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February 17, 2012 Volume 36, Issue 7

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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2012

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 27, 2011	January 6, 2012
2	January 3, 2012	January 13, 2012
3	January 9, 2012	January 20, 2012
4	January 17, 2012	January 27, 2012
5	January 23, 2012	February 3, 2012
6	January 30, 2012	February 10, 2012
7	February 6, 2012	February 17, 2012
8	February 14, 2012	February 24, 2012
9	February 21, 2012	March 2, 2012
10	February 27, 2012	March 9, 2012
11	March 5, 2012	March 16, 2012
12	March 12, 2012	March 23, 2012
13	March 19, 2012	March 30, 2012
14	March 26, 2012	April 6, 2012
15	April 2, 2012	April 13, 2012
16	April 9, 2012	April 20, 2012
17	April 16, 2012	April 27, 2012
18	April 23, 2012	May 4, 2012
19	April 30, 2012	May 11, 2012
20	May 7, 2012	May 18, 2012
21	May 14, 2012	May 25, 2012
22	May 21, 2012	June 1, 2012
23	May 29, 2012	June 8, 2012

24	June 4, 2012	June 15, 2012
25	June 11, 2012	June 22, 2012
26	June 18, 2012	June 29, 2012
27	June 25, 2012	July 6, 2012
28	July 2, 2012	July 13, 2012
29	July 9, 2012	July 20, 2012
30	July 16, 2012	July 27, 2012
31	July 23, 2012	August 3, 2012
32	July 30, 2012	August 10, 2012
33	August 6, 2012	August 17, 2012
34	August 13, 2012	August 24, 2012
35	August 20, 2012	August 31, 2012
36	August 27, 2012	September 7, 2012
37	September 4, 2012	September 14, 2012
38	September 10, 2012	September 21, 2012
39	September 17, 2012	September 28, 2012
40	September 24, 2012	October 5, 2012
41	October 1, 2012	October 12, 2012
42	October 9, 2012	October 19, 2012
43	October 15, 2012	October 26, 2012
44	October 22, 2012	November 2, 2012
45	October 29, 2012	November 9, 2012
46	November 5, 2012	November 16, 2012
47	November 13, 2012	November 26, 2012
48	November 19, 2012	November 30, 2012
49	November 26, 2012	December 7, 2012
50	December 3, 2012	December 14, 2012
51	December 10, 2012	December 21, 2012
52	December 17, 2012	December 28, 2012

DEPARTMENT OF HUMAN RIGHTS

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Procedures of the Department of Human Rights
- 2) Code Citation: 56 Ill. Adm. Code 2520
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
2520.570	Amendment
2520.700	Amendment
2520.710	Amendment
2520.720	Amendment
2520.730	Amendment
2520.760	Amendment
2520.770	Amendment
2520.795	Amendment
2520.APPENDIX A	Amendment
2520.APPENDIX B	Repealed
2520.APPENDIX C	Amendment
2520.APPENDIX D	Amendment
- 4) Statutory Authority: Implementing Articles 1 through 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 1 through 7B] and the Intergovernmental Cooperation Act [5 ILCS 220], and authorized by Sections 7-101(A) and 7-105(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(A) and 7-105(A)]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments clarify the Request for Review period when a notice of default is issued, make technical changes to clarify affirmative action obligations of State agencies, and update outdated references in the Department's affirmative action regulations for State agencies.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No

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- 11) Statement of Statewide Policy Objective: The proposed amendments clarify affirmative action requirements of State agencies and will affect a unit of local government only if the Department issues a finding of default against that unit of local government.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments in writing within 45 days after publication to:

David T. Rothal
Staff Attorney
Illinois Department of Human Rights – Legal Division
100 W. Randolph St., Ste. 10-100
Chicago, IL 60601

312/814-6257 or 217/785-5125 (TTY)
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: The amendments will only affect these entities if they are subject to a finding of default against them.
 - B) Reporting, bookkeeping or other procedures required for compliance: No changes
 - C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: The proposed amendments were contained in the regulatory agenda for January 2011, but did not reference the amendment to Section 2520.570 because the amendment was not anticipated.

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

DEPARTMENT OF HUMAN RIGHTS

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER II: DEPARTMENT OF HUMAN RIGHTS

PART 2520

PROCEDURES OF THE DEPARTMENT OF HUMAN RIGHTS

SUBPART A: INTERPRETATIONS

Section	
2520.10	Definition of Terms
2520.20	Computation of Time
2520.30	Service of Documents
2520.40	Filing with the Department
2520.50	Separability
2520.110	Preservation of Records by Employers, Labor Organizations, Employment Agencies and Respondents

SUBPART B: CHARGE

Section	
2520.310	Time of Filing (Repealed)
2520.320	Form (Repealed)
2520.330	Contents
2520.340	Requirements for Charge (Repealed)
2520.350	Unperfected Charge
2520.360	Amendment
2520.370	Substitution and Addition of Parties (Repealed)
2520.380	Withdrawal of Charge

SUBPART C: PROCEDURE UPON CHARGE

Section	
2520.405	Verified Response to Charge
2520.410	Docketing and Service of Charge (Repealed)
2520.420	Maintenance of Records (Repealed)
2520.430	Investigation
2520.440	Fact-Finding Conference
2520.450	Administrative Closure (Repealed)

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- 2520.460 Determination After Investigation (Repealed)
- 2520.470 Conciliation (Repealed)
- 2520.480 Complaint (Repealed)

SUBPART D: SETTLEMENTS

Section

- 2520.510 Settlement
- 2520.520 Non-Disclosure (Repealed)
- 2520.530 Dismissal for Refusal to Accept Settlement Offer (Repealed)
- 2520.540 Non-Compliance with Settlement Terms (Repealed)

SUBPART E: ADMINISTRATIVE CLOSURE, DISMISSAL AND DEFAULT

Section

- 2520.550 Administrative Closure
- 2520.560 Dismissal
- 2520.570 Default

SUBPART F: REQUESTS FOR REVIEW

Section

- 2520.573 Filing with Chief Legal Counsel
- 2520.575 Contents of Request for Review
- 2520.577 Notice by the Chief Legal Counsel
- 2520.580 Extensions of Time
- 2520.583 Reply to Request for Review and Surreply
- 2520.585 Additional Investigation
- 2520.587 Decision

SUBPART G: RELATIONS WITH LOCAL HUMAN RIGHTS AGENCIES

Section

- 2520.610 Scope and Purpose (Repealed)
- 2520.620 Definitions (Repealed)
- 2520.630 Cooperative Agreements
- 2520.640 Nature of Cooperative Agreements
- 2520.650 Training and Technical Assistance

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2520.660 Promotion of Communication and Goodwill

SUBPART H: EQUAL EMPLOYMENT OPPORTUNITY AND
AFFIRMATIVE ACTION BY STATE EXECUTIVE AGENCIES

Section

2520.700 Definitions
2520.710 Scope and Purpose
2520.720 Affirmative Action Groups
2520.730 Consideration of Additional Groups
2520.740 Definitions (Renumbered)
2520.750 Nondiscrimination (Repealed)
2520.760 Plans
2520.770 Reporting and Record-Keeping
2520.780 Equal Employment Opportunity Officers
2520.790 Complaint Process
2520.795 EEO/AA Performance Reviews
2520.797 Sanctions for Noncompliance

SUBPART I: SEXUAL HARASSMENT IN HIGHER EDUCATION POLICIES

Section

2520.810 Posting of Sexual Harassment Policies
2520.820 Notice to Show Cause

2520.APPENDIX A Contents of Affirmative Action Plans
2520.APPENDIX B Value Weight Assignment Chart (~~Repealed~~)
2520.APPENDIX C Contents of Layoff Reports
2520.APPENDIX D Illinois Counties by Region

AUTHORITY: Implementing Articles 1 through 7B of the Illinois Human Rights Act [775 ILCS 5/Arts. 1 through 7B] and the Intergovernmental Cooperation Act [5 ILCS 220], and authorized by Sections 7-101(A) and 7-105(A) of the Illinois Human Rights Act [775 ILCS 5/7-101(A) and 7-105(A)].

SOURCE: Adopted November 20, 1972 by the Fair Employment Practices Commission; transferred to the Department of Human Rights by P.A. 81-1216, effective July 1, 1980; emergency amendments at 4 Ill. Reg. 39, p. 335, effective September 17, 1980, for a maximum

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of 150 days; amended at 5 Ill. Reg. 1627, effective February 9, 1981; amended at 6 Ill. Reg. 2125, effective February 8, 1982; amended at 6 Ill. Reg. 3076, effective March 15, 1982; amended at 6 Ill. Reg. 8090, effective July 1, 1982; codified at 8 Ill. Reg. 17884; amended at 17 Ill. Reg. 15556, effective September 13, 1993; amended at 18 Ill. Reg. 16829, effective November 4, 1994; emergency amendment at 20 Ill. Reg. 445, effective January 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 5084, effective March 15, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6291, effective April 18, 1996; amended at 20 Ill. Reg. 10631, effective July 24, 1996; amended at 21 Ill. Reg. 14081, effective October 10, 1997; amended at 26 Ill. Reg. 17217, effective November 18, 2002; amended at 29 Ill. Reg. 804, effective December 28, 2004; amended at 30 Ill. Reg. 1343, effective January 13, 2006; amended at 30 Ill. Reg. 13403, effective July 31, 2006; amended at 30 Ill. Reg. 18715, effective November 20, 2006; amended at 31 Ill. Reg. 12319, effective August 8, 2007; amended at 31 Ill. Reg. 14815, effective October 19, 2007; amended at 32 Ill. Reg. 13482, effective August 1, 2008; amended at 33 Ill. Reg. 11311, effective July 20, 2009; amended at 33 Ill. Reg. 17086, effective December 4, 2009; amended at 34 Ill. Reg. 11413, effective July 20, 2010; amended at 36 Ill. Reg. _____, effective _____.

SUBPART E: ADMINISTRATIVE CLOSURE, DISMISSAL AND DEFAULT

Section 2520.570 Default

Prior to the entry of a default against a respondent pursuant to ~~Section~~Sections 7A-102(B), ~~or~~ 7A-102(C), ~~7B-102(B) or 7B-102(C)~~ of the Act and Section 2520.440(d) of this Part, the Department will afford that party written notice and a period of at least ~~15~~fifteen days to show good cause in writing why default may not be appropriate ~~[775 ILCS 5/7A-102(B) and 5/7A-102(C)]~~. A Notice of Default shall be construed as a "report" pursuant to Section 7A-102(G) of the Act. For charges filed on or after January 1, 2008, if the Department issues a Notice of Default, the Department will notify the respondent that the respondent has 30 days from service of the Notice of Default to file a Request for Review with the Human Rights Commission.

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

SUBPART H: EQUAL EMPLOYMENT OPPORTUNITY AND
AFFIRMATIVE ACTION BY STATE EXECUTIVE AGENCIES**Section 2520.700 Definitions**

For purposes of this Subpart, the following terms shall have the meanings indicated:

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~~Act—the Illinois Human Rights Act [775 ILCS 5].~~

Affirmative Action Group – any of the groups listed in Section 2520.720 or 2520.730 ~~of this Part.~~

Agency – any instrumentality or facility of the executive branch of State government, as specified in Section 2520.710 ~~of this Part.~~

Central Management Services ~~or CMS~~ – the Department of Central Management Services or any successor agency responsible for its functions.

Chief Executive Officer – the director or other chief executive or administrator of any agency other than the Department.

~~Department—the Department of Human Rights.~~

~~Director—the Director of the Department or a duly authorized designee.~~

Disability – as used in Section 2-105(Bb) of the Act ~~and this Subpart, long-lasting physical, mental, hearing, cognition, ambulation, self care, independent living or other functions~~ ~~a mental or physical condition (other than pregnancy), lasting six months or longer, that limits the amount or kind of work an individual can perform.~~ and this Subpart, long-lasting physical, mental, hearing, cognition, ambulation, self care, independent living or other functions

EEO – Equal Employment Opportunity.

EEO/AA – Equal Employment Opportunity/Affirmative Action.

EEO Job Categories – the following ~~eight~~ categories: officials/managers; professionals; paraprofessionals; technicians; office/clerical workers; protective services workers; skilled craft workers; and service/maintenance workers.

EEO Officer – the Equal Employment Opportunity Officer, whether full or part-time, appointed by a State agency pursuant to Section 2-105(B)(4) of the Act and Section 2520.780 of this Part.

Layoff – the placement of an employee in non-paid and non-working status

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without prejudice, either temporarily or for an indeterminate length of time. Layoff does not include, either temporarily or indeterminately, a means or form of discipline.

Minority – those groups, or members of a group, listed in Section 2520.720 or 2520.730 ~~of this Part~~, other than women and disabled persons.

Numerical Goals – the number of members of an affirmative action group that have been determined to be available to an agency for employment in each of the EEO job categories.

