Are there any amendments pending on this Part?** No  
13) **Summary and purpose of amendment**: By this Notice, the Department has updated the incorporation by reference of 49 CFR 178 to the October 1, 2004 edition, the most recent edition of 49 CFR. The following summaries provide descriptions of federal rulemakings that are applicable to this Part, that became effective since October 1, 2003, and that are included in the October 1, 2004 edition of 49 CFR 178. Therefore, the Department has incorporated changes made by the following Dockets:
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that were published in the Federal Register. Docket HM-223 (68 FR 61906, October 30, 2003) Clarified the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. Also, listed the HMR pre-transportation functions to which the HMR apply.

Docket HM-189U (68 FR 75734, December 31, 2003) Amended the hazardous materials regulations (HMR) to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. The amendments made minor editorial changes and imposed no new requirements.


Docket HM-189W (69 FR 54042, September 7, 2004) Corrected editorial errors, made minor regulatory changes and improved the clarity of certain provisions for the HMR.

The Department also corrected the heading at Section 178.2000 so it corresponds with the Table of Contents page.

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

Ms. Catherine Allen
Illinois Department of Transportation Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois 62794-9212

217/785-1181

The full text of the Adopted Amendment begins on the next page:
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TITLE 92: TRANSPORTATION  
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PART 178  
SPECIFICATIONS FOR PACKAGINGS

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DEPARTMENT OF TRANSPORTATION

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(Repealed)
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178.337.0.4 [178.337-4] Joints (Repealed)
178.337.0.5 [178.337-5] Bulkheads, Baffles, and Ring Stiffeners (Repealed)
178.337.0.6 [178.337-6] Closure for Manhole (Repealed)
178.337.0.7 [178.337-7] Overtturn Protection (Repealed)
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178.337.1.5 [178.337-15] Pumps and Compressors (Repealed)
178.337.1.6 [178.337-16] Testing (Repealed)
178.337.1.7 [178.337-17] Marking (Repealed)
178.337.1.8 [178.337-18] Certification (Repealed)
178.340 General Design and Construction Requirements Applicable to Specifications MC 306 (Section 178.341), MC 307 (Section 178.342), and MC 312 (Section 178.343) Cargo Tanks (Repealed)
178.340.0.4 [178.340-4] Structural Integrity (Repealed)
178.340.0.6 [178.340-6] Supports and Anchoring (Repealed)
178.340.0.7 [178.340-7] Circumferential Reinforcements (Repealed)
178.340.0.8 [178.340-8] Accident Damage Protection (Repealed)
178.340.0.9 [178.340-9] Pumps (Repealed)
178.340.1.0 [178.340-10] Certification (Repealed)
178.341 Specification MC 306; Cargo Tanks (Repealed)
178.341.0.1 [178.341-1] General Requirements (Repealed)
178.341.0.2 [178.341-2] Thickness of Shells, Heads, Bulkheads, and Baffles (Repealed)
178.341.0.3 [178.341-3] Closures for Fill Openings and Manholes (Repealed)
178.341.0.4 [178.341-4] Vents (Repealed)
178.341.0.5 [178.341-5] Emergency Flow Control (Repealed)
178.341.0.6 [178.341-6] Gauging Devices (Repealed)
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178.341.0.7 [178.341-7] Method of Test (Repealed)
178.342 Specification MC 307; Cargo Tanks (Repealed)
178.342.0.1 [178.342-1] General Requirements (Repealed)
178.342.0.2 [178.342-2] Thickness of Shell, Heads, Bulkheads, and Baffles (Repealed)
178.342.0.3 [178.342-3] Closures for Manholes (Repealed)
178.342.0.4 [178.342-4] Vents (Repealed)
178.342.0.5 [178.342-5] Emergency Flow Control (Repealed)
178.342.0.6 [178.342-6] Gauging Devices (Repealed)
178.342.0.7 [178.342-7] Method of Test (Repealed)
178.343 Specification MC 312; Cargo Tanks (Repealed)
178.343.0.1 [178.343-1] General Requirements (Repealed)
178.343.0.2 [178.343-2] Thickness of Shell, Heads, Bulkheads, and Baffles of Non-Asme Code Tanks (Repealed)
178.343.0.3 [178.343-3] Closures for Manholes (Repealed)
178.343.0.4 [178.343-4] Vents (Repealed)
178.343.0.5 [178.343-5] Outlets (Repealed)
178.343.0.6 [178.343-6] Gauging Devices (Repealed)
178.343.0.7 [178.343-7] Method of Test (Repealed)
178.350 Specification 7A; General Packaging, Type A (Repealed)
178.350.0.1 [178.350-1] General Requirements (Repealed)
178.350.0.2 [178.350-2] Specific Requirements (Repealed)
178.350.0.3 [178.350-3] Marking (Repealed)
178.1000 General
178.2000 Incorporation By Reference of 49 CFR 178
178.APPENDIX C Tensile Specimen (Repealed)
178.APPENDIX D Material Thickness (Repealed)
178.TABLE A Minimum Thickness of Heads, Bulkheads, and Baffles (Repealed)
178.TABLE B Minimum Thickness of Shell Sheets (Repealed)

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

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Reg. 7901, effective May 6, 1994; amended at 20 Ill. Reg. 6566, effective April 30, 1996;
amended at 22 Ill. Reg. 5726, effective March 4, 1998; amended at 22 Ill. Reg. 17032, effective
Reg. 8948, effective June 5, 2002; amended at 28 Ill. Reg. 10099, effective July 1, 2004;

AGENCY NOTE: In reading this Part it is necessary to read Sections 178.1000 and 178.2000
prior to reading the remaining Sections in numerical order.

Section 178.2000  Incorporation By Reference of 49 CFR 178

a) As Part 178 of the Illinois Hazardous Materials Transportation Regulations, the
Department incorporates 49 CFR 178 by reference, as that part of the federal
hazardous materials transportation regulations was in effect on October 1,
FR 34604, June 22, 2004 subject only to the exceptions in subsection (f) of this
Section. No later amendments to or editions of 49 CFR 178 are incorporated.

b) As Section 178.340 of the Illinois Hazardous Materials Transportation
Regulations, the Department hereby incorporates 49 CFR 178.340 as that section
of the federal hazardous materials transportation regulations was in effect on
October 1, 1989.

c) As Section 178.341 of the Illinois Hazardous Materials Transportation
Regulations, the Department hereby incorporates 49 CFR 178.341 as that section
of the federal hazardous materials transportation regulations was in effect on
October 1, 1989.

d) As Section 178.342 of the Illinois Hazardous Materials Transportation
Regulations, the Department hereby incorporates 49 CFR 178.342 as that section
of the federal hazardous materials transportation regulations was in effect on
October 1, 1989.

e) As Section 178.343 of the Illinois Hazardous Materials Transportation
Regulations, the Department hereby incorporates 49 CFR 178.343 as that section
of the federal hazardous materials transportation regulations was in effect on
October 1, 1989.
The following interpretations of, additions to and deletions from the 49 CFR 178 shall apply for purposes of this Part.

1) All references to "this part" in the incorporated federal regulations shall mean Part 178 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

4) All references to part 174, 175 or 176, or to sections therein shall be read to refer to those parts referenced sections in the federal hazardous materials transportation regulations.