Petitioning Group – a chartered not-for-profit organization that is recognized by the community it purports to represent that has as its purpose fostering the interests and well being of that community.

Plan – an affirmative action plan for employment as described in Section 2520.760.

Program Goals – a set of actions established to address affirmative action or EEO problems cited in the agency's plan.

Promotable – agency employees who, within the fiscal year, under standard employment practices, are able to move from one of the EEO job categories to another.

Reasonable Accommodation – as it relates to disabled employees and applicants, modification of the work site, work process and/or work schedule to enable a disabled person to perform the major functions of a specific job; however, such an accommodation cannot impose an undue hardship on the conduct of the business of the employer or labor organization.

Region – a group of adjacent counties. There are 11 regions within Illinois as identified in Appendix D ~~of this Part~~.

Trainable – agency employees who, within the fiscal year, are eligible for participation in established training programs that, when completed, would allow them to move from one of the EEO job categories to another.

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Transferable – agency employees eligible for transfer within the fiscal year from one region to another.

Underutilized Category – a category in which the number of employed members of an affirmative action group for which numerical goals have been set does not reflect the availability of that group in the agency workforce in that EEO job category.

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

Section 2520.710 Scope and Purpose

This Subpart implements the affirmative action provisions of the Act, which apply to *every State executive department, State agency, board, commission and instrumentality*. ~~(Ill. Rev. Stat. 1991, ch. 68, pars. 2-105(B) and 7-105)~~ [775 ILCS 5/2-105(B) and 7-105]. Agencies of the legislative and judicial branches and local government entities are excluded. This Subpart interprets the responsibilities imposed on covered agencies to practice EEO and affirmative action in employment. This Subpart also describes the methods by which the Department will monitor and assist agencies in complying with those obligations.

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

Section 2520.720 Affirmative Action Groups

Section 2-105(B) of the Act requires agencies to keep records, analyze their workforces, and establish numerical and program goals for employment *"by race, national origin, sex and disability, and any other category which the Department may require by rule"*. ~~(Ill. Rev. Stat. 1991, ch. 68, par. 2-105(B))~~ [775 ILCS 5/2-105(B)]. State agency affirmative action efforts should focus upon the following groups: African Americans, women, Hispanics and Latinos, Native Americans, Asians, Native Hawaiians and Other Pacific Islanders, and disabled persons. The Department will apply the criteria of Section 2520.730 ~~of this Part~~ to identify ~~such~~ other groups to be added to ~~this~~the list ~~above~~.

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

Section 2520.730 Consideration of Additional Groups

- a) Criteria – In order for an affirmative action group to be recognized, a petitioning

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group must present to the Director the following criteria:

- 1) the relationship between the proportion of an affirmative action group in the State population and the proportion of the affirmative action group in State employees, and whether that proportion is less than 4/5 of the availability of that group in each of the ~~eight~~ EEO categories;
 - 2) other authoritative statistical evidence, surveys and studies reflective of the discrimination experienced by the group, particularly, but not exclusively, as they relate to experience in Illinois;
 - 3) the frequency with which charges alleging ~~the~~ discrimination, as compared to discrimination against other minorities, have been filed with the Department, its predecessors and other federal and local entities that investigate employment discrimination charges;
 - 4) whether employment discrimination is longstanding against the group in question and is without an adequate legal remedy ~~that~~ is under color of State law; and
 - 5) evidence of a continuing cycle of discrimination ~~that~~, without affirmative action, will continue.
- b) Consideration Process – If the Director determines that the criteria in subsection (a) ~~above~~ have been met and that a petitioning group has submitted a petition as specified in 2 Ill. Adm. Code 925.110 of the Department's Rules:
- 1) A Notice of Proposed Rulemaking will be published by the Department in the Illinois Register, and the Department will commence rulemaking within 90 days after submission of ~~such~~ a petition.
 - 2) The Department shall convene a hearing, if required, in accordance with Section ~~5-40(b)(5)5.01(b)(5)~~ of the Illinois Administrative Procedure Act (~~Ill. Rev. Stat. 1991, ch. 127, par. 1005-40(b)(5)~~) [5 ILCS 100/5-40(b)(5)].
 - 3) If the rulemaking results in the addition of an affirmative action group, each agency shall develop numerical and program goals for that group.

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

Section 2520.760 Plans

- a) Adoption and Maintenance – Every agency shall develop and adopt a plan conforming to the requirements of this Section, and shall review and update the plan at the beginning of each State fiscal year.
- b) Filing and Approval – By September 1 of each year, every agency shall file with the Department a complete copy of its plan, including any amendments or additions made for that year. If an agency submits a written request for an extension before September 1, the Director may grant an extension of up to 30 days. The request for an extension should state the reason for the extension. The Department will review each agency's plan to determine if it complies with the requirements of this Section. The Department may confer with representatives of the agency and request further information to make this determination. The agency may make revisions to its plan as suggested by the Department to achieve compliance. Within 45 days after receipt of the plan, the Director shall provide to the agency's Chief Executive Officer either a statement indicating that the plan satisfies the requirements of this Section or a statement specifying any deficiencies and the measures necessary to achieve compliance. If, within 30 days thereafter, the agency fails to correct any deficiencies noted by the Director, the Director shall invoke the sanctions provided in Section 2520.797 ~~of this Part~~ for agency noncompliance.
- c) Modifications – After an agency's plan has been approved by the Director, an agency may modify its plan by filing, with the Department, a copy of the proposed modifications together with a written statement outlining the modifications and the reasons ~~for the modification~~therefor. The modifications shall be reviewed by the Department and approved or disapproved in the same manner as provided in subsection (b) ~~above~~.
- d) Contents – Every agency's plan shall include the items specified, and be organized as indicated, in Appendix A ~~of this Part~~.
- e) Guidelines and Assistance – The Department may promulgate and distribute to agencies manuals and guidelines for the preparation of plans. Agencies may also obtain technical assistance by ~~accessing~~ ~~contacting~~ the Department's ~~website at~~

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<http://www.state.il.us/dhr/Liaison/default.htm>~~Compliance Division.~~

- f) Public Disclosure – Upon request, a State agency shall make available for public inspection during normal business hours a copy of its current plan.

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

Section 2520.770 Reporting and Record-Keeping

- a) ~~Workforce Analysis~~**Employment Profiles** – As required by Section 2-105(B) of the Act, each agency shall maintain data reflecting the composition of its workforce in each region, by race, national origin as specified by the Department, sex and disability, EEO job categories, and any other category that the Department may require by rule. This information shall be collected from the agency's employees through the use of a form, developed by Central Management Services and approved by the Director, which shall be completed by each employee and applicant for employment at his/her option. Central Management Services shall compile this data and furnish quarterly reports to each agency and the Department depicting the ~~workforce composition~~**employment profile** of each agency under the Personnel Code [20 ILCS 415]. Other agencies, and agencies under the Code having non-Code employees, shall compile this data themselves and provide it to the Department.
- b) Position Vacancies – Each agency shall maintain a centralized record detailing all its current and anticipated job openings, and indicating for each opening the job title, EEO job category, pay grade or merit compensation level, and region. This information shall be supplied to the agency's EEO Officer, and to the Department upon request. Every agency shall also post conspicuously in its offices all vacancies in nonexempt positions that the agency intends to fill, if the vacant position is ~~underutilized where the proportion of incumbents in one or more affirmative action groups is significantly less than the proportion of those groups in the available local labor force~~. The posting shall also state that the agency is an Equal Opportunity Employer.
- c) Quarterly Reports – No later than 15 working days after ~~receipt of the CMS-DHR9 and CMS-DHR10 data information at~~ the end of each fiscal quarter, every agency shall file a report with the Department. If an agency submits a written request for an extension within 15 working days after ~~the end of the fiscal~~

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~~quarter receipt of the CMS-DHR10 data information~~, the Director may grant an extension of up to 15 days. The report, forwarded with a cover letter signed by the EEO Officer and Chief Executive Officer, shall contain:

- 1) A current ~~workforce analysis~~ employment profile of each of the agency's departments or divisions by EEO job category and affirmative action groups of the incumbents.
 - 2) A breakdown of all employment transactions for the previous quarter by EEO job category and the affirmative action groups of the employees affected.
 - 3) A statement on the agency's progress in meeting its numerical and/or program goals. If a numerical or program goal is not attained, the agency should provide an explanation for the failure to meet the goal.
 - 4) A narrative describing all charges and complaints of employment discrimination filed or pending against the agency during the previous quarter. The narrative should identify the region out of which the charge or complaint was filed; the organization with whom it was filed; and the current status of the matter, including whether pending, withdrawn, settled or dismissed.
 - 5) A quarterly report describing hires of employees with disabilities and any known changes in employees' disability status.
- d) Federal Compliance Reports – Any agency that is the subject of an EEO compliance review by the federal government shall forward to the Department a copy of any and all reports within 5 working days after the agency's receipt of the report.
 - e) Orders and Settlements – Any agency that is a party to any proceedings, whether judicial or administrative, and whether federal or State, involving allegations of employment discrimination shall forward to the Department a copy of any order, decree, settlement agreement or award that decides or disposes of the proceedings within 15 days after the entry of the order, decree, settlement agreement or award.
 - f) Layoff Reports – Each agency shall prepare a layoff report outlining any intended

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layoff of incumbent employees, in accordance with the procedures established in Appendix C. The report shall be submitted to the agency's EEO Officer and the Department not less than 30 days prior to the expected date of the layoff, unless emergency conditions necessitate a delay of the report; however, the emergency conditions must be documented in the report. The report shall identify, by region, job title and affirmative action group, the employees to be affected by the layoff. The agency's EEO Officer shall review the report to determine if the layoff will have an adverse impact upon minorities, women or disabled persons. The EEO Officer shall submit a written adverse impact report to the Chief Executive Officer and to the Director of his/her findings and, if adverse impact is found, suggested alternatives to lessen or eliminate the impact. The Director of Central Management Services will not approve a layoff until the Director has indicated that the adverse impact report is correct.

- g) Reorganization Reports – Any proposed workforce reorganization that significantly changes lines of authority, wages or job duties and descriptions on an agency-wide basis, or throughout any bureau, division or unit of the agency, must be described in a reorganization report and submitted to the agency's EEO Officer at least 30 days prior to implementation. The agency's EEO Officer shall review the report to determine whether it will have an adverse impact upon minorities, women or disabled persons, and shall submit an adverse impact report, within 15 days after receipt of the reorganization report, to the agency's Chief Executive Officer and the Department. If the EEO Officer determines that an adverse impact is apparent, he/she shall include in the adverse impact report recommendations to lessen the impact.
- h) Hiring and Promotion Monitors – The Hiring Monitor (DHR-19) and the Promotion Monitor (DHR-20) established by the Department shall be completed by each agency and submitted as required to Central Management Services on all hires and promotions for all full-time permanent and part-time permanent employees, including trainees, provisional employees, and semi-automatic promotions pursuant to a collective bargaining agreement. On the applicable Monitor, the agency shall indicate the EEO job category and classifications of the position and whether it is an underutilized category. The Monitor shall also indicate the race, sex, whether disabled, and national origin of all persons considered for the position and of the candidate, and whether the candidate meets the affirmative action requirements for that category. If the candidate does not meet the affirmative action requirements for that category, a detailed explanation

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indicating the reasons for the selection must be completed by the selecting officer and attached to the Monitor. The agency EEO Officer, or designee, shall have access to the eligibility list and other pertinent documents, including, but not limited to, Rutan documentation. The EEO Officer or designee shall review and sign the Monitor, indicating concurrence or non-concurrence in the transaction. The EEO Officer or designee shall fully explain on the Monitor his/her reason for any non-concurrence. In all transactions, the agency Chief Executive Officer or designee shall sign and date the Monitor, indicating approval. Central Management Services shall not complete any hire or promotion transaction if the Monitor is not attached to the transaction, is not signed and dated by the EEO Officer or designee, is not approved and signed by the agency's Chief Executive Officer or designee, and is not signed and dated prior to the effective date of the candidate's hire or promotion.

- i) Exit Questionnaire – Each agency shall provide an exit questionnaire to employees at the time of their separation from employment, whether voluntary or involuntary. The questionnaire shall identify the employee by name and affirmative action group, job title and region, date of separation, and reasons for separation, and shall include space for the employee's comments. Completion of the questionnaire shall be at the employee's option. Completed questionnaires shall be forwarded immediately to the agency's EEO Officer.

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

Section 2520.795 EEO/AA Performance Reviews

The Department shall conduct periodic performance reviews of all agencies. On a quarterly basis, the EEO/AA reports submitted by agencies will be reviewed and the results of the review shall be shared with the agency in question, indicating whether corrective action is needed. On an annual basis, the Department shall determine whether each agency is in compliance with the EEO and affirmative action obligations of the Act and this Subpart. In the course of such a review, the Department may request documentation and reports reflecting the agency's employment practices and profile, and may visit the agency's worksites and interview employees.