(Source: Amended at 29 Ill. Reg. 695, effective December 20, 2004)
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part**: Specifications for Tank Cars

2) **Code Citation**: 92 Ill. Adm. Code 179

3) **Section Number**: 179.2000
   **Adopted Action**: Amend

4) **Statutory Authority**: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

5) **Effective Date of Amendment**: December 20, 2004

6) Does this amendment contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? Yes

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department's Division of Traffic Safety and is available for public inspection.

9) **Notice of Proposal published in Illinois Register**: October 1, 2004; 28 Ill. Reg. 13201

10) Has JCAR issued a Statement of Objection to this amendment? No

11) **Differences between proposal and final version**: None

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were necessary.

13) **Will this amendment replace an emergency amendment currently in effect?** No

14) **Are there any amendments pending on this Part?** Yes

<table>
<thead>
<tr>
<th>Section Number</th>
<th>Proposed Action</th>
<th>Ill. Reg. Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>179.2000</td>
<td>Amend</td>
<td>28 Ill. Reg. 13345, 10/08/04</td>
</tr>
</tbody>
</table>

15) **Summary and purpose of amendment**: By this Notice, the Department has updated the incorporation by reference of 49 CFR 179 to the October 1, 2004 edition, the most recent edition of 49 CFR. The following summaries provide descriptions of federal rulemakings that are applicable to this Part, that became effective since October 1, 2003, and that are
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included in the October 1, 2004 edition of 49 CFR 179. Therefore, the Department has incorporated changes made by the following Dockets:

Docket HM-189U (68 FR 75734, December 31, 2003)  Amended the hazardous materials regulations (HMR) to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. The amendments made minor editorial changes and imposed no new requirements.

Docket HM-189W (69 FR 54042, September 7, 2004)  Corrected editorial errors, made minor regulatory changes and improved the clarity of certain provisions for the HMR.

Section 179.2000(b)(4) has been deleted. The reference to 49 CFR 179.2(a)(4) is no longer valid since that section is now a reserved section in the 49 CFR.

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

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois  62794-9212
217/785-1181

The full text of the Adopted Amendment begins on the next page:
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NOTICE OF ADOPTED AMENDMENT

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 179
SPECIFICATIONS FOR TANK CARS

Section 179.1000 General
179.2000 Incorporation By Reference of 49 CFR 179

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].


Section 179.2000 Incorporation By Reference of 49 CFR 179

a) As Part 179 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates the following sections of 49 CFR 179 by reference, as those sections of the federal hazardous materials transportation regulations were in effect on October 1, 2004, as amended at 68 FR 57629, October 6, 2003, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of those sections of 49 CFR 179 of the federal regulations are incorporated.

179.1 General
179.2 Definitions and abbreviations
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179.5 Certificate of Construction
179.6 Repairs and alterations
179.7 Quality Assurance program
179.10 Tank mounting
179.11 Welding certification
179.12 Interior heater systems
179.16 Tank-head puncture-resistance systems
179.18 Thermal protection systems
179.20 Service equipment; protection systems
179.22 Marking
179.300 General specifications applicable to multi-unit tank car tanks designed to be removed from car structure for filling and emptying (classes DOT-106A and 110AW)
179.301 Individual specification requirements for multi-unit tank car tanks

b) The following interpretations of, additions to and deletions from the above incorporated sections of 49 CFR 179 shall apply for purposes of this Part.

1) All references to "this part" in the incorporated federal regulations shall mean Part 179 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations except references to Section 179.3 shall mean 49 CFR 179.3.

4) 49 CFR 179.2(a)(4) is deleted and replaced by the following: "'DOT' means the U.S. Department of Transportation and 'Department' means the Illinois Department of Transportation."
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

(Source: Amended at 29 Ill. Reg. 706, effective December 20, 2004)
DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENT

1) **Heading of the Part**: Continuing Qualification and Maintenance of Packaging

2) **Code Citation**: 92 Ill. Adm. Code 180

3) **Section Number**: 180.2000
   **Adopted Action**: Amend

4) **Statutory Authority**: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

5) **Effective Date of Amendment**: December 20, 2004

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

7) **Does this amendment contain incorporations by reference?** Yes

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department’s Division of Traffic Safety and is available for public inspection.

9) **Notice of Proposal published in Illinois Register**: October 1, 2004; 28 Ill. Reg. 13207

10) **Has JCAR issued a Statement of Objection to this amendment?** No

11) **Differences between proposal and final version**: A nonsubstantive technical correction was made in agreement with JCAR.

12) **Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR?** Yes

13) **Will this amendment replace an emergency amendment currently in effect?** No

14) **Are there any amendments pending on this Part?** No

15) **Summary and purpose of amendment**: By this Notice, the Department has updated the incorporation by reference of 49 CFR 180 to the October 1, 2004 edition, the most recent edition of 49 CFR. The following summaries provide descriptions of federal rulemakings that are applicable to this Part, that became effective since October 1, 2003, and that are included in the October 1, 2004 edition of 49 CFR 180. Therefore, the Department has incorporated changes made by the following Dockets:
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that were published in the Federal Register Docket HM-189U (68 FR 75734, December 31, 2003) Amended the hazardous materials regulations (HMR) to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. The amendments made minor editorial changes and imposed no new requirements.

Docket HM-189W (69 FR 54042, September 7, 2004) Corrected editorial errors, made minor regulatory changes and improved the clarity of certain provisions for the HMR.

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

Ms. Catherine Allen
Illinois Department of Transportation
Division of Traffic Safety
P.O. Box 19212
Springfield, Illinois 62794-9212

217/785-1181

The full text of the Adopted Amendment begins on the next page:
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NOTICE OF ADOPTED AMENDMENT

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 180
CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGING

Section
180.1000 General
180.2000 Incorporation by Reference of 49 CFR 180

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].


Section 180.2000 Incorporation by Reference of 49 CFR 180

a) As Part 180 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 180 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2003, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 180 are incorporated.

b) The following interpretations of, additions to and deletions from 49 CFR 180 shall apply for purposes of this Part.

1) All references to "this part" in the incorporated federal regulations shall mean Part 180 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
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3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

4) All references to part 174, 175, or 176 or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.

5) All references to shipments of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

(Source: Amended at 29 Ill. Reg. 711, effective December 20, 2004)
DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

1) **Heading of the Part**: Watercraft Use Tax

2) **Code Citation**: 86 Ill. Adm. Code 153

3) **Section Numbers**: Emergency Action:
   - 153.101 New Section
   - 153.105 New Section
   - 153.110 New Section
   - 153.115 New Section
   - 153.120 New Section

4) **Statutory Authority**: 35 ILCS 158; P.A. 93-0840

5) **Effective Date of Emergency Rules**: December 16, 2004

6) If this Emergency Rulemaking is to expire before the end of the 150-day period, please specify the date on which it is to expire: This rulemaking will not expire before the end of the 150-day period.

7) Date filed with the Index Department: December 16, 2004

8) A copy of the emergency rulemaking, including any material incorporated by reference, is on file in the agency’s principal office and is available for public inspection.

9) **Reason for Emergency**: The changes made by this rulemaking result from legislation that was recently passed and signed into law. Because these statutory provisions are now effective, it is important that the Department provide guidance on these statutory changes to taxpayers as soon as possible through emergency rules.

10) **A Complete Description of the Subjects and Issues Involved**: This rulemaking sets out the implementation of the Watercraft Use Tax Law [35 ILCS 158], as established in PA 93-0840.