- a) EEO/AA Criteria – The Department shall judge the agency's concerted effort and progress to provide equal employment opportunity and affirmative action for minorities, women and disabled persons, using the following criteria:

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- 1) existence of an approved plan;
- 2) demonstration of the implementation of the agency's goals within the timeframe cited in the agency's plan. In order to be found in compliance with numerical goals, the ~~agency must show that its~~ percentage of ~~an agency's~~ hires and promotions for minorities and females in underutilized categories ~~equals must equal~~ or ~~exceeds exceed~~ 80% of the ~~statewide~~-labor market availability rate of minorities and females in question based on Illinois Department of Employment Security Workforce ~~Availability~~ Availability Information at <http://lmi.ides.state.il.us/affaction/aamenu.htm> ~~or that the agency has made a concerted effort to reach those goals. In determining whether an agency made a concerted effort, the Department will evaluate the agency's overall actions taken over the course of the fiscal year to reduce its underutilization when there have been opportunities to hire and/or promote in underutilized categories. When agency underutilization occurs in a geographic region with labor market availability rates less than 2 percent for a specific affirmative action group, the Department will consider the availability of this group in evaluating an agency's performance~~<http://lmi.ides.state.il.us/affaction/aamenu.htm>. ~~When agency underutilization is confined to one region of the State or one affirmative action group, the labor market availability rate of that region or affirmative action group will be considered. In determining whether an agency made a concerted effort, the Department will evaluate the agency's overall actions taken over the course of the fiscal year to reduce its underutilization when there have been opportunities to hire and/or promote in underutilized categories.~~ Compliance with program goals will be determined by an agency's documentation that those goals have either been achieved or a demonstration of a concerted effort to achieve those goals;
- 3) demonstration that the agency's EEO/AA policy has been disseminated throughout the agency;
- 4) documentation of the inclusion of EEO/AA principles and procedures in appropriate in-service training programs;
- 5) documentation of the inclusion of the agency's EEO Officer in the

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investigation and disposition of all internal and external discrimination grievances and complaints;

- 6) maintenance and timely submission of appropriate employment data and reports as required in this Subpart and by federal authorities;
 - 7) in an agency with 1,000 or more employees, documentation of the appointment, with the Director's approval, of an EEO Officer;
 - 8) in an agency with fewer than 1,000 employees, documentation of the designation of an EEO Officer who may serve as a full-time EEO Officer or be responsible for other duties within the agency beyond those of an EEO Officer; and
 - 9) documentation that the agency's EEO Officer has performed the duties and responsibilities outlined in the Act and this Subpart.
- b) EEO/AA Profile – The Department shall complete an annual EEO/AA profile summarizing the agency's satisfaction of the various EEO/AA criteria outlined in subsection (a) ~~of this Section~~. The profile shall be sent to the agency's Chief Executive Officer and the EEO/AA officer with a letter of findings signed by the Director, and shall find the agency in:
- 1) Compliance: all EEO/AA criteria set forth in subsection (a) ~~of this Section~~ have been met by the agency; or
 - 2) Non-compliance: EEO/AA criteria as set forth in subsection (a) ~~of this Section~~ have not been met.
- c) Compliance Process
- 1) If the Department finds the agency is in compliance, the Director shall send a letter of findings of compliance to the agency and attach the EEO/AA profile. The agency will not be required to take any further action.
 - 2) If the Department finds that an agency is in non-compliance in regards to subsection (a)(2) ~~of this Section~~ for the first year, in accordance with

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Section 7-105(H) of the Act, the Department will send a letter of findings of non-compliance to the agency and attach the EEO/AA profile. The Director will notify the agency and the Department of Central Management Services (CMS) that the agency must establish necessary training programs for preparation and promotion of the category of individuals affected by the failure, in cooperation with CMS.

- 3) If the Department finds that an agency is in non-compliance in regards to subsection (a)(2) ~~of this Section~~ for the second consecutive year, in accordance with Section 7-105(H) of the Act, the Department will send a letter of findings of non-compliance to the agency and attach the EEO/AA profile. The Director will notify the agency and CMS that the agency must continue necessary training programs for preparation and promotion of the category of individuals affected by the failure, in cooperation with CMS.
- 4) If the Department finds that an agency is in non-compliance in regards to subsection (a)(2) ~~of this Section~~ for the third consecutive year, in accordance with Section 7-105(H) of the Act, the Department will inform the agency that it must continue training. Further, the Director may request that the Chief Executive Officer of the agency in question meet with him/her to discuss the agency's EEO/AA performance. In addition, the Department shall direct that the agency furnish to the Department a monthly report due on the fifth working day of each month that must be signed by the Chief Executive Officer and EEO Officer.
 - A) The monthly report shall list each employment transaction for the month by job title, EEO job category, pay grade or merit compensation level, geographic region and affirmative action group of the employee affected. The report shall also indicate the number of people in each affirmative action group who applied and who were selected for each transaction.
 - B) After an agency has completed training for failure to meet numerical and program goals, the agency shall describe in its monthly reports the training instituted and indicate the numbers of each affirmative action group participating in the training.

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- 5) If the Department finds an agency in non-compliance with subsection (a)(2) ~~of this Section~~ for the third consecutive year, sanctions for non-compliance provided in Section 2520.797 ~~of this Part~~ will be invoked.
- 6) If the Department finds an agency in non-compliance with any other EEO/AA criteria other than subsection (a)(2) ~~of this Section~~:
- A) The Director shall send a letter of findings of non-compliance to the agency, attach the EEO/AA profile report, and set forth recommendations for the agency to achieve compliance. The agency shall submit, within 30 days after receipt of the letter of findings of non-compliance, a corrective action plan incorporating the Director's recommendations, as well as other plans the agency develops to achieve compliance.
 - B) If the Department determines the corrective action plan is sufficient to bring the agency into compliance, the Department will notify the agency that it has 30 days to implement the plan.
 - C) The Department will monitor and periodically evaluate the implementation of the agency's corrective action plan.
 - D) If the Department determines that an agency's corrective action plan is not sufficient to bring the agency into compliance, the Department will notify the agency and request a plan with alternative measures to be submitted within 30 days after the agency's receipt of the Department's notice. If the alternative action plan is sufficient, the Department will proceed pursuant to subsections (b) and (c).
 - E) If the agency fails to provide an alternative action plan that is sufficient to bring the agency into compliance, the Department will invoke the sanctions for non-compliance provided in Section 2520.797 ~~of this Part~~.

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

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Section 2520.APPENDIX A Contents of Affirmative Action Plans

Part I

- a)A. A completed Equal Employment Opportunity/Affirmative Action Certification Form;
- b)B. An agency EEO/AA policy statement signed by the Chief Executive Officer;
- c)C. An agency profile statement, describing the mission of the agency and its specific EEO/AA problems and needs;
- d)D. Identification of the agency's primary EEO Officer and his/her work location and telephone number;
- e)E. An organizational chart depicting the agency personnel at all levels responsible for implementing and monitoring the agency's affirmative action plan; and
- f)F. A description of the methods to be used in accomplishing both internal and external dissemination of the agency's affirmative action policy and plan.

Part II

- a)A. Summary of Workforce Transactions Report: an assessment of the agency's personnel transactions for the previous fiscal year, including, but not limited to, a breakdown of new hires, promotions, demotions, transfers and separations by affirmative action groups. ~~Internal Workforce Analysis: an assessment of the agency's personnel transactions for the previous fiscal year; an analysis of the distribution of present employees separated by code, non-code and combined workforce among the eight EEO job categories; and a breakdown of new hires, promotions, demotions, transfers, terminations, superior performance increases and salary comparisons by affirmative action group; and~~
- b)B. Summary Workforce Analysis: an analysis, as of June 30 of the previous fiscal year, of the distribution of present employees by affirmative action group among the 8 EEO job categories in the 11 regions. ~~External Workforce Analysis: a determination of the number of minorities, women and disabled persons available to the workforce of the agency, calculated according to methodology determined~~

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~~to be appropriate by the Department.~~

Part III

_____ a) Availability Analysis for each Affirmative Action Group ~~Women and~~
~~Minorities:~~

_____ 1) Numerical goals must be determined when there are 10 or more
employees in an EEO job category within a region where the labor market
availability rate for a specific affirmative action group is greater than 2
percent. The following factors must be considered in determining
availability for each affirmative action group in each of the EEO job
categories in each region of the State:

A) Those having requisite skills in the region; and

B) Those promotable, trainable and transferable, as these terms are
defined in [Section 2520.700](#).

2) The availability of members of each affirmative action group is
determined by using the following methodology:

A) Each factor is assigned a value weight by the agency on a
scale of 0 percent to 100 percent. The value weight indicates the
applicability of each factor to the agency/facility in recruiting
employees for that EEO job category. The sum of all value
weights must be 100 percent, representing all persons available to
work in a job category.

B) Each value weight is multiplied by the percentage of the
affirmative action group in each of the factors. The result is a
weighted factor for each of the categories.

C) The sum of the weighted factors is the availability
percentage or ratio for that affirmative action group for that
category for that region. This availability percentage or ratio is
applied to the total number of positions in the agency's EEO job

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category to determine the numerical availability of the affirmative action group in each EEO job category.

~~A. Goals and Timetables: Program goals must be developed in conjunction with the problems identified as the result of the agency's internal and external workforce analyses. Numerical goals must be developed utilizing methodology determined to be appropriate by the Department. Each numerical or program goal should include a brief description of the area of concern, objectives that delineate specific intentions, action items outlining steps to be taken to achieve the objectives, the individual responsible for carrying out the action item, the target date for completion, and the procedure for monitoring the progress toward meeting the goal.~~

~~b)B. Goals and Timetables: Agencies shall set numerical goals equal to the underutilization of affirmative action group members resulting from the process set forth in Part III(a)(2). No such goals shall be set when the labor force availability of an affirmative action group is less than 2 percent in the DHR region in which it occurs. Program goals must be developed in conjunction with the problems identified as the result of the agency's internal and external workforce analyses. Each numerical or program goal should include a brief description of the area of concern, objectives that delineate specific intentions, action items outlining steps to be taken to achieve the objectives, the individual responsible for carrying out the action item, the target date for completion, and the procedure for monitoring the progress toward meeting the goal.~~

~~Methodology for Women and Minorities:~~

- ~~1) Factors: Numerical goals must be determined for each affirmative action group by computing the availability of that group in each of the EEO job categories in the agency workforce considering the total number and the percentage of the affirmative action group:
 - ~~a) in the population of the State of Illinois;~~
 - ~~b) geographic region where the facility is located;~~
 - ~~c) in the total workforce in the geographic region;~~
 - ~~d) among those having requisite skills in the geographic region;~~~~

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- e) ~~having the requisite skills in State government;~~
 - f) ~~among those promotable in the geographic region;~~
 - g) ~~of those who are transferable within the geographic region;~~
 - h) ~~at institutions in the geographic region providing training in the requisite skills;~~
 - i) ~~among those in the geographic region the agency can train in the requisite skills. Agencies may consider other appropriate factors, if approved by the Director.~~
- 2) ~~The availability of members of each affirmative action group is determined by using the following methodology:~~
- a) ~~Each factor is assigned a value weight by the agency on a scale of 1% to 100%. The value weight assigned must fall within the parameters found in Appendix B of this rulemaking. The value weight indicates the applicability of each factor to the agency/facility in recruiting employees for that EEO job category. The sum of all value weights must be 100%, representing all persons available to work in a job category.~~
 - b) ~~Each value weight is multiplied by the percentage of the affirmative action group in each of the factors. The result is a weighted factor for each of the categories.~~
 - c) ~~The sum of the weighted factors is the availability percentage or ratio for that affirmative action group for that category for the agency. This availability percentage or ratio is applied to the total number of positions in the agency's EEO job category to determine the numerical availability of the affirmative action group in each EEO job category.~~
 - d) ~~The agency must indicate the sources of all its statistics in computing the availability percentage or ratio, and the reasons for~~

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~~its weighting value.~~

~~C. Methodology for Disabled Persons:~~

- ~~1) Factors: A numerical goal must be determined on an agency-wide basis, considering the proportion of people with work disabilities in the Illinois labor force, as reflected in the most recent decennial Census.~~
- ~~2) Survey: After this subpart C has been adopted, employees shall be surveyed to determine the State's utilization of people with disabilities, as defined in Section 2520.700. Subsequently hired employees will be surveyed at the time of hire.~~
- ~~3) Availability: Availability must be determined by using the following methodology:
 - ~~a) The total number of agency employees is multiplied by the percentage of employees with work disabilities in the Illinois labor force (as supplied by the Department);~~
 - ~~b) Central Management Services will supply the number of agency employees with disabilities by determining the number of employees who disclose such conditions on the latest "Illinois Department of Human Rights Survey for Disabled Employees" form (IL 442-0254);~~
 - ~~c) The number of employees in 2(b) is subtracted from the result of 2(a);~~
 - ~~d) If the result of 2(c) is a positive number, the agency must adopt that number as its goal for employing persons with disabilities. If the result of 2(c) is "0" or a negative number, the agency is considered to be at parity with the external labor force.~~~~

~~D. Monitoring Procedures: An outline of the procedures to be used by the agency to determine whether the objectives are met by the dates indicated.~~

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Discrimination Complaint Process: A description of the procedures established by the agency to address charges of employment discrimination. This Part should include a statement that employees will be advised of their rights to file charges of discrimination with the Department, the U.S. Equal Employment Opportunity Commission, or any other appropriate government agency.

Part V

Affirmative Action for Disabled Persons

a) Methodology for Disabled Persons:

1) Factors: A numerical goal must be determined on an agency-wide basis, considering the proportion of people with disabilities in the Illinois labor force, as reflected in the most recent data provided by the U.S. Census Bureau American Community Survey.

2) Survey: Employees working when this amendatory rulemaking is adopted shall be surveyed to determine the State's utilization of people with disabilities, as defined in Section 2520.700. Subsequently hired employees shall be surveyed at the time of hire.

3) Availability: Availability must be determined by using the following methodology:

A) The total number of agency employees is multiplied by the percentage of employees with disabilities in the Illinois labor force (as supplied by the Department);

B) The agency will enter the number of employees identifying themselves as having disabilities through the disability survey process;

C) The number of employees in subsection (a)(3)(B) is subtracted from the result of subsection (a)(3)(A);

D) If the result of subsection (a)(3)(C) is a positive number, the

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agency must adopt that number as its goal for employing persons with disabilities. If the result of subsection (a)(3)(C) is "0" or a negative number, the agency is considered to be at parity with the external labor force; and

E) If there is underutilization, a numerical goal must be developed and should include a brief description of the area of concern, objectives that delineate specific intentions, action items outlining steps to be taken to achieve the objectives, the individual responsible for carrying out the action item, the target date for completion, and the procedure for monitoring progress toward meeting the goal.

b)A. Recruitment Procedures: Identification of sources used to recruit applicants with disabilities when persons with disabilities are underutilized.

c)B. Application Process Procedures

- 1) A review of employment criteria to assure they have no adverse impact on disabled persons;
- 2) Pre-employment inquiries – a statement regarding the inadmissibility of inquiries regarding an applicant's disability during the interview process;
- 3) Employment testing (for agencies conducting their own tests) – a statement that the tests do not have an adverse impact on disabled applicants and that reasonable accommodation will be provided in the administration of the tests, as required;
- 4) The prohibition of pre-employment medical examinations before an offer of employment;
- 5) The prohibition of pre-employment medical examinations after an offer of employment, unless thesueh examinations are job related and required of all applicants for that position.

d)C. Reasonable Accommodation

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- 1) Agency policy committing the agency to providing reasonable accommodations to disabled employees, signed by the Chief Executive Officer of the agency.
- 2) A description of the procedure to determine reasonable accommodation.

| ~~e)D.~~ Physical Accessibility for Employment:

- 1) Of personnel offices;
- 2) Of the worksite;
- 3) For evacuation of disabled persons in emergency situations.

Part VI

Applicable EEO Laws: This Part should set forth the relevant text of any federal law that mandates the agency to adhere to additional EEO/AA requirements.

Part VII

| This Partpart should have an appendix to the affirmative action plan that contains all supporting data, including the Hiring and Promotion Monitors and the exit questionnaire.

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

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Section 2520.APPENDIX B Value Weight Assignment Chart (Repealed)~~OCCUPATIONAL CATEGORY~~

FACTORS	Off/Mgrs.	Prof.	Tech.	Pro. Serv.	Para. Prof.	Off. Clr.	Skl. Crafts.	Serv. Maints.
Population	1-3	1-3	1-5	1-5	1-5	1-5	1-5	1-10
Unemployed Workforce	1-3	1-3	2-10	15-35	2-10	2-10	1-5	15-35
Participation	5-15	1-15	5-15	15-35	5-15	5-15	2-10	20-40
Req. Skills in Immed. Area	15-30	15-30	15-30	5-15	10-25	5-15	20-40	2-10
Req. Skills in State Govt.	5-35	15-35	15-35	10-30	15-35	15-35	5-30	5-15
Promotable Persons	20-40	20-40	20-40	10-30	20-40	15-35	5-15	2-10
External Training Insts.	5-10	10-20	10-30	5-15	10-20	20-40	15-35	2-10
Internal Training	1-5	1-5	1-5	1-5	1-5	1-5	1-5	1-5
Transferable Persons	20-40	20-40	20-40	10-30	20-40	15-35	5-15	2-10

~~NOTE:~~

- ~~1. Value weights illustrated must equal 100%.~~
- ~~2. Remember that the value weight assignment depends on the mode of entry into job group.~~
- ~~3. Remember when zero occurs in a factor, the other factor value weights have to be readjusted.~~

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

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Section 2520.APPENDIX C Contents of Layoff Reports

- a) When a State agency has at least 30 incumbents in the EEO job category within a particular region in which a layoff will take place and there are at least 5 members of a specific affirmative action group who are targeted for layoff, the completed projected layoff report shall contain the following:
- 1) The Certification Sheet. The certification sheet confirms the accuracy of the layoff report. A completed certification sheet must indicate the name of the agency, agency Chief Executive Officer, agency EEO/AA Officer, and effective date of the projected layoff. The Chief Executive Officer and EEO/AA Officer must sign and date the certification sheet. The Department's assigned agency liaison will sign and date the certification sheet upon receipt.
 - 2) The Projected Layoff Summary Form. The projected layoff summary form provides statistical data on the agency layoff by race, sex and disability. A completed form must indicate the agency name, the analysis date, and the date and source of workforce data. The form shall include: total employees before layoff and the total number of projected layoffs, by region; the number of persons laid off, by race, sex and disability; and, if necessary, adverse impact on any affirmative action group member.
 - 3) The Projected Layoff Analysis Form. The projected layoff analysis form is used to calculate whether adverse impact exists for a specific affirmative action group subject to the layoff. A form must be completed for each affirmative action group member affected by the layoff, when necessary. A completed form must indicate the agency name, region and affirmative action group member. The form must indicate, by EEO job category, total employees and number of employees projected to be laid off. A comparison of the layoff rate of the affirmative action group in question with the layoff rate of the comparison group will indicate the impact ratio to determine adverse or no adverse impact.
 - 4) The Narrative
 - A) The narrative must contain, but is not limited to, the following information:

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- i) the State agency's reasons for selecting the targeted positions for layoff;
 - ii) any provisions of the Illinois Personnel Code, personnel rules, and/or collective bargaining agreement governing the layoff;
 - iii) if the layoff decisions were made by seniority date, an explanation of any exceptions and the reasons for the exceptions;
 - iv) any alternatives to laying off the affected employees that were available to and considered by the agency; and
 - v) a discussion of any significant impact the layoff would have on a specific affirmative action group.
 - B) If the report is being submitted less than 30 days prior to the effective date of the layoff, the narrative must set forth the emergency situation necessitating the layoff.
 - 5) The agency's layoff plan shall identify, by region, job title, and affirmative action groups, the employees to be affected by the layoff.
 - 6) A summary workforce analysis (~~Form CMS-DHR9~~) for the region where the layoff will occur.
- b) When there are fewer than 30 incumbents in the EEO job category within a particular region in which a layoff will take place or there are fewer than 5 members of a specific affirmative action group who are targeted for layoff, the completed projected layoff report shall contain the following:
- 1) The Certification Sheet. The certification sheet confirms the accuracy of the layoff report. A completed certification sheet must indicate the name of the agency, agency Chief Executive Officer, agency EEO/AA Officer, and effective date of the projected layoff. The Chief Executive Officer and EEO/AA Officer must sign and date the certification sheet. The

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Department's assigned agency liaison will sign and date the certification sheet upon receipt.

- 2) The Projected Layoff Summary Form. The projected layoff summary form provides statistical data of the agency layoff by race, sex and disability. A completed form must indicate the agency name, the analysis date, and the date and source of workforce data. The form shall include: total employees before layoff and the total number of projected layoffs, by region; the number of persons laid off by race, sex and disability; and, if necessary, adverse impact on any affirmative action group member.
- 3) The Narrative
 - A) The narrative must contain, but is not limited to, the following information:
 - i) the State agency's reasons for selecting the targeted positions for layoff;
 - ii) any provisions of the Illinois Personnel Code, personnel rules, and/or collective bargaining agreement governing the layoff;
 - iii) if the layoff decisions were made by seniority date, an explanation of any exceptions and the reasons they were made;
 - iv) any alternatives to laying off the affected employees that were available to and considered by the agency; and
 - v) a discussion of any significant impact the layoff would have on a specific affirmative action group.
 - B) If the report is being submitted less than 30 days prior to the effective date of the layoff, the narrative must set forth the emergency situation necessitating the layoff.

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- 4) The agency's layoff plan shall identify, by region, job title, and affirmative action groups, the employees to be affected by the layoff.
- 5) A summary workforce analysis ~~(Form CMS-DHR9)~~ for the region where the layoff will occur.

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

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- 1) Heading of the Part: Housing Discrimination
- 2) Code Citation: 71 Ill. Adm. Code 2300
- 3) Section Number: 2300.10 Proposed Action:
Amendment
- 4) Statutory Authority: Implementing Articles 3, 6 and 7B, and authorized by Section 7-101(A) of the Illinois Human Rights Act [775 ILCS 5/Arts. 3, 6 and 7B and 7-101(A)]
- 5) A Complete Description of the Subjects and Issues Involved: The amendment makes technical modifications to the definitions Section.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency amendment currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: The proposed amendment does not affect units of local government.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments in writing within 45 days after publication to:

David T. Rothal
Staff Attorney
Illinois Department of Human Rights – Legal Division
100 W. Randolph St., Ste. 10-100
Chicago IL 60601

312/814-6257 or 217/785-5125 (TTY)

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: The amendment does not change the duties of small businesses, small municipalities, and not for profit corporations.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2012

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

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TITLE 71: PUBLIC BUILDINGS, FACILITIES, AND REAL PROPERTY
CHAPTER VII: DEPARTMENT OF HUMAN RIGHTS

PART 2300
HOUSING DISCRIMINATION

Section	
2300.10	Definitions
2300.30	Exemptions
2300.35	Housing for Older Persons
2300.40	Verified Response to Charge
2300.50	Dismissal for Refusal to Accept Settlement Offer
2300.70	Procedures
2300.80	Rental of Rooms in a Private Home
2300.90	Real Estate Transactions

AUTHORITY: Implementing Articles 3, 6 and 7B, and authorized by Section 7-101(A), of the Illinois Human Rights Act [775 ILCS 5/Arts. 3, 6 and 7B and 7-101(A)].

SOURCE: Adopted at 16 Ill. Reg. 8178, effective May 19, 1992; amended at 25 Ill. Reg. 2420, effective January 23, 2001; amended at 25 Ill. Reg. 9619, effective July 17, 2001; amended at 29 Ill. Reg. 13808, effective August 25, 2005; amended at 30 Ill. Reg. 1361, effective January 13, 2006; amended at 32 Ill. Reg. 13497, effective August 1, 2008; amended at 36 Ill. Reg. _____, effective _____.

Section 2300.10 Definitions

For purposes of this Part, the following terms shall have the meanings indicated:

"Act" - ~~shall mean~~ the Illinois Human Rights Act [775 ILCS 5].

~~Aid, abet, compel or coerce—includes threatening, intimidating or interfering with a real estate transaction or a person for pursuing any right protected under Article 3 of the Act. Such conduct must be: because of unlawful discrimination; because that person has aided or encouraged another person in the exercise or enjoyment of a right protected under Article 3; or because of the race, color, religion, national origin, ancestry, citizenship status, age, sex, marital status, disability, familial status, sexual orientation, military status or unfavorable discharge from the military of visitors or associates of any person.~~

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"Department" – ~~shall mean~~ the Illinois Department of Human Rights.

"Director" – ~~shall mean~~ the Director of the Department or a duly authorized designee.

"Housing facility or community" – ~~shall mean~~ any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

A condominium association;

A cooperative;

A property governed by a homeowners' or residents' association;

A municipally zoned area;

A leased property under common private ownership;

A mobile home park; and

A manufactured housing community.