11) Are there any proposed amendments to this Part pending? No

12) **Statement of Statewide Policy Objectives**: This rulemaking neither imposes a State mandate, nor modifies an existing mandate.

13) **Information and questions regarding this Emergency Rulemaking shall be directed to:**
DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

Edwin E. Boggess
Associate Counsel
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois  62794
Phone: (217) 782-2844

The full text of the Emergency Rulemaking begins on the next page:
DEPARTMENT OF REVENUE

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 153
WATERCRAFT USE TAX

Section
153.101  Definitions
153.105  Nature of the Watercraft Use Tax
153.110  Basis and Rate of the Tax
153.115  Nontaxable Transactions
153.120  Returns and Payment

AUTHORITY: Implementing the Watercraft Use Tax Law [35 ILCS 158].


Section 153.101  Definitions

As used in this Part, the terms listed below are defined as follows:

"Department" means the Department of Revenue.

"Immediate family member" means a spouse, mother, father, brother, sister, or child of the transferor.

"Personal watercraft" means a vessel that uses an inboard motor powering a water jet pump as its primary source of motor power and that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel, and includes vessels that are similar in appearance and operation but are powered by an outboard or propeller drive motor. (Section 1-2 of the Boat Registration and Safety Act) An example of a personal watercraft is a jet ski.

"Purchase price" means the reasonable consideration paid for a watercraft valued in money whether received in money or otherwise, including, but not limited to, cash, credits, property, and services, and including the value of any motor sold with, or in conjunction with, the watercraft. Except in the case of transfers between immediate family members, reasonable consideration ordinarily means the fair market value on the date the watercraft or the share of
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the watercraft was acquired or the date the watercraft was brought into this State, whichever is later, unless the taxpayer can demonstrate that a different value is reasonable. In the case of transfers between immediate family members, reasonable consideration ordinarily means the consideration actually paid, unless it appears from the facts and circumstances that the primary motivation of the transfer was the avoidance of tax. [35 ILCS 158/15-5]

"Watercraft" means Class 2, Class 3, and Class 4 watercraft, as defined in Section 3-2 of the Boat Registration and Safety Act; and personal watercraft, as defined in Section 1-2 of the Boat Registration and Safety Act. [35 ILCS 158/15-5]. Section 3-2 of the Boat Registration and Safety Act defines these terms as follows:

"Class 2" watercraft means all watercraft 16 feet or more but less than 26 feet in length except canoes and kayaks.

"Class 3" watercraft means all watercraft 26 feet or more but less than 40 feet in length.

"Class 4" watercraft means all watercraft 40 feet or more in length.

Section 153.105 Nature of the Watercraft Use Tax

The Watercraft Use Tax is a privilege tax imposed on the privilege of using, in this State, watercraft acquired by gift, transfer, or non-retail purchase after September 1, 2004. The tax is imposed on the use of watercraft in this State regardless of whether the watercraft is actually registered under the Boat Registration and Safety Act. No trade-in credit will be allowed in a non-retail purchase transaction.

Examples:

a) An Illinois resident purchases an 18-foot boat from an individual (non-retailer) in Missouri on October 1, 2004 for $5,000, and brings the boat into Illinois on October 5, 2004. The fair market value of the boat at the time of purchase is $5,000. Watercraft Use Tax is due on the $5,000 purchase price of the boat. However, if the Illinois resident had purchased the boat from a non-retailer in Missouri on August 5, 2004 and brought the boat into Illinois on October 5, 2004, the purchase would not be subject to the tax imposed by this Part.
b) A Chicago resident is given a used 20-foot boat and a motor on September 2, 2004, from his neighbor. Watercraft Use Tax is due on the fair market value of the boat, including the motor.

c) A person living in Joliet, Illinois purchases a jet ski from his neighbor for $3,000 on October 5, 2004. As part of the deal, he trades his $2,000 pontoon boat for the jet ski, and pays $1,000 cash. The fair market value of the jet ski is $3,000. The purchaser of the jet ski owes Watercraft Use Tax on the entire $3,000 purchase price, and is not allowed to claim a trade-in credit. The purchaser of the pontoon boat also owes Watercraft Use Tax on the entire $2,000 purchase price, and may not claim a trade-in credit.

d) Three people each agree to purchase an undivided \( \frac{1}{3} \)-share interest in a $100,000 yacht from an individual (non-retailer) to be used in Illinois. At the time of the purchase, the fair market value of the yacht is $100,000. Each individual shareholder incurs Watercraft Use Tax on his or her individual share. However, each shareholder is jointly and severally liable for the total taxes due on the entire $100,000 purchase price of the yacht. See Section 153.110(c) of this Part.

e) Corporation XYZ purchases a yacht for $75,000 from an individual (non-retailer) for use in Illinois by giving consideration in the form of $25,000 cash and $50,000 in XYZ stock. The fair market value of the yacht is $100,000. Watercraft Use Tax is incurred on the $100,000 amount, unless the corporation can demonstrate that a different value is reasonable.

**Section 153.110 Basis and Rate of the Tax**

a) Non-Retail Sales of Watercraft

The rate of tax is 6.25% of the purchase price for each watercraft that is subject to tax under the Law [35 ILCS 158/15-15]. However, the purchase price shall not be less than the fair market value of the watercraft on the date the watercraft is purchased or the date the watercraft is brought into the State, whichever is later, unless the purchaser can document that a different value is reasonable. In the case of transfers between immediate family members, purchase price ordinarily means the consideration actually paid, unless it appears from the facts and circumstances that the primary motivation of the transfer was the avoidance of tax.

Examples:
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1) An Illinois resident buys a 20-foot pontoon boat valued at $20,000, from an individual (non-retailer) in Wisconsin, for $5,000 on September 5, 2004. On September 25, 2004, she brings the pontoon boat into Illinois for use at her lake home. Watercraft Use Tax is due on the fair market value of the watercraft ($20,000) on September 25, 2004 when the watercraft entered the State, unless she can document that the $5,000 she paid was reasonable.

2) A person living in Champaign, Illinois sells his $10,000 fishing boat to his son for $8,000. The taxable purchase price for this sale between immediately family members will ordinarily be the $8,000 actually paid, unless the Department determines the primary motivation of the sale was the avoidance of tax.

b) Gifts and Other Transfers of Watercraft

For purposes of calculating the tax due when a watercraft is acquired by gift or transfer, the tax shall be imposed on the fair market value of the watercraft on the date the watercraft is acquired or the date the watercraft is brought into the State, whichever is later. In the case of gifts between immediate family members, no tax is due unless it appears from the facts and circumstances that the primary motivation of the transfer was the avoidance of tax.

Examples:

1) A women living in Carbondale decides to give her 18-foot johnboat to her fiancé. Her fiancé incurs Watercraft Use Tax based on the fair market value of the johnboat.

2) Dad gives his jet ski to his daughter. No tax is due, unless, it appears that the primary motivation for the gift was the avoidance of tax.

3) A woman wants to purchase a 35-foot boat that she finds for sale in California. In order to avoid the Watercraft Use Tax, she convinces her sister, who lives in California, to purchase the boat for her for $50,000. She claims that her sister "sold" the boat to her for $500 so she can use the boat in Illinois. The primary motivation under this set of facts and circumstances would be viewed as the avoidance of tax, and Watercraft Use Tax would be owed on the fair market value ($50,000) of the boat.
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4) The XYZ partnership, owner of a 24-foot sailboat, is dissolved. All ownership of the sailboat is transferred to partner X following the dissolution. Partner X must pay Watercraft Use Tax on the fair market value of the sailboat.

c) Transfers of Fractional Shares of Watercraft

*When an ownership share of a watercraft is acquired, the tax is imposed on the purchase price of that share. All owners are jointly and severally liable for any tax due as a result of the purchase, gift, or transfer of an ownership share of the watercraft.* [35 ILCS 158/15-5] In the case of ownership shares sold between immediate family members, purchase price ordinarily means the consideration actually paid, unless it appears from the facts and circumstances that the primary motivation of the selling of the shares was the avoidance of tax. In the case of a share of a watercraft acquired by gift between family members, no tax is due unless it appears from the facts and circumstances that the primary motivation of the share transfer was the avoidance of tax.

Examples:

1) An Illinois resident owns a 1/10 undivided interest share in a $10,000 houseboat. She sells her 1/10 share of the houseboat to her neighbor for $1,000. Watercraft Use Tax is due on the purchase price of the 1/10 share ($1,000). However, each of the remaining undivided owners is also responsible for the total amount of taxes due as a result of the sale of the 1/10 share on the $1,000 purchase price.

2) A Springfield resident purchases a ½ share of a 20-foot sailboat with a fair market value of $10,000. He files a return listing the value of his ½ share of the sailboat as $1,000. The Department will use the $10,000 fair market value of the sailboat to determine his ½ share interest ($5,000), if he cannot demonstrate that the $1,000 value is reasonable.

d) Credit for Taxes Paid

The Watercraft Use Tax does not apply to the use of watercraft *acquired outside this State and brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of the watercraft, to the extent of the amount of tax properly due and paid in the other state.* [35 ILCS 105/3-55(d)] (See 35 ILCS 158/15-10.) For purposes of this subsection, the term "state" is limited to a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
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Examples:

1) A resident of Illinois, who is on vacation in Nevada, buys an 18-foot fishing boat from an individual in Nevada, and pays the proper amount of Nevada tax. She later moves her boat to Illinois. She can receive a credit for taxes properly due and paid in Nevada up to the amount of Watercraft Use Tax due on the boat in Illinois.

2) While vacationing in Europe, an Illinois resident buys a 35-foot sea cruiser with an extra motor from an individual in Europe and pays European taxes. Upon returning home to Illinois with his boat, he must pay Watercraft Use Tax on the purchase price of $50,000, which is the fair market value of the boat, including the motor. He will not get a credit for taxes paid in another country.

e) Determinations of Reasonable Value
The purchase price shall not be less than the fair market value of the watercraft on the date the watercraft is purchased or the date the watercraft is brought into the State, whichever is later, unless the purchaser can document that a different value is reasonable. To determine if a purchase price, other than fair market value, is reasonable, the Department shall consider any information provided by the taxpayer, including but not limited to:

1) date and location of sale;

2) condition of the watercraft and any motor sold in conjunction with the watercraft;

3) type and make of watercraft;

4) evidence of similar sales; and

5) whether such watercraft was purchased as a result of an estate sale or auction open to the general public.

f) Determination of Purchase Price
For the purpose of assisting in determining the validity of the purchase price reported on returns filed with the Department, the Department may furnish the
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following information to persons with whom the Department has contracted for service related to making that determination:

1) the purchase price stated on the return;
2) the watercraft identification number;
3) the year, the make, and the model name or number of the watercraft;
4) the purchase date; and
5) the hours of operation. [35 ILCS 158/15-30]

Section 153.115 Nontaxable Transactions

The tax imposed by the Watercraft Use Tax Law does not apply if:

a) the use of the watercraft is otherwise taxed under the Use Tax Act;

b) the watercraft is bought and used by a governmental agency or a society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes and that entity has been issued an exemption identification number that is active under Section 1g of the Retailers' Occupation Tax Act;

c) the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is a surviving spouse; or

d) the watercraft is exempted from the numbering provisions of Section 3-12 of the Boat Registration and Safety Act [625 ILCS 45/3-12]. [35 ILCS 158/15-10] However, Watercraft Use Tax will become due on any watercraft that is exempted from the numbering provisions of paragraphs A, B, C, F, and G of Section 3-12 of the Boat Registration and Safety Act [625 ILCS 45/3-12] if that watercraft is used upon the waters of this State over 30 accumulated days in any calendar year. The following are the watercraft referred to in paragraphs A, B, C, F, and G of Section 3-12 of the Boat Registration and Safety Act to which the 30-day rule applies:

1) A watercraft that has a valid marine document issued by the United States Coast Guard.
DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

2) A watercraft already covered by a number in full force and effect that has been awarded to it pursuant to Federal law or a Federally approved numbering system of another State.

3) A watercraft from a country other than the United States temporarily using the waters of this State.

4) A watercraft that belongs to a class of boats that have been exempted from numbering by the Department of Natural Resources after such agency has found that an agency of the Federal Government has a numbering system applicable to the class of watercraft to which the watercraft in question belongs and would be exempt from numbering if it were subject to the Federal law.

5) A watercraft that is competing in any race approved by the Department of Natural Resources under the provisions of Section 5-15 of the Boat Registration and Safety Act or a watercraft that is designed and intended solely for racing while engaged in navigation that is incidental to preparation of the watercraft for the race. Preparation of the watercraft for the race may be accomplished only after obtaining the written authorization of the Department of Natural Resources.

Example:

A watercraft that has a valid marine document issued by the United States Coast Guard and is used upon the waters of this State for 35 days in a calendar year is subject to Watercraft Use Tax. The tax applies even though the watercraft is not required to be registered under the Boat Registration and Safety Act until it has been used upon the waters of this State for more than 60 days in a calendar year. See subsection (d).

e) Other common exemptions:

1) A tugboat qualifying for the rolling stock exemption is purchased for use upon the waters in Illinois. No Watercraft Use Tax would be incurred on the purchase.

2) A person purchases a 17-foot johnboat from an individual (non-retailer) to be used primarily in the raising of catfish for retail sale on a commercial
DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

catfish farm in Illinois. No Watercraft Use Tax is due on the purchase, because the johnboat is used primarily in production agriculture.

Section 153.120 Returns and Payment

a) The purchaser, transferee, or donee shall file with the Department a return signed by the purchaser, transferee, or donee on a form prescribed by the Department. The return shall contain a verification in substantially the following form and such other information as the Department may reasonably require:

VERIFICATION

I declare that I have examined this return and, to the best of my knowledge, it is true, correct, and complete. I understand that the penalty for willfully filing a false return is a fine not to exceed $1,000 or imprisonment in a penal institution other than the penitentiary not to exceed one year, or both a fine and imprisonment. [35 ILCS 158/15-20(a)]

b) The return and payment from the purchaser, transferee, or donee shall be submitted to the Department within 30 days after the date of purchase, donation, or other transfer or the date the watercraft is brought into this State, whichever is later. Payment of tax is a condition to securing certificate of title for the watercraft from the Department of Natural Resources. When a purchaser, transferee, or donee pays the tax imposed by Section 15-10 of the Law, the Department (upon request therefor from the purchaser, transferee, or donee) shall issue an appropriate receipt to the purchaser, transferee, or donee showing that he or she has paid the tax to the Department. The receipt shall be sufficient to relieve the purchaser, transferee, or donee from further liability for the tax to which the receipt may refer. [35 ILCS 158/15-20(b)]

c) Any person required to file a return under the Law who willfully files a false or incomplete return is guilty of a Class A misdemeanor. [35 ILCS 158/15-25]
NOTICE OF PEREMPTORY AMENDMENT

1) **Heading of the Part:** Pay Plan

2) **Code Citation:** 80 Ill. Adm. Code 310

3) **Section Number:** Peremptory Action: 310.Appendix A, Table V

4) **Reference to the Specific State or Federal Court Order, Federal Rule or Statute which Requires this Peremptory Rulemaking:**
   The Department of Central Management Services is amending the Pay Plan 80 Ill. Adm. Code 310.Appendix A, Table V to reflect the Agreement signed November 16, 2004, for CU-500 between the Departments of Central Management Services and Corrections, and the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO. The Agreement is effective July 1, 2004 to June 30, 2008.