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: General Rules
- 2) Code Citation: 35 Ill. Adm. Code 101
- 3) Section Number: 101.202 Proposed Action:
Amend
- 4) Statutory Authority: Implementing Sections 3.330, 26, 27, and 28 of the Environmental Protection Act (Act) [415 ILCS 5/3.330, 26, 27, and 28] and authorized by Sections 26, 27, and 28 of the Act [415 ILCS 5/26, 27, and 28]
- 5) A Complete Description of the Subjects and Issues Involved: The Board is proposing amendments to the definition of "pollution control facility" in Section 101.202 of its procedural rules only to the extent necessary to make it consistent with recent Public Acts amending the statutory definition.
- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed amendment does not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

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

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Interested persons may request copies of the Board's opinion and order in R12-22 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact hearing officer Tim Fox at 312/814-6065 or e-mail FoxT@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: As the proposal only make the definition of "pollution control facility" consistent with recent statutory amendments, it is expected to have no new effect on small businesses, small municipalities, or not-for-profit corporations.
 - B) Reporting, bookkeeping or other procedures required for compliance: As the proposal only make the definition of "pollution control facility" consistent with recent statutory amendments, no reporting, bookkeeping, or similar procedures are required for compliance.
 - C) Types of Professional skills necessary for compliance: As the proposal only make the definition of "pollution control facility" consistent with recent statutory amendments, no professional skills beyond those currently required by the rule are expected to be necessary for compliance.
- 14) Regulatory Agenda in which this rulemaking was summarized: The proposed amendment intends only to make the definition of "pollution control facility" in the Board's procedural rules consistent with Public Acts amending Section 3.330 of the Environmental Protection Act, the most recent of which became effective on January 1, 2012.

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 101
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

Section	
101.200	Definitions Contained in the Act
101.202	Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents by Reference
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory

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Proceedings

- 101.402 Intervention of Parties
- 101.403 Joinder of Parties
- 101.404 Agency as a Party in Interest
- 101.406 Consolidation of Claims
- 101.408 Severance of Claims

SUBPART E: MOTIONS

Section

- 101.500 Filing of Motions and Responses
- 101.502 Motions Directed to the Hearing Officer
- 101.504 Contents of Motions and Responses
- 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
- 101.508 Motions to Board Preliminary to Hearing
- 101.510 Motions to Cancel Hearing
- 101.512 Motions for Expedited Review
- 101.514 Motions to Stay Proceedings
- 101.516 Motions for Summary Judgment
- 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders
- 101.520 Motions for Reconsideration
- 101.522 Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section

- 101.600 Hearings
- 101.602 Notice of Board Hearings
- 101.604 Formal Board Transcript
- 101.606 Informal Recordings of the Proceedings
- 101.608 Default
- 101.610 Duties and Authority of the Hearing Officer
- 101.612 Schedule to Complete the Record
- 101.614 Production of Information
- 101.616 Discovery
- 101.618 Admissions
- 101.620 Interrogatories
- 101.622 Subpoenas and Depositions
- 101.624 Examination of Adverse, Hostile or Unwilling Witnesses

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- 101.626 Information Produced at Hearing
- 101.628 Statements from Participants
- 101.630 Official Notice
- 101.632 Viewing of Premises

SUBPART G: ORAL ARGUMENT

- Section
- 101.700 Oral Argument

SUBPART H: SANCTIONS

- Section
- 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders
- 101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

- Section
- 101.902 Motions for Reconsideration
- 101.904 Relief from and Review of Final Opinions and Orders
- 101.906 Judicial Review of Board Orders
- 101.908 Interlocutory Appeal

- 101.APPENDIX A Captions
 - 101.ILLUSTRATION A Enforcement Case
 - 101.ILLUSTRATION B Citizen's Enforcement Case
 - 101.ILLUSTRATION C Variance
 - 101.ILLUSTRATION D Adjusted Standard Petition
 - 101.ILLUSTRATION E Joint Petition for an Adjusted Standard
 - 101.ILLUSTRATION F Permit Appeal
 - 101.ILLUSTRATION G Underground Storage Tank Appeal
 - 101.ILLUSTRATION H Pollution Control Facility Siting Appeal
 - 101.ILLUSTRATION I Administrative Citation
 - 101.ILLUSTRATION J General Rulemaking
 - 101.ILLUSTRATION K Site-specific Rulemaking
- 101.APPENDIX B Appearance Form
- 101.APPENDIX C Withdrawal of Appearance Form

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- 101.APPENDIX D Notice of Filing
- 101.APPENDIX E Certificate of Service
 - 101.ILLUSTRATION A Service by Non-Attorney
 - 101.ILLUSTRATION B Service by Attorney
- 101.APPENDIX F Notice of Withdrawal (Repealed)
- 101.APPENDIX G Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. _____, effective _____.

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act [415 ILCS 5/1].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

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"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued pursuant to Section 31.1 of the Act by the Agency, or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act.

"Administrative citation review (appeal)" means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Affidavit of service" means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing,*

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sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map [415 ILCS 5/7.1].

"Attorney General" means the Attorney General of the State of Illinois or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

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"Citizen's enforcement proceeding" means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the federal *Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq.* [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

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"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" *means paper that has been processed to remove inks, clays, coatings, binders and other contaminants* [415 ILCS 20/2.1].

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

"DNR" means the Illinois Department of Natural Resources.

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"Ex parte communication" means *any written or oral communication by any*

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person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. "Ex parte communication" does not include the following:

statements by a person publicly made in a public forum, including pleadings, transcripts, and public comments made part of the proceeding's record;

statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and

statements made by a State employee of the Board to Board members or other employees of the Board. [5 ILCS 430/5-50(b)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago, IL 60601.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act. (See Subpart I of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority

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to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

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

"Identical-in-substance rules ~~(or regulations)~~" or "[identical-in-substance regulations](#)" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois* [415 ILCS 5/7.2].

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding,

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who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act* [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony.

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(See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom a proceeding is brought.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

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"Permit appeal" means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:*

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due

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to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are:

located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an

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Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and

in compliance with all applicable zoning requirements ~~[415 ILCS 5/3-330]~~;

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility ~~that accepts~~~~accepting~~ exclusively general construction or demolition debris, ~~is~~ located in a county with a population over ~~3,000,000~~~~700,000~~ as of January 1, 2000 ~~or in a county that is contiguous to such a county~~, and ~~is~~ operated and located in accordance with Section 22.38 of the Act;

the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products;

the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station;

the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy

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recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;

effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents; ~~and~~

a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received; ~~[415 ILCS 5/3.330]~~

the portion of a site or facility that is used for the composting of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste, including, but not limited to, corrugated paper or cardboard, and meets all of the following requirements:

there must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time;

all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:

the portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well;

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the portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed;

the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility;

the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:

facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;

primary and secondary schools and adjacent areas that the schools use for recreation;

any facility for child care licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation;

by the end of each operating day, all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must be processed into windrows or other piles and covered in a manner that prevents scavenging by birds and animals and that prevents other nuisances;

food scrap, livestock waste, crop residue, uncontaminated wood waste, paper waste, and compost must not be placed within 5 feet of the water table;

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the site or facility must meet all of the requirements of the Wild and Scenic Rivers Act (16 USC 1271 et seq.);

the site or facility must not restrict the flow of a 100-year flood, result in washout of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste from a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as by providing lagoons, holding tanks, or drainage around structures at the facility;

the site or facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:

an irreplaceable historic or archaeological site has been listed under the National Historic Preservation Act (16 USC 470 et seq.) or the Illinois Historic Preservation Act [20 ILCS 3410];

a natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or

a natural area has been designated as a Dedicated Illinois Nature Preserve under the Illinois Natural Areas Preservation Act [525 ILCS 30];

the site or facility must not be located in an area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [520 ILCS 10];

the portion of a site or facility that is located entirely within a home rule unit having a population no less than 120,000 and no more than 135,000,

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according to the 2000 federal census, and that meets all of the following requirements:

the portion of the site or facility is used exclusively to perform testing of a thermochemical conversion technology using only woody biomass, collected as landscape waste within the boundaries of the home rule unit, as the hydrocarbon feedstock for the production of synthetic gas in accordance with Section 39.9 of the Act;

the portion of the site or facility is in compliance with all applicable zoning requirements; and

a complete application for a demonstration permit at the portion of the site or facility has been submitted to the Agency in accordance with Section 39.9 of the Act within one year after July 27, 2010 (the effective date of Public Act 96-1314);

the portion of a site or facility used to perform limited testing of a gasification conversion technology in accordance with Section 39.8 of the Act and for which a complete permit application has been submitted to the Agency prior to one year from April 9, 2010 (the effective date of Public Act 96-887); and

the portion of a site or facility that it used to incinerate only pharmaceuticals from residential sources that are collected and transported by law enforcement agencies under Section 17.9A of the Act. [415 ILCS 5/3.330]

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

"Postconsumer material" means paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage. Additionally, it includes all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream [415 ILCS 20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)

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"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing* [415 ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by an applicant and issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

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"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

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

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

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

"Service" means delivery of documents upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

"Service list" means the list of persons designated by the hearing officer or Clerk

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in a regulatory or adjudicatory proceeding upon whom participants must serve motions, prefiled questions and prefiled testimony and any other documents that the participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought pursuant to Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

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"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)].

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

"Web site" means the Board's computer-based informational service accessed on the Internet at <http://www.ipcb.state.il.us>.

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

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- 1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
106.100	Amend
106.1000	New
106.1002	New
106.1004	New
106.1006	New
106.1008	New
106.1010	New
106.1012	New
- 4) Statutory Authority: Implementing Section 95 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95] and authorized by Sections 26, 27, and 28 of the Environmental Protection Act (the Act) [415 ILCS 5/26, 27, and 28]
- 5) A Complete Description of the Subjects and Issues Involved: The Board is proposing procedural rules applicable to petitions for temporary waivers of the covered electronic device (CED) landfill ban under Section 95 of the Electronic Products Recycling and Reuse Act (EPRRA) [415 ILCS 150/95]. Section 95(e) of EPRRA addresses matters including the contents of a petition for a temporary landfill ban waiver, criteria for the Board's consideration of a petition, the Board's decision deadline, appeal of Board orders denying temporary landfill ban waivers, and implementation of waivers. Specifically, the Board proposes a new 35 Ill. Adm. Code 106.Subpart J following the general format of other subparts of Part 106.
- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

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<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Action Citation:</u>
106.100	Amend	35 Ill. Reg. 18492; November 14, 2011
106.900	New	35 Ill. Reg. 18492; November 14, 2011
106.902	New	35 Ill. Reg. 18492; November 14, 2011
106.904	New	35 Ill. Reg. 18492; November 14, 2011
106.906	New	35 Ill. Reg. 18492; November 14, 2011
106.908	New	35 Ill. Reg. 18492; November 14, 2011
106.910	New	35 Ill. Reg. 18492; November 14, 2011

- 11) 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)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

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

Interested persons may request copies of the Board's opinion and order in R12-21 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact hearing officer Tim Fox at 312/814-6065 or e-mail FoxT@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Under the Section 95(e) of the Environmental Products Recycling and Reuse Act, county governments and municipal joint action agencies may submit petitions seeking a temporary waiver of the landfill ban applicable to covered devices. The proposed procedural rules addressing these petition would have, if any, an indirect effect on small businesses, small municipalities, and not-for-profit corporations.

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- B) Reporting, bookkeeping or other procedures required for compliance: These proposed procedural rules do not include reporting, recordkeeping, or other similar requirements for county governments and municipal joint action agencies seeking a temporary waiver of the landfill ban.
- C) Types of Professional skills necessary for compliance: No professional skills beyond those currently required by landfill and waste regulations are expected to be necessary.
- 14) Regulatory Agenda in which these amendments were summarized: Public Act 97-287, which amended temporary landfill ban waiver provisions, became effective August 10, 2011, after publication of the Board's July 2011 Regulatory Agenda.