   Provisions that affect the pay rates during later fiscal years will be in Proposed Amendments prior to the beginning of the particular fiscal year. The Amendments here are for the fiscal year 2005 provisions only. They are the rates on July 1, 2004 and the pay rates with the 2.75% increase for all unit classifications and steps on January 1, 2005.

5) **Statutory Authority:** Authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 20 ILCS 415/8a].

6) **Effective Date:** December 15, 2004

7) **A Complete Description of the Subjects and Issues Involved:** Section 310.Appendix A, Table V is amended to reflect the rates on July 1, 2004 and the 2.75% increase to the pay rates for all unit classifications and steps on January 1, 2005.

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

9) **Date filed with the Index Department:** December 15, 2004

10) **This and other Pay Plan amendments are available in the Division of Technical Services of the Bureau of Personnel.**

11) **Is this in compliance with Section 5-50 of the Illinois Administrative Procedure Act?** Yes

12) **Are there any other proposed amendments pending on this Part?** Yes
## NOTICE OF PEREMPTORY AMENDMENT

<table>
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13) **Statement of Statewide Policy Objectives**: These amendments to the Pay Plan affect only the employees subject to the Personnel Code and do not set out any guidelines that affect local or other jurisdictions in the State.

14) **Information and questions regarding this peremptory amendment shall be directed to**:

Ms. Dawn DeFraties  
Deputy Director  
Department of Central Management Services  
503 William G. Stratton Building  
Springfield IL  62706  
217/524-8773  
Fax: 217/558-4497  

*The full text of the Peremptory Amendment begins on the next page:*
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND
POSITION CLASSIFICATIONS
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 310
PAY PLAN

SUBPART A: NARRATIVE

Section
310.20  Policy and Responsibilities
310.30  Jurisdiction
310.40  Pay Schedules
310.50  Definitions
310.60  Conversion of Base Salary to Pay Period Units
310.70  Conversion of Base Salary to Daily or Hourly Equivalents
310.80  Increases in Pay
310.90  Decreases in Pay
310.100 Other Pay Provisions
310.110 Implementation of Pay Plan Changes for Fiscal Year 2004
310.120 Interpretation and Application of Pay Plan
310.130 Effective Date
310.140 Reinstitution of Within Grade Salary Increases (Repealed)
310.150 Fiscal Year 1985 Pay Changes in Schedule of Salary Grades, effective July 1, 1984 (Repealed)

SUBPART B: SCHEDULE OF RATES

Section
310.205 Introduction
310.210 Prevailing Rate
310.220 Negotiated Rate
310.230 Part-Time Daily or Hourly Special Services Rate
310.240 Hourly Rate
310.250 Member, Patient and Inmate Rate
310.260 Trainee Rate
310.270 Legislated and Contracted Rate
310.280 Designated Rate
310.290 Out-of-State or Foreign Service Rate
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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310.300 Educator Schedule for RC-063 and HR-010
310.310 Physician Specialist Rate
310.320 Annual Compensation Ranges for Executive Director and Assistant Executive Director, State Board of Elections
310.330 Excluded Classes Rate (Repealed)

SUBPART C: MERIT COMPENSATION SYSTEM

Section
310.410 Jurisdiction
310.420 Objectives
310.430 Responsibilities
310.440 Merit Compensation Salary Schedule
310.450 Procedures for Determining Annual Merit Increases
310.455 Intermittent Merit Increase
310.456 Merit Zone (Repealed)
310.460 Other Pay Increases
310.470 Adjustment
310.480 Decreases in Pay
310.490 Other Pay Provisions
310.495 Broad-Band Pay Range Classes
310.500 Definitions
310.510 Conversion of Base Salary to Pay Period Units (Repealed)
310.520 Conversion of Base Salary to Daily or Hourly Equivalents
310.530 Implementation
310.540 Annual Merit Increase Guidechart for Fiscal Year 2004
310.550 Fiscal Year 1985 Pay Changes in Merit Compensation System, effective July 1, 1984 (Repealed)

310. APPENDIX A Negotiated Rates of Pay
310.TABLE A HR-190 (Department of Central Management Services – State of Illinois Building – SEIU) (Repealed)
310.TABLE B HR-200 (Department of Labor – Chicago, Illinois – SEIU) (Repealed)
310.TABLE C RC-069 (Firefighters, AFSCME) (Repealed)
310.TABLE D HR-001 (Teamsters Local #726)
310.TABLE E RC-020 (Teamsters Local #330)
310.TABLE F RC-019 (Teamsters Local #25)
310.TABLE G RC-045 (Automotive Mechanics, IFPE)
310.TABLE H RC-006 ( Corrections Employees, AFSCME)
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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310.TABLE I  RC-009 (Institutional Employees, AFSCME)
310.TABLE J  RC-014 (Clerical Employees, AFSCME)
310.TABLE K  RC-023 (Registered Nurses, INA)
310.TABLE L  RC-008 (Boilermakers)
310.TABLE M  RC-110 (Conservation Police Lodge)
310.TABLE N  RC-010 (Professional Legal Unit, AFSCME)
310.TABLE O  RC-028 (Paraprofessional Human Services Employees, AFSCME)
310.TABLE P  RC-029 (Paraprofessional Investigatory and Law Enforcement Employees, IFPE)
310.TABLE Q  RC-033 (Meat Inspectors, IFPE)
310.TABLE R  RC-042 (Residual Maintenance Workers, AFSCME)
310.TABLE S  HR-012 (Fair Employment Practices Employees, SEIU)
            (Repealed)
310.TABLE T  HR-010 (Teachers of Deaf, IFT)
310.TABLE U  HR-010 (Teachers of Deaf, Extracurricular Paid Activities)
310.TABLE V  CU-500 (Corrections Meet and Confer Employees)
310.TABLE W  RC-062 (Technical Employees, AFSCME)
310.TABLE X  RC-063 (Professional Employees, AFSCME)
310.TABLE Y  RC-063 (Educators, AFSCME)
310.TABLE Z  RC-063 (Physicians, AFSCME)
310.TABLE AA NR-916 (Department of Natural Resources, Teamsters)
310.TABLE AB VR-007 (Plant Maintenance Engineers, Operating Engineers)
            (Repealed)

310.APPENDIX B  Schedule of Salary Grades – Monthly Rates of Pay for Fiscal Year 2004
310.APPENDIX C  Medical Administrator Rates for Fiscal Year 2004
310.APPENDIX D  Merit Compensation System Salary Schedule for Fiscal Year 2004
310.APPENDIX E  Teaching Salary Schedule (Repealed)
310.APPENDIX F  Physician and Physician Specialist Salary Schedule (Repealed)
310.APPENDIX G  Broad-Band Pay Range Classes Salary Schedule for Fiscal Year 2004

AUTHORITY: Implementing and authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

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

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**DEPARTMENT OF CENTRAL MANAGEMENT SERVICES**

**NOTICE OF PEREMPTORY AMENDMENT**

Section 310. **APPENDIX A   Negotiated Rates of Pay**

Section 310. **TABLE V   CU-500 (Corrections Meet and Confer Employees)**

**Effective July 1, 2004**

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DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

**Youth Supervisor IV**

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Maximum Security Institutions Schedule
**Effective July 1, 2004**

| Correctional Casework Supervisor | 3649  | 3753  | 3864  | 3976  | 4169  | 4361  | 4561  | 4752  | 4942  | 5236  | 5393  |
| Correctional Lieutenant           | 3460  | 3558  | 3663  | 3769  | 3953  | 4134  | 4322  | 4498  | 4682  | 4958  | 5107  |
| Corrections Clerk III             | 2995  | 3079  | 3165  | 3253  | 3396  | 3544  | 3689  | 3834  | 3986  | 4212  | 4338  |
| Corrections Food Service Supervisor III | 3288 | 3382  | 3480  | 3581  | 3749  | 3917  | 4090  | 4253  | 4418  | 4675  | 4815  |
| Corrections Identification Supervisor | 3132 | 3219  | 3308  | 3405  | 3562  | 3720  | 3872  | 4025  | 4182  | 4425  | 4558  |
| Corrections Industry Supervisor   | 3288  | 3382  | 3480  | 3581  | 3749  | 3917  | 4090  | 4253  | 4418  | 4675  | 4815  |
| Corrections Laundry Manager II    | 3132  | 3219  | 3308  | 3405  | 3562  | 3720  | 3872  | 4025  | 4182  | 4425  | 4558  |
| Corrections Maintenance Supervisor | 2995 | 3079  | 3165  | 3253  | 3396  | 3544  | 3689  | 3834  | 3986  | 4212  | 4338  |
| Corrections Supply Supervisor III | 3288  | 3382  | 3480  | 3581  | 3749  | 3917  | 4090  | 4253  | 4418  | 4675  | 4815  |
| Youth Supervisor IV               | 3460  | 3558  | 3663  | 3769  | 3953  | 4134  | 4322  | 4498  | 4682  | 4958  | 5107  |

**Effective January 1, 2005**

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DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Correctional Casework Supervisor
Correctional Lieutenant
Corrections Clerk III
Corrections Food Service Supervisor III
Corrections Identification Supervisor
Corrections Industry Supervisor
Corrections Laundry Manager II
Corrections Maintenance Supervisor
Corrections Residence Counselor II
Corrections Supply Supervisor III
Property and Supply Clerk III
Storekeeper III
Youth Supervisor IV

Maximum Security Institutions Schedule
Effective January 1, 2005

S T E P S

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## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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NOTICE OF PEREMPTORY AMENDMENT

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| Corrections Industry Supervisor | 2886 | 2968 | 3055 | 3146 | 3296 | 3447 | 3600 | 3746 | 3894 | 4122 |
| Corrections Laundry Manager-II | 2746 | 2823 | 2904 | 2988 | 3128 | 3270 | 3405 | 3542 | 3684 | 3900 |
| Corrections Maintenance Supervisor | 2625 | 2700 | 2776 | 2854 | 2980 | 3113 | 3242 | 3373 | 3508 | 3709 |
| Corrections Residence Counselor-II | 2625 | 2700 | 2776 | 2854 | 2980 | 3113 | 3242 | 3373 | 3508 | 3709 |
| Corrections Supply Supervisor-III | 2886 | 2968 | 3055 | 3146 | 3296 | 3447 | 3600 | 3746 | 3894 | 4122 |
| Property and Supply Clerk-III | 1900 | 1952 | 2007 | 2061 | 2135 | 2206 | 2285 | 2353 | 2428 | 2548 |
| Storekeeper-III | 2302 | 2367 | 2434 | 2503 | 2601 | 2706 | 2810 | 2909 | 3017 | 3186 |
| Corrections Food Service Supervisor-III | 2938 | 3021 | 3108 | 3199 | 3349 | 3499 | 3654 | 3799 | 3946 | 4176 |
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Maximum Security Institutions Schedule
Effective July 1, 2000

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DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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Effective July 1, 2001

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| Correctional Lieutenant | 2994 | 3079 | 3170 | 3264 | 3420 | 3576 | 3735 | 3886 | 4040 | 4227 |
| Corrections Clerk III | 2725 | 2801 | 2880 | 2961 | 3092 | 3230 | 3364 | 3499 | 3640 | 3827 |
| Corrections Food Service Supervisor III | 2994 | 3079 | 3170 | 3264 | 3420 | 3576 | 3735 | 3886 | 4040 | 4227 |
| Corrections Identification Supervisor | 2849 | 2929 | 3013 | 3100 | 3245 | 3393 | 3533 | 3675 | 3822 | 4046 |
| Corrections Industry Supervisor | 2994 | 3079 | 3170 | 3264 | 3420 | 3576 | 3735 | 3886 | 4040 | 4227 |
| Corrections Laundry Manager II | 2849 | 2929 | 3013 | 3100 | 3245 | 3393 | 3533 | 3675 | 3822 | 4046 |
| Corrections | 2725 | 2801 | 2880 | 2961 | 3092 | 3230 | 3364 | 3499 | 3640 | 3848 |
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

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Maximum Security Institutions Schedule
Effective July 1, 2001

| Correctional Casework Supervisor | 3382 | 3479 | 3581 | 3685 | 3864 | 4041 | 4227 | 4404 | 4580 | 4853 |
| Correctional Lieutenant | 3048 | 3134 | 3225 | 3319 | 3475 | 3630 | 3791 | 3941 | 4094 | 4333 |
| Corrections Clerk III | 2776 | 2854 | 2933 | 3015 | 3147 | 3285 | 3419 | 3554 | 3694 | 3804 |
| Corrections Food Service Supervisor III | 3048 | 3134 | 3225 | 3319 | 3475 | 3630 | 3791 | 3941 | 4094 | 4333 |
| Corrections Identification Supervisor | 2903 | 2983 | 3066 | 3156 | 3304 | 3448 | 3588 | 3730 | 3876 | 4101 |
| Corrections Industry Supervisor | 3048 | 3134 | 3225 | 3319 | 3475 | 3630 | 3791 | 3941 | 4094 | 4333 |
| Corrections Laundry Manager II | 2903 | 2983 | 3066 | 3156 | 3304 | 3448 | 3588 | 3730 | 3876 | 4101 |
| Corrections Maintenance Supervisor | 2776 | 2854 | 2933 | 3015 | 3147 | 3285 | 3419 | 3554 | 3694 | 3804 |
# DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF PEREMPTORY AMENDMENT

### Corrections
- Supply Supervisor III: 3048 3134 3225 3319 3475 3630 3791 3941 4094 4333
- Youth Supervisor IV: 3048 3134 3225 3319 3475 3630 3791 3941 4094 4333

**Effective January 1, 2002**

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DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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Maximum Security Institutions Schedule
Effective January 1, 2002