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 A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 106

PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section	
106.100	Applicability
106.102	Severability
106.104	Definitions

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE,
AND SULFUR DIOXIDE DEMONSTRATIONS

Section	
106.200	General
106.202	Petition Requirements
106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
106.206	Notice
106.208	Recommendation and Response
106.210	Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	
106.300	General
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
106.306	Response and Reply
106.308	Hearing
106.310	Burden of Proof

SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT
PERMIT PROGRAM (CAAPP) PERMITS

Section

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106.400	General
106.402	Definitions
106.404	Initiation of Proceedings
106.406	Petition Content Requirements
106.408	Response and Reply
106.410	Hearing
106.412	Burden of Proof
106.414	Opinion and Order
106.416	USEPA Review of Proposed Determination

SUBPART E: MAXIMUM ACHIEVABLE CONTROL
TECHNOLOGY DETERMINATIONS

Section	
106.500	General
106.502	Definitions
106.504	Initiation of Proceedings
106.506	Petition Content Requirements
106.508	Response and Reply
106.510	Hearing
106.512	Burden of Proof
106.514	Board Action

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER
LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

Section	
106.600	General
106.602	Initiation of Proceedings
106.604	Petition Content Requirements
106.606	Response and Reply
106.608	Hearing
106.610	Burden of Proof

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL
MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

Section	
106.700	Purpose

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- 106.702 Applicability
- 106.704 Termination Under Section 52.3-4(b) or (b-5) of the Act
- 106.706 Who May Initiate, Parties
- 106.707 Notice, Statement of Deficiency, Answer
- 106.708 Service
- 106.710 Notice of Hearing
- 106.712 Deficient Performance
- 106.714 Board Decision
- 106.716 Burden of Proof
- 106.718 Motions, Responses
- 106.720 Intervention
- 106.722 Continuances
- 106.724 Discovery, Admissions
- 106.726 Subpoenas
- 106.728 Settlement Procedure
- 106.730 Authority of Hearing Officer, Board Members, and Board Assistants
- 106.732 Order and Conduct of Hearing
- 106.734 Evidentiary Matters
- 106.736 Post-Hearing Procedures
- 106.738 Motion After Entry of Final Order
- 106.740 Relief from Final Orders

SUBPART H: AUTHORIZATIONS UNDER THE REGULATION OF PHOSPHORUS IN DETERGENTS ACT

- Section
- 106.800 General
- 106.802 Definitions
- 106.804 Initiation of Proceeding
- 106.806 Petition Content Requirements
- 106.808 Response and Reply
- 106.810 Hearing
- 106.812 Burden of Proof

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

- Section
- 106.1000 General
- 106.1002 Definitions

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106.1004	Initiation of Proceeding
106.1006	Petition Content Requirements
106.1008	Response and Reply
106.1010	Burden of Proof
106.1012	Board Decision

106.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5], and Section 95 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 106.100 Applicability

- a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, the involuntary termination of environmental management system agreements, ~~and~~ authorization of use of cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS

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92], and temporary landfill ban waivers under the Electronic Products Recycling and Reuse Act [415 ILCS 150].

- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

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

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

Section 106.1000 General

- a) Applicability. This Subpart applies to any county government or municipal joint action agency filing a petition with the Board beginning April 1, 2012, but no later than December 31, 2013, for a temporary CED landfill ban waiver under Section 95(e) of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95(e)].
- b) Demonstration. Any county government or municipal joint action agency filing a petition for a temporary CED landfill ban waiver under this Subpart must demonstrate that *the respective county's or action agency's jurisdiction may be granted a temporary CED landfill ban waiver due to a lack of funds and a lack of collection opportunities to collect CEDs and EEDs within the county's or action agency's jurisdiction.* [415 ILCS 150/95(e)].
- c) Parties. The person filing the petition for a temporary CED landfill ban waiver must be named the petitioner.
- d) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

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

Section 106.1002 Definitions

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The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 10 of the Electronic Products Recycling and Reuse Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 10 of the Electronic Products Recycling and Reuse Act will apply. Terms defined in Section 10 of the Electronic Products Recycling and Reuse include the following:

"Covered electronic device" or "CED" means any computer, computer monitor, television, printer, electronic keyboard, facsimile machine, videocassette recorder, portable digital music player that has memory capability and is battery powered, digital video disc player, video game console, electronic mouse, scanner, digital converter box, cable receiver, satellite receiver, digital video disc recorder, or small-scale server sold at retail and taken out of service from a residence in this State. "Covered electronic device" does not include any of the following:

an electronic device that is part of a motor vehicle or any component part of a motor vehicle assembled by or for a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

an electronic device that is functionally or physically part of a larger piece of equipment or that is taken out of service from an industrial, commercial (including retail), library checkout, traffic control, kiosk, security (other than household security), governmental, agricultural, or medical setting, including but not limited to diagnostic, monitoring, or control equipment; or

an electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, water pump, sump pump, or air purifier.

To the extent allowed under federal and State laws and regulations, a CED that is being collected, recycled, or processed for reuse is not considered to be hazardous waste, household waste, solid waste, or special waste. [415 ILCS 150/10]

"Eligible electronic device" or "EED" means any of the following products sold at retail and taken out of service from a residence in this State: mobile telephone; computer cable; portable digital assistant (PDA); or zip drive. To the extent

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allowed under federal and State laws and regulations, an EED that is being collected, recycled, or processed for reuse is not considered to be hazardous waste, household waste, solid waste, or special waste. [415 ILCS 150/10]

"Municipal joint action agency" or "action agency" means a municipal joint action agency created under Section 3.2 of the Intergovernmental Cooperation Act. [415 ILCS 150/10]

"Program year" means a calendar year. The first program year is 2010. [415 ILCS 150/10]

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

Section 106.1004 Initiation of Proceeding

The petitioner must file the petition for authorization with the Clerk of the Board and must serve one copy upon the Agency.

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

Section 106.1006 Petition Content Requirements

- a) The petition from the county or action agency shall include the following:
- 1) documentation of the county's or action agency's attempts to gain funding, as well as the total funding obtained, for the collection of CEDs and EEDs in its jurisdiction from manufacturers or other units of government in the State; and
 - 2) an assessment of other collection opportunities in the county's or action agency's jurisdiction demonstrating insufficient capacity for the anticipated volume of CEDs and EEDs for the remainder of the program year in which the petition is being filed. [415 ILCS 150/95(e)]
- b) In addition to the information listed in subsection (a) of this Section, the petition from the county or action agency must also include:
- 1) total weight of CEDs and EEDs collected in the county's or action agency's jurisdiction during all preceding program years;

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- 2) *total weight of CEDs and EEDs collected in the county's or action agency's jurisdiction during the year in which the petition is filed; and*
 - 3) *the projected difference in weight between prior program year in which the petition is filed. [415 ILCS 150/95(e)]*
- c) The petition shall include any other information that may be required by Section 95 of the Electronic Products Recycling and Reuse Act.

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

Section 106.1008 Response and Reply

- a) Within 21 days after the filing of a petition, the Agency may file a response to any petition in which it has not joined as co-petitioner. The response must include comments concerning potential Board action on the petition.
- b) The petitioner may file a reply within 7 days after the service of any Agency response.

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

Section 106.1010 Burden of Proof

The burden of proof is on the petitioner. A county government or municipal joint action agency filing a petition for a temporary CED landfill waiver ban must show *by clear and convincing evidence that a county or action agency has a lack of funds and its respective jurisdiction lacks sufficient collection opportunities to collect CEDs and EEDs.* [415 ILCS 150/95(e)]

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

Section 106.1012 Board Decision

- a) *Within 60 days after the filing of the petition with the Board, the Board shall determine, based on the criteria in Section 95(e)(1) and (e)(2) of the Electronic Products Recycling and Reuse Act, whether a temporary CED landfill ban waiver shall be granted to the respective county or action agency for the remainder of the program year in which the petition is filed. [415 ILCS 150/95(e)]*

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- b) *If the Board grants a waiver under Section 95(e) of the Electronic Products Recycling and Reuse Act, Section 95(a) and (b) of that Act shall not apply to CEDs and EEDs that are taken out of service from residences within the jurisdiction of the county or action agency receiving the waiver and disposed of during the remainder of the program year in which the petition is filed. [415 ILCS 150/95(e)]*
- c) *Within 5 days after granting a temporary CED landfill ban waiver, the Board shall provide written notice to the Agency of the Board's decision. The notice shall be provided at least 15 days prior to the waiver taking effect. [415 ILCS 150/95(e)]*
- d) *If the Board denies the petition for a landfill ban waiver, the Board's order shall be final and immediately appealable to the circuit court having jurisdiction over the petitioner. [415 ILCS 150/95(e)]*

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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Board Meetings
- 2) Code Citation: 11 Ill. Adm. Code 206
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
206.10	Amend
206.40	New
206.50	New
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments to Section 206.40 establish guidelines for public participation of interested parties including the submission of documents and addressing the Board. The proposed amendment to Section 206.50 describes the guidelines for Board members participating in meetings telephonically. The proposed amendment to Section 206.10 applies to petitioners and a deadline for the submission of documents.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending in this Part? No
- 11) Statement of Statewide Policy Objectives: No local governmental units will be required to increase expenditures.
- 12) 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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

Chicago, Illinois 60601

312/814-5017

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: the Board did not anticipate the need for this rulemaking at the time the agendas were published.

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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
 SUBTITLE B: HORSE RACING
 CHAPTER I: ILLINOIS RACING BOARD
 SUBCHAPTER a: GENERAL RULES

PART 206
 BOARD MEETINGS

Section	
206.10	Request for Board Action
206.20	Board Meeting Agenda
206.30	Annual Notice of Monthly Meetings
<u>206.40</u>	<u>Public Participation</u>
<u>206.50</u>	<u>Board Members</u>

AUTHORITY: Authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 5 Ill. Reg. 10331, effective September 25, 1981; codified at 5 Ill. Reg. 10878; amended at 18 Ill. Reg. 7407, effective April 29, 1994; amended at 36 Ill. Reg. _____, effective _____.

Section 206.10 Request for Board Action

- a) All persons who seek Board action shall submit a request or application to the Board in writing no later than ~~that fifteen (15)~~ calendar days before the date of the Board meeting at which the request or application is to be heard. To allow for distribution to the Board members and staff, copies of any additional materials must be submitted to the staff at least 7 calendar days prior to the meeting. Materials received after the deadline will not be accepted unless late submission is approved by the Executive Director.
- b) This ~~Part rule~~ shall not apply to requests for hearings under ~~Part 204~~ (11 Ill. Adm. Code 204) or to applications for the conduct of race meetings conducted pursuant to ~~Part 205~~ (11 Ill. Adm. Code 205).

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

Section 206.40 Public Participation

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

- a) Interested parties may submit written materials on any agenda matter in advance of the Board meeting. To allow for distribution to the Board members and staff, copies of all material must be submitted to the staff at least 7 calendar days prior to the meeting. Materials received after the deadline will not be accepted unless late submission is approved by the Executive Director.
- b) Interested parties wishing to speak at a Board meeting on a specific agenda matter shall notify Board staff at least 7 calendar days prior to the meeting of their name, address and subject matter. Persons shall have the right to speak before the Board during the specific time specified within the agenda's order of business. Each speaker shall limit his/her discussion to his/her subject and shall keep his/her presentation to five minutes or less, unless extended by the Chairman.

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

Section 206.50 Board Members

If a quorum of Board members is physically present at an open meeting, a majority of the Board may allow a Board member to attend the meeting telephonically if the member cannot otherwise attend because of personal illness or disability, employment obligations, other business of the Board, or a family or other emergency. In these instances, the Board member who wishes to attend telephonically will notify the Executive Director before the meeting, unless advance notice is impractical.

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.3373 Proposed Action:
New Section
- 4) Statutory Authority: 35 ILCS 5/304(a)(3)(C-5)(iv)
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking provides guidance on when publishing and advertising services are received in Illinois for purposes of computing the sales factor used to determine the percentage of a nonresident's business income that is taxable by Illinois. The Department is expressly authorized to adopt rules providing guidance on this issue by IITA Section 304(a)(3)(C-5)(iv).
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

Springfield, Illinois 62794

217/782-7055

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small businesses engaged in multistate publishing will receive guidance on the computation of their sales factor.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2012

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 100
INCOME TAX

SUBPART A: TAX IMPOSED

Section

- 100.2000 Introduction
100.2050 Net Income (IITA Section 202)

SUBPART B: CREDITS

Section

- 100.2100 Replacement Tax Investment Credit Prior to January 1, 1994 (IITA 201(e))
100.2101 Replacement Tax Investment Credit (IITA 201(e))
100.2110 Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA 201(f))
100.2120 Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone (IITA 201(g))
100.2130 Investment Credit; High Impact Business (IITA 201(h))
100.2140 Credit Against Income Tax for Replacement Tax (IITA 201(i))
100.2150 Training Expense Credit (IITA 201(j))
100.2160 Research and Development Credit (IITA 201(k))
100.2163 Environmental Remediation Credit (IITA 201(l))
100.2165 Education Expense Credit (IITA 201(m))
100.2170 Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)
100.2180 Credit for Residential Real Property Taxes (IITA 208)
100.2185 Film Production Services Credit (IITA 213)
100.2190 Tax Credit for Affordable Housing Donations (IITA Section 214)
100.2193 Student-Assistance Contributions Credit (IITA 218)
100.2195 Dependent Care Assistance Program Tax Credit (IITA 210)
100.2196 Employee Child Care Assistance Program Tax Credit (IITA Section 210.5)
100.2197 Foreign Tax Credit (IITA Section 601(b)(3))
100.2198 Economic Development for a Growing Economy Credit (IITA 211)
100.2199 Illinois Earned Income Tax Credit (IITA Section 212)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

OCCURRING PRIOR TO DECEMBER 31, 1986

Section

- 100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Scope
- 100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) – Definitions
- 100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
- 100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
- 100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
- 100.2250 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES
OCCURRING ON OR AFTER DECEMBER 31, 1986

Section

- 100.2300 Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
- 100.2310 Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
- 100.2320 Determination of the Amount of Illinois Net Loss for Losses Occurring On or After December 31, 1986
- 100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986
- 100.2340 Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 100.2350 Illinois Net Losses and Illinois Net Loss Deductions, for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Changes in Membership

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section

- 100.2405 Gross Income, Adjusted Gross Income, Taxable Income and Base Income Defined; Double Deductions Prohibited; Legislative Intention (IITA Section 203(e), (g) and (h))
- 100.2410 Net Operating Loss Carryovers for Individuals, and Capital Loss and Other Carryovers for All Taxpayers (IITA Section 203)
- 100.2430 Addition and Subtraction Modifications for Transactions with 80-20 and Noncombination Rule Companies
- 100.2435 Addition Modification for Student-Assistance Contribution Credit (IITA Sections 203(a)(2)(D-23), (b)(2)(E-16), (c)(2)(G-15), (d)(2)(D-10))
- 100.2450 IIT Refunds (IITA Section 203(a)(2)(H), (b)(2)(F), (c)(2)(J) and (d)(2)(F))
- 100.2455 Subtraction Modification: Federally Disallowed Deductions (IITA Sections 203(a)(2)(M), 203(b)(2)(I), 203(c)(2)(L) and 203(d)(2)(J))
- 100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))
- 100.2480 Enterprise Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))
- 100.2490 Foreign Trade Zone/High Impact Business Dividend Subtraction (IITA Sections 203(a)(2)(K), 203(b)(2)(L), 203(c)(2)(O), 203(d)(2)(M))

SUBPART F: BASE INCOME OF INDIVIDUALS

Section

- 100.2510 Subtraction for Contributions to Illinois Qualified Tuition Programs (Section 529 Plans) (IITA Section 203(a)(2)(Y))
- 100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))
- 100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

Section

- 100.2655 Subtraction Modification for Enterprise Zone and River Edge Redevelopment Zone Interest (IITA Section 203(b)(2)(M))
- 100.2680 Capital Gain Income of Estates and Trusts Paid to or Permanently Set Aside for Charity (Repealed)

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF BASE INCOME

Section

- 100.3000 Terms Used in Article 3 (IITA Section 301)
- 100.3010 Business and Nonbusiness Income (IITA Section 301)
- 100.3015 Business Income Election (IITA Section 1501)
- 100.3020 Resident (IITA Section 301)

SUBPART J: COMPENSATION

Section

- 100.3100 Compensation (IITA Section 302)
- 100.3110 State (IITA Section 302)
- 100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

- 100.3200 Taxability in Other State (IITA Section 303)
- 100.3210 Commercial Domicile (IITA Section 303)
- 100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other Than Residents (IITA Section 303)

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

- 100.3300 Allocation and Apportionment of Base Income (IITA Section 304)
- 100.3310 Business Income of Persons Other Than Residents (IITA Section 304) – In General
- 100.3320 Business Income of Persons Other Than Residents (IITA Section 304) – Apportionment (Repealed)

DEPARTMENT OF REVENUE

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100.3330	Business Income of Persons Other Than Residents (IITA Section 304) – Allocation
100.3340	Business Income of Persons Other Than Residents (IITA Section 304)
100.3350	Property Factor (IITA Section 304)
100.3360	Payroll Factor (IITA Section 304)
100.3370	Sales Factor (IITA Section 304)
100.3371	Sales Factor for Telecommunications Services
100.3373	Sales Factor for Publishing
100.3380	Special Rules (IITA Section 304)
100.3390	Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))
100.3400	Apportionment of Business Income of Financial Organizations for Taxable Years Ending Prior to December 31, 2008 (IITA Section 304(c))
100.3405	Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))
100.3420	Apportionment of Business Income of Insurance Companies (IITA Section 304(b))
100.3500	Allocation and Apportionment of Base Income by Nonresident Partners

SUBPART M: ACCOUNTING

Section	
100.4500	Carryovers of Tax Attributes (IITA Section 405)

SUBPART N: TIME AND PLACE FOR FILING RETURNS

Section	
100.5000	Time for Filing Returns: Individuals (IITA Section 505)
100.5010	Place for Filing Returns: All Taxpayers (IITA Section 505)
100.5020	Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)
100.5030	Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)
100.5040	Innocent Spouses
100.5050	Frivolous Returns
100.5060	Reportable Transactions
100.5070	List of Investors in Potentially Abusive Tax Shelters and Reportable Transactions
100.5080	Registration of Tax Shelters (IITA Section 1405.5)

SUBPART O: COMPOSITE RETURNS

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

Section

100.5100	Composite Returns: Eligibility
100.5110	Composite Returns: Responsibilities of Authorized Agent
100.5120	Composite Returns: Individual Liability
100.5130	Composite Returns: Required forms and computation of Income
100.5140	Composite Returns: Estimated Payments
100.5150	Composite Returns: Tax, Penalties and Interest
100.5160	Composite Returns: Credits on Separate Returns
100.5170	Composite Returns: Definition of a "Lloyd's Plan of Operation"
100.5180	Composite Returns: Overpayments and Underpayments

SUBPART P: COMBINED RETURNS

Section

100.5200	Filing of Combined Returns
100.5201	Definitions and Miscellaneous Provisions Relating to Combined Returns
100.5205	Election to File a Combined Return
100.5210	Procedures for Elective and Mandatory Filing of Combined Returns
100.5215	Filing of Separate Unitary Returns
100.5220	Designated Agent for the Members
100.5230	Combined Estimated Tax Payments
100.5240	Claims for Credit of Overpayments
100.5250	Liability for Combined Tax, Penalty and Interest
100.5260	Combined Amended Returns
100.5265	Common Taxable Year
100.5270	Computation of Combined Net Income and Tax
100.5280	Combined Return Issues Related to Audits

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section

100.7000	Requirement of Withholding (IITA Section 701)
100.7010	Compensation Paid in this State (IITA Section 701)
100.7020	Transacting Business Within this State (IITA Section 701)
100.7030	Payments to Residents (IITA Section 701)
100.7035	Nonresident Partners, Subchapter S Corporation Shareholders, and Trust Beneficiaries (IITA Section 709.5)
100.7040	Employer Registration (IITA Section 701)

DEPARTMENT OF REVENUE

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100.7050	Computation of Amount Withheld (IITA Section 702)
100.7060	Additional Withholding (IITA Section 701)
100.7070	Voluntary Withholding (IITA Section 701)
100.7080	Correction of Underwithholding or Overwithholding (IITA Section 701)
100.7090	Reciprocal Agreement (IITA Section 701)
100.7095	Cross References

SUBPART R: AMOUNT EXEMPT FROM WITHHOLDING

Section	
100.7100	Withholding Exemption (IITA Section 702)
100.7110	Withholding Exemption Certificate (IITA Section 702)
100.7120	Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

SUBPART S: INFORMATION STATEMENT

Section	
100.7200	Reports for Employee (IITA Section 703)

SUBPART T: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section	
100.7300	Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)
100.7310	Returns Filed and Payments Made on Annual Basis (IITA Section 704)
100.7320	Time for Filing Returns and Making Payments for Taxes Required to Be Withheld Prior to January 1, 2008 (IITA Section 704)
100.7325	Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)
100.7330	Payment of Tax Required to be Shown Due on a Return (IITA Sections 704 and 704A)
100.7340	Correction of Underwithholding or Overwithholding (IITA Section 704)
100.7350	Domestic Service Employment (IITA Sections 704 and 704A)
100.7360	Definitions and Special Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
100.7370	Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)

SUBPART U: ESTIMATED TAX PAYMENTS

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

Section

- 100.8000 Payment of Estimated Tax (IITA Section 803)
- 100.8010 Failure to Pay Estimated Tax (IITA Sections 804 and 806)

SUBPART V: COLLECTION AUTHORITY

Section

- 100.9000 General Income Tax Procedures (IITA Section 901)
- 100.9010 Collection Authority (IITA Section 901)
- 100.9020 Child Support Collection (IITA Section 901)

SUBPART W: NOTICE AND DEMAND

Section

- 100.9100 Notice and Demand (IITA Section 902)

SUBPART X: ASSESSMENT

Section

- 100.9200 Assessment (IITA Section 903)
- 100.9210 Waiver of Restrictions on Assessment (IITA Section 907)

SUBPART Y: DEFICIENCIES AND OVERPAYMENTS

Section

- 100.9300 Deficiencies and Overpayments (IITA Section 904)
- 100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)
- 100.9320 Limitations on Notices of Deficiency (IITA Section 905)
- 100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

SUBPART Z: CREDITS AND REFUNDS

Section

- 100.9400 Credits and Refunds (IITA Section 909)
- 100.9410 Limitations on Claims for Refund (IITA Section 911)
- 100.9420 Recovery of Erroneous Refund (IITA Section 912)

SUBPART AA: INVESTIGATIONS AND HEARINGS

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

Section

100.9500	Access to Books and Records (IITA Section 913)
100.9505	Access to Books and Records – 60-Day Letters (IITA Section 913) (Repealed)
100.9510	Taxpayer Representation and Practice Requirements
100.9520	Conduct of Investigations and Hearings (IITA Section 914)
100.9530	Books and Records

SUBPART BB: JUDICIAL REVIEW

Section

100.9600	Administrative Review Law (IITA Section 1201)
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SUBPART CC: DEFINITIONS

Section

100.9700	Unitary Business Group Defined (IITA Section 1501)
100.9710	Financial Organizations (IITA Section 1501)
100.9720	Nexus
100.9730	Investment Partnerships (IITA Section 1501(a)(11.5))
100.9750	Corporation, Subchapter S Corporation, Partnership and Trust Defined (IITA Section 1501)

SUBPART DD: LETTER RULING PROCEDURES

Section

100.9800	Letter Ruling Procedures
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SUBPART EE: MISCELLANEOUS

Section

100.9900	Tax Shelter Voluntary Compliance Program
100.APPENDIX A	Business Income Of Persons Other Than Residents
100.TABLE A	Example of Unitary Business Apportionment
100.TABLE B	Example of Unitary Business Apportionment for Groups Which Include Members Using Three-Factor and Single-Factor Formulas

AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a

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maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378, effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11, 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26, 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516, effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1, 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg. 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008; amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill. Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008; amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195, effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill. Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010; amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092, effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at 36 Ill. Reg. _____, effective _____.

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

[Section 100.3373 Sales Factor for Publishing](#)

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- a) For taxable years ending on or after December 31, 2008, sales of services (other than sales covered by IITA Section 304(a)(3)(B-1), (B-2) and (B-5)) are in this State if the services are received in this State. The Department may adopt rules prescribing where specific types of service are received, including, but not limited to, broadcast, cable, advertising, publishing, and utility service. (IITA Section 304(a)(3)(C-5)(iv)) This Section provides guidance for determining where publishing services are received and applies only to the gross receipts from publishing services of a taxpayer required to source gross receipts under IITA Section 304(a)(3)(C-5) in computing its sales factor.
- b) Definitions. For purposes of this Section, the following terms have the following meanings:
- 1) "Circulation factor" means, for each individual publication by the taxpayer of published material containing advertising, the ratio that the taxpayer's in-state circulation to purchasers and subscribers of the published material bears to its total circulation of the published material to purchasers and subscribers everywhere. If the geographic location of purchasers and subscribers of a publication is determined by the taxpayer for a business purpose (for example, in determining advertising rates), the circulation factor shall be determined for that publication using the geographic information used by the taxpayer for that purpose. Otherwise, the circulation factor shall be determined from the taxpayer's books and records or, if the books and records of the taxpayer are inadequate to allow the determination of the circulation factor of a publication or if the taxpayer so elects, the circulation factor for a publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations, Internet World Stats, or other comparable sources, provided that the source selected is consistently used from year to year for that purpose.

EXAMPLE 1: Company A publishes advertising on the Internet for its customers. In order to calculate its circulation factor, Company A elects to utilize Internet World Stats. Company A determines its circulation factor by multiplying Illinois' population by the Internet penetration percentage of the United States, as reported on Internet World Stats, divided by the combined populations of the jurisdictions in which Company A does business multiplied by their respective Internet penetration percentages as

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reported on Internet World Stats. Company A must use this method consistently from year to year to compute its circulation factor.

- 2) "Publication" or "published material" includes, without limitation, the physical embodiment or printed version of any thought or expression, including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of published material shall be made without regard to its content. Published material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any property or medium (including any electronic medium, such as, for example, the internet, but not including any broadcasting medium governed by IITA Section 304(a)(3)(B-7)).
 - 3) "Publishing" or "publishing services" means deriving business income from publishing, selling, licensing (other than licensing to another person for purposes of printing or other publication of the licensed material by that person within the meaning of IITA Section 304(a)(3)(B-1)) or distributing newspapers, magazines, periodicals, trade journals or other published material. "Publishing" or "publishing services" does not include delivery of materials published by a third party, and does not include delivery of materials published by the taxpayer when a separate charge is made for delivery. Fees for delivery services performed by a taxpayer who is not itself the publisher of the materials (such as a newspaper carrier) or that are charged separately by the publisher are sourced under Section 100.3370(c)(5), not under this Section.
 - 4) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the published material. Neither term shall mean or include a wholesaler, retailer or other distributor of published material.
- c) Sales within this State from publishing include:
- 1) Gross receipts derived from the sale of published materials in the form of tangible personal property, as provided in Sections 100.3370(c) and 100.3380(c).

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- 2) The portion of gross receipts derived from sales of published materials in a form other than tangible personal property, from advertising and from the sale, rental or other use of the taxpayer's customer lists for a particular publication or any portion thereof attributed to this State using the taxpayer's circulation factor for that publication during the applicable tax period.
- d) For the purposes of this Section, other than sales of tangible personal property under subsection (c)(1):
 - 1) Gross receipts from the performance of publishing services provided to a corporation, partnership, or trust may be attributed only to a state where that corporation, partnership, or trust has a fixed place of business, as defined in Section 100.3405(b)(1). (IITA Section 304(a)(3)(C-5)(iv)) When the circulation factor is determined by a method other than the taxpayer's own books and records, this subsection (d)(1) shall not apply.
 - 2) If the state where the publishing services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the services does not have a fixed place of business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. (IITA Section 304(a)(3)(C-5)(iv)) When the circulation factor is determined by a method other than the taxpayer's own books and records, this subsection (d)(2) shall not apply.
 - 3) If the ordering office cannot be determined, the publishing services shall be deemed to be received at the office of the customer to which the services are billed. (IITA Section 304(a)(3)(C-5)(iv)) When the circulation factor is determined by a method other than the taxpayer's own books and records, this subsection (d)(3) shall not apply.
 - 4) If the taxpayer is not taxable in the state in which the publishing services are received, the sale must be excluded from both the numerator and the denominator of the sales factor. (IITA Section 304(a)(3)(C-5)(iv)) See Section 100.3200 for guidance on determining when a taxpayer is taxable in a state.

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EXAMPLE 2: In computing its circulation factor, Company A from Example 1 must exclude from the denominator the population (weighted by the Internet penetration percentage as reported on Internet World Stats) of any jurisdiction in which Company A is not taxable.

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

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- 1) Heading of the Part: Dismissal of Tenured Teachers under Article 24 and Dismissal of Tenured Teachers and Principals under Article 34 of the School Code
- 2) Code Citation: 23 Ill. Adm. Code 51
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
51.10	Amendment
51.20	Amendment
51.30	Amendment
51.35	New Section
51.40	Amendment
51.55	Amendment
51.60	Amendment
51.70	Amendment
51.75	New Section
51.80	Repeal
51.200	New Section
51.210	New Section
51.220	New Section
51.230	New Section
51.240	New Section
51.250	New Section
51.260	New Section
51.270	New Section
51.280	New Section
51.290	New Section
- 4) Statutory Authority: 105 ILCS 5/24-12(d), 24-16.5 and 34-85
- 5) A Complete Description of the Subjects and Issues Involved: P.A. 97-8, effective June 13, 2011, amended the processes set forth in Sections 24-12 and 35-85 of the School Code [105 ILCS 5/24-12 and 34-85] for a school district's dismissal of a tenured teacher, as well as the dismissal of a principal in City of Chicago School District 299 (CPS), either for misconduct or due to receipt of an "unsatisfactory" performance evaluation rating. As to the latter cause for dismissal, P.A. 97-8 also added a provision whereby a school district could dismiss a teacher if the teacher receives a rating of "unsatisfactory" any time within a 36-month period after successfully completing a remediation plan. This dismissal authority is in addition to allowing dismissal of a teacher who received a "needs improvement" or "unsatisfactory" rating following completion of a remediation plan under Section 24A-5 of the School Code [105 ILCS 5/24A-5].

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The statutory changes made by P.A. 97-8 and the proposed amendments to Part 51 have several purposes, each of which is described below.

- **To align the rules to the streamlined process for both performance-related dismissals under Section 24A-5 of the School Code and dismissals for misconduct by shortening the timelines for action.** The law now requires that a hearing officer commence a hearing no more than 75 days, and conclude the hearing no more than 120 days, after his or her selection; that each party have only three days to present its case; that a decision or findings of fact and recommendation be rendered within 30 days after the hearing's conclusion (formerly three months); and that the local board of education within 45 days issue a written order regarding the final action it will take regarding dismissal (previously, no deadline was contained in the law).
- **Provides authority to boards of education to dismiss teachers due to misconduct.** Except for CPS, the law previously provided that the decision of the hearing officer as to whether a teacher should be dismissed for alleged misconduct was final and the only recourse available for a school board that did not agree with the hearing officer's decision was for the board to seek administrative review in the applicable circuit court. School boards outside of Chicago now have the opportunity to review the hearing officer's findings of fact and recommendation and determine whether the conduct at issue occurred and whether the hearing officer's recommendation regarding retention or dismissal should be sustained.
- **Provides authority for all boards of education (including CPS) to pursue a more streamlined dismissal process for poor performance if certain conditions are met.** Both CPS and other school districts may choose to adopt an Optional Alternative Evaluation Dismissal process under Section 24-16.5 of the School Code (see Subpart B of the proposed amendments). This optional process includes use of a second evaluator who is charged with conducting either the mid-point or final evaluation that is part of the remediation plan or conducting an independent assessment of whether the teacher completed the remediation with a "proficient" or better rating.

Part 51 has been further modified to include much of the explanatory text from the law. Given the significance of dismissal proceedings, it is both a courtesy to the reader and makes sense procedurally for Part 51 to provide the statutory requirements as part of the rules rather than only providing cross-references to where the requirements can be found in the School Code.

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It is also proposed that Section 51.80 be repealed and its requirements placed in other sections of the rulemaking that contain related provisions. For ease of reference:

- Section 51.80(a) has been moved to Section 51.55(g);
- Section 51.80(b) has been moved to Section 51.40(i);
- Section 51.80(c) has been moved to Section 51.40(h) as that subsection's concluding statement; and
- Section 51.80(d) has been removed as no longer relevant.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes, see Section 51.40(h).
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking will not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 90 days of the publication of this Notice to:

Shelley Helton
Agency Rules Coordinator
Illinois State Board of Education
100 North First Street, S-493
Springfield, Illinois 62777-0001

217/782-5270

Comments may also be submitted electronically, addressed to:

rules@isbe.net

- 13) Initial Regulatory Flexibility Analysis:

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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
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2011

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER b: PERSONNEL

PART 51

DISMISSAL OF TENURED TEACHERS UNDER ARTICLE 24 AND
DISMISSAL OF TENURED TEACHERS AND PRINCIPALS
UNDER ARTICLE 34 OF THE SCHOOL CODE

SUBPART A: GENERAL PROVISIONS

Section

51.10

Definitions

SUBPART B: STANDARD DISMISSAL PROCEDURES
UNDER ARTICLES 24 AND 34 OF THE SCHOOL CODE

51.20

Applicability of this ~~Subpart B~~Part

51.30

~~Dismissal Proceedings, Notice of Charges to Tenured Teachers, and Compliance
with Other Applicable Provisions of the School Code~~

51.35

Suspension without Pay

51.40

Qualifications and Selection of Hearing Officers; Conditions of Service

51.50

Suspension Pending the Hearing (Repealed)

51.55

Pre-Hearing Procedures

51.60

The Hearing

51.70

The Decision: School Districts Not Organized under Article 34 of the School
Code

51.75

The Decision: School Districts Organized under Article 34 of the School Code

51.80

Waiver, Interpretation and Application of this Part (Repealed)

SUBPART C: OPTIONAL ALTERNATIVE EVALUATIVE DISMISSAL
UNDER SECTION 24-16.5 OF THE SCHOOL CODE

Section

51.200

Purpose and Applicability of this Subpart C

51.210

Establishment of the List of Second Evaluators; Qualifications

51.220

Selection of Second Evaluators

51.230

Use of a Second Evaluator in Specific Remediations

51.240

Hearing Procedures

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51.250	Notice of Dismissal to the Affected Tenured Teacher
51.260	Qualifications and Selection of Hearing Officers
51.270	Scope of the Hearing
51.280	Findings of Fact and Recommendation of the Hearing Officer
51.290	Decision of Board

AUTHORITY: Implementing and authorized by Sections 24-12 and 34-85 of the School Code [105 ILCS 5/24-12 and 34-85].

SOURCE: Rules Prescribed by the State Board of Education Governing the Procedure for the Dismissal of Tenured Teachers in Illinois, adopted February 19, 1976; codified at 8 Ill. Reg. 13739; emergency amendment at 9 Ill. Reg. 13116, effective August 9, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 5807, effective April 2, 1986; emergency amendment at 10 Ill. Reg. 19572, effective October 30, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 5950, effective March 23, 1987; amended at 29 Ill. Reg. 10108, effective June 30, 2005; amended at 32 Ill. Reg. 4824, effective March 21, 2008; amended at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 51.10 Definitions

As used in this Part:

"Board" means the local school board and not the State Board of Education.

"Day" means calendar day unless otherwise specified in this Part.

"Parties" means the tenured teacher against whom charges are brought and the school board bringing the charges.

"State Board" means the Illinois State Board of Education.

"Tenured Teacher" means any teacher who has entered upon contractual continued service pursuant to Section 24-11 of the School Code [105 ILCS 5/24-11] and, in school districts organized under Article 34 of the School Code [105 ILCS 5/Art. 34]having a population of 500,000 or more, a teacher or principal (see Sections 34-84 and 34-85 of the School Code [105 ILCS 5/34-84 and 34-85]).

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

SUBPART B: STANDARD DISMISSAL PROCEDURES
UNDER ARTICLES 24 AND 34 OF THE SCHOOL CODE

Section 51.20 Applicability of this Subpart BPart

This Subpart BPart applies to the dismissal for reason or cause of a tenured teacher (see Section 51.10 of this Part) under Section 24-12(d) or Section 34-85 of the School Code, other than a tenured teacher for whom alternative procedures are established in an agreement entered into pursuant to Section 34-85c of the School Code [105 ILCS 5/34-85c]. That is, this Subpart B applies to dismissals of tenured teachers other than honorable dismissals (i.e., those set forth in Section 24-12 (a) or (b) of the School Code), as follows:

- a) For any tenured teacher who fails to complete a remediation plan with a performance evaluation rating of "satisfactory" or "proficient" or better or who, in accordance with Section 24-A-5(n) of the School Code, successfully completes a remediation plan but receives a subsequent performance evaluation rating of "unsatisfactory" anytime during the 36 months following the completion of the remediation plan (see Section 24A-5(m) and (n) of the School Code):
- b) For any tenured teacher who is being dismissed due to conduct that the Board does not consider remediable. (See Sections 24-12(d) and 34-85(a) of the School Code.)

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

Section 51.30 ~~Dismissal Proceedings, Notice of Charges to Tenured Teachers, and Compliance with Other Applicable Provisions of the School Code~~

~~The approval of charges or a motion for dismissal, provision of notice of charges to the affected tenured teacher, selection of the hearing officer, scheduling of the hearing, and suspension of the teacher pending the hearing shall be as set forth in Section 24-12(d)(1) or Section 34-85 of the School Code, as applicable, and this Section. To comply with Section 24-12 or Section 34-85 of the School Code, as applicable, the notice to the tenured teacher of the charges or motion for dismissal must inform the teacher that he or she has ten days after receiving notice to request in writing that a hearing be scheduled. A motion approved by a board pursuant to Section 24-12 of the School Code or charges approved by the general superintendent pursuant to Section 34-85 of the School Code may include a scheduled date for a hearing, provided that the hearing is scheduled no fewer than 15 nor more than 30 days after the approval of the motion or charges.~~

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- a) Notice of Charges for School Districts Not Organized under Article 34 of the School Code
- 1) The notice shall be provided to the tenured teacher either by certified mail, return receipt requested, or personal delivery with receipt, within five days after the Board's adoption of a motion for the dismissal (see Section 24-12(d) of the School Code).
 - 2) The notice shall include a bill of particulars and inform the tenured teacher of his or her right to request, in writing to the school district, a hearing within 17 days after receiving the notice (see Section 24-12(d) of the School Code).
 - 3) *Any written notice sent on or after July 1, 2012 shall inform the teacher of the right to request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between the teacher and the Board, or a hearing before a Board-selected hearing officer, with the cost of the hearing paid by the Board (Section 24-12(d)(1) of the School Code). The notice shall inform the tenured teacher of the requirement to copy the State Board on a request for a hearing submitted pursuant to subsection (a)(4) of this Section addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.*
 - 4) If the tenured teacher chooses to have a hearing, then the tenured teacher shall submit a request for a hearing in writing to the school district within the timeline set forth in subsection (a)(2) of this Section that specifies his or her desire to have the hearing either before a mutually selected hearing officer or a Board-selected hearing officer. The tenured teacher shall