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Maximum Security Institutions Schedule
Effective July 1, 2002
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Effective January 1, 2003

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**Effective July 1, 2003**

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| Correctional Lieutenant             |      |      |      |      |      |      |      |      |      |      |      |
| Corrections Clerk III               | 2940 | 3022 | 3108 | 3195 | 3336 | 3485 | 3630 | 3775 | 3928 | 4152 | 4235 |
| Corrections Food Service Supervisor III | 3230 | 3322 | 3421 | 3521 | 3690 | 3858 | 4030 | 4193 | 4360 | 4614 | 4706 |
| Corrections Identification Supervisor | 3074 | 3161 | 3251 | 3345 | 3502 | 3661 | 3812 | 3966 | 4124 | 4366 | 4453 |
| Corrections Industry Supervisor     | 3230 | 3322 | 3421 | 3521 | 3690 | 3858 | 4030 | 4193 | 4360 | 4614 | 4706 |
| Corrections Laundry Manager II      | 3074 | 3161 | 3251 | 3345 | 3502 | 3661 | 3812 | 3966 | 4124 | 4366 | 4453 |
| Maintenance Supervisor              | 2940 | 3022 | 3108 | 3195 | 3336 | 3485 | 3630 | 3775 | 3928 | 4152 | 4235 |
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DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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Maximum Security Institutions Schedule
Effective July 1, 2003

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DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Youth Supervisor IV  
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3499  3602  3707  3817  4008  4193  4387  4569  4757  5041  5142  

Effective January 1, 2004

Correctional Casework Supervisor  
3589  3695  3804  3916  4109  4299  4500  4692  4883  5176  5331

Correctional Lieutenant  
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Corrections Clerk III  
3230  3322  3421  3521  3690  3858  4030  4193  4360  4614  4752

Corrections Food Service Supervisor III  
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Corrections Identification Supervisor  
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Corrections Industry Supervisor  
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Corrections Laundry Manager II  
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Corrections Maintenance Supervisor  
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Corrections Residence Counselor II  
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Corrections Supply Supervisor III  
2200  2252  2307  2361  2435  2506  2585  2655  2733  2858  2944

Property and Supply Clerk III  
2602  2670  2739  2811  2914  3028  3145  3256  3377  3566  3673

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**DEPARTMENT OF CENTRAL MANAGEMENT SERVICES**

**NOTICE OF PEREMPTORY AMENDMENT**

Maximum Security Institutions Schedule
Effective January 1, 2004

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(Source: Amended by peremptory rulemaking at 29 Ill. Reg. 726, effective December 15, 2004)
The following second notices were received by the Joint Committee on Administrative Rules during the period of December 14, 2004 through December 20, 2004 and have been scheduled for review by the Committee at its January 11, 2005 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<table>
<thead>
<tr>
<th>Second Notice Expires</th>
<th>Agency and Rule</th>
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<td><strong>Pollution Control Board</strong>, Regulatory Relief Mechanisms (35 Ill. Adm. Code 104)</td>
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<td><strong>Pollution Control Board</strong>, Appeals of Final Decisions of State Agencies (35 Ill. Adm. Code 105)</td>
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<td><strong>Pollution Control Board</strong>, Proceedings Pursuant to Specific Rules or Statutory Provisions (35 Ill. Adm. Code 106)</td>
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<td>Identification and Protection of Trade Secrets and Other Non-Disclosable Information (35 Ill. Adm. Code 130)</td>
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<td>Secretary of State</td>
<td>Cancellation, Revocation of Suspension of Licenses or Permits (92 Ill. Adm. Code 1040)</td>
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<td>Illinois Commerce Commission</td>
<td>Employee Walkways in Railroad Yards (92 Ill. Adm. Code 1546)</td>
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At its meeting on December 14, 2004, the Joint Committee on Administrative Rules considered the above cited rulemaking and recommended that DHS more strictly follow 5 ILCS 100/5-60 and submit a complete Regulatory Agenda for publication in the Illinois Register that anticipates all rules the agency will be proposing, including those necessitated by annual federal reviews and updates of rates.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.
At its meeting on December 14, 2004, the Joint Committee on Administrative Rules objected to the emergency rules of DHS titled "Eligibility" (89 Ill. Adm. Code 682; 28 Ill. Reg. 15183) because DHS used emergency rulemaking to state that a person needing long-term care must obtain a physician's certification every two years. Use of emergency rulemaking procedures is limited to emergency situations that reasonably present a threat to the public interest, safety or welfare requiring the adoption of rules upon fewer days notice than under regular rulemaking. DHS has been unable to provide any rationale for why emergency rulemaking was required in this instance.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.
At its meeting on December 14, 2004, the Joint Committee on Administrative Rules objected to DHS' use of emergency rulemaking to amend Section 684.75, the physician's certification provisions of Service Planning and Provision (89 Ill. Adm. Code 684; 28 Ill. Reg. 15188). Use of emergency rulemaking procedures is limited to emergency situations that reasonably present a threat to the public interest, safety or welfare requiring the adoption of rules upon fewer days notice than under regular rulemaking. DHS has been unable to provide any rationale for why emergency rulemaking was required in this instance.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.
At its meeting on December 14, 2004, the Joint Committee on Administrative Rules objected to the emergency rules of the Department of Revenue titled Use Tax (86 Ill. Adm. Code 150; 28 Ill. Reg. 15266) because DOR inadvertently adopted an incorrect effective date for the tax exemption (March 1, 2004), rather than a continuation of the July 1, 2004 through June 30, 2005 time frame from PA 93-1033.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.
DEPARTMENT OF PUBLIC AID

AGENCY RESPONSE TO JOINT COMMITTEE
RECOMMENDATION ON PROPOSED RULEMAKING

1) **Heading of the Part:** Medical Assistance Programs

2) **Code Citation:** 89 Ill Adm. Code 120

3) **Section Number:** 120.530  
   **Proposed Action:** Amendment

4) **Date Originally Published in the Illinois Register:** February 27, 2004; 28 Ill. Reg. 3685

5) **JCAR Statement of Recommendation on Proposed Rulemaking Published in the Illinois Register:** September 14, 2004; 27 Ill. Reg. 13270

6) **Summary of Action Taken by the Agency:** At its meeting on September 14, 2004, the Joint Committee on Administrative Rules considered the above cited proposed rulemaking and issued a Recommendation that the Department seek a statutory amendment clearly authorizing the Statewide average rate approach at the 125 percent level or making the statute more flexible with respect to the threshold.

The Department has utilized the standard of 125 percent of the Statewide average per diem expenditure for hospital care as the ceiling for the estimated cost to the State for in-home care since the first waiver for medically fragile, technology dependent children was approved in 1985. The use of this standard compensates for inequities that may result when children enter the program from hospitals with widely differing costs of care.

Under the Illinois Public Aid Code at Section 5-2(7)(c) [305 ILCS 5/5-2(7)(c)], for persons under the age of 21 years, the Department must determine that the estimated cost for care outside of an institution is not greater than the cost for institutional care. This provision reflects federal regulations which require that the cost of waiver care shall not exceed the cost of appropriate and comparable institutional care. Federal regulations allow states to use individual caps for purposes of cost determination under a waiver as long as the waiver is cost neutral in the aggregate. The Department believes that, as an option, utilization of 125 percent of the Statewide average rate to determine individual caps results in compliance with State and federal requirements.

Because of the foregoing, the Department respectfully disagrees with the Joint Committee and does not believe it is necessary to seek a statutory amendment that authorizes the use of the Statewide average rate approach at the 125 percent level.
NOTICE OF WITHDRAWAL OF PROPOSED RULES

1) **Heading of the Part**: Licensing

2) **Code Citation**: 11 Ill. Adm. Code 502

3) **Section Number**: 502.350  **Proposed Action**: Withdraw

4) **Date Notice of Proposed Rules Published in the Illinois Register**: July 9, 2004; 28 Ill. Reg. 9219

5) **Reason for the withdrawal**: Board staff has determined, after meetings with industry groups, that this proposed rulemaking requires significant changes.
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF WITHDRAWL OF PROPOSED AMENDMENTS

1) **Heading of the Part:** Permanent Program Performance Standards – Underground Mining Operations

2) **Code Citation:** 62 Ill. Adm. Code 1817

3) **Section Numbers:**
   - 1817.42 Amendment
   - 1817.43 Amendment
   - 1817.116 Amendment
   - 1817.121 Amendment

4) **Date Notice of Proposed Amendments Published in the Illinois Register:** December 17, 2004; 28 Ill. Reg. 16118

5) **Reason for the Withdrawal:** The Department has determined that additional language changes are necessary before filing the proposed amendments.
WHEREAS, perianesthesia nursing is a specialized nursing practice dealing in all phases of preanesthesia and postanesthesia care, ambulatory surgery and pain management; and

WHEREAS, the depth and breadth of the perianesthesia nursing profession meets the varied and emerging health care needs of the American population in a diversified range of environments; and

WHEREAS, while the demand for perianesthesia nurses will only increase due to an aging American population and advances in medicine that are prolonging life, the role played by these nurses has been established as essential in the quality of health care and safety of patients in the hospital and ambulatory surgery settings; and

WHEREAS, there are more than 49,000 perianesthesia nurses in the United States whose interests are represented by the American Society of PeriAnesthesia Nurses, one of our nation’s premier specialty nursing organizations; and

WHEREAS, the American Society of PeriAnesthesia Nurses strives to advance the field of nursing by providing education, conducting research and developing standards of practice for their field; and

WHEREAS, the Illinois Society of PeriAnesthesia Nurses, founded in 1976 as a branch of the American Society, exists to unite perianesthesia nurses to promote quality and cost-effective care for their patients, their families and the community, through public and professional education, research and standards of practice; and

WHEREAS, in celebration of the ways perianesthesia nurses strive to advance nursing practices, the Illinois Society of PeriAnesthesia Nurses, in conjunction with the American Society of PeriAnesthesia Nurses will celebrate PeriAnesthesia Nurse Awareness Week, with the theme, “The Vision of Perianesthesia Nurses in Action:”

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim February 7-13, 2005 as PERIANESTHESIA NURSE AWARENESS WEEK in Illinois, and encourage citizens to join in celebration of the accomplishments and efforts to improve the quality of patient care and nursing practices of Illinois’ perianesthesia nurses.

Issued by the Governor December 15, 2004.
Filed by the Secretary of State December 15, 2004.

2004-354
CAREER AND TECHNICAL EDUCATION WEEK

WHEREAS, a commitment to career and technical education helps to ensure that Illinois has a strong, well-trained workforce that enhances productivity in business and industry, and solidifies the State’s leadership in the national and international marketplaces; and

WHEREAS, providing citizens with career and technical education can stimulate the growth and vitality of businesses and industries by preparing workers for the occupations forecasted to experience the largest and fastest growth in the next decade; and
WHEREAS, individual citizens benefit from a career and technical education because it enables them to find satisfying careers suited to their own skills and interests, provides technical skills that allow them to excel in their chosen careers and teaches leadership skills that serve them on the job, at home and in the community; and

WHEREAS, for over 60 years, the Illinois Association for Career and Technical Education (IACTE), the only association in Illinois dedicated to the support and service of career and technical educators, has been committed to the betterment of the profession, and to providing visibility and assistance for vocational and technical education; and

WHEREAS, each year, the IACTE celebrates Career and Technical Education Week to promote the advancement of the career and technical education profession in this State. The theme for this year’s week is “Career Tech: Training Tomorrow’s Workforce;”

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim February 13-19, 2005 as CAREER AND TECHNICAL EDUCATION WEEK in Illinois, and encourage all citizens to become familiar with the services and benefits offered by career and technical education programs in our state, and to support and participate in these programs to enhance individual work skills and productivity.

Issued by the Governor December 15, 2004.
Filed by the Secretary of State December 15, 2004.

2004-355
ANGELMAN SYNDROME AWARENESS DAY

WHEREAS, Angelman Syndrome is a rare genetic condition that was first discovered in the 1960’s by Dr. Harry Angelman. The disorder is characterized by an irregularity in Chromosome 15; and

WHEREAS, symptoms of Angelman Syndrome include: seizures; profound mental retardation; little or no speech; feeding and sleeping problems, and hyperactivity; and

WHEREAS, Angelman Syndrome occurs in about 1 in 25,000 individuals, and it is most prevalent in children between the ages of three and seven. Although those affected have a normal life expectancy, they are never able to live independently; and

WHEREAS, Angelman Syndrome is an extremely complex disorder, and not enough information is known to find an effective cure. Medical scientists continue working daily to increase research for Angelman Syndrome in the hopes of one day eradicating it from society:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim December 24, 2004 as ANGELMAN SYNDROME AWARENESS DAY in Illinois, and encourage all citizens to become cognizant of this disorder, and learn more about what they can do to assist in the efforts to develop a cure.

Issued by the Governor December 17, 2004.
Filed by the Secretary of State. December 17, 2004

2004-356
CRIME STOPPERS OF LAKE COUNTY MONTH
WHEREAS, Crime Stoppers of Lake County was formed in 1983 and is a community program comprised of concerned citizens who work closely with police authorities, the news media and the public in the fight against crime in Lake County and surrounding communities; and

WHEREAS, during the month of January, Crime Stoppers will be involved in fundraising ventures and will provide information to increase public awareness of crime prevention and community safety; and

WHEREAS, Crime Stoppers of Lake County is a non-profit organization, funded primarily by private donations of money, goods or services from the public, corporations, clubs, associations, retailers and organizations. The great success of Crime Stoppers is due to the support of all who contribute to the program. Cash rewards are paid to people who provide information leading to the arrest of felony crime offenders and to the capture of felony fugitives. Callers reporting a crime always remain anonymous; and

WHEREAS, Crime Stoppers of Lake County has been in existence for more than 20 years. With the cooperation of citizens and the police departments, Crime Stoppers has proven to be successful in combating crime and has more than 4,100 arrests for recovery of stolen property and illicit narcotics. It should be noted that, since the program’s inception on April 26, 1983, Lake County Crime Stoppers has led law enforcement officers to more than $13 million worth of contraband and recovered stolen property throughout Lake County, Northern Illinois and Wisconsin; and

WHEREAS, Lake County benefits when concerned citizens look out for each other and report a crime to the appropriate authorities. It is this type of support between concerned citizens and the law enforcement agencies that improves the quality of life and safety for all communities within Lake County:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim January 2004 as CRIME STOPPERS OF LAKE COUNTY MONTH in Illinois.

Issued by the Governor December 17, 2004.

Filed by the Secretary of State. December 17, 2004
### PROPOSED RULES

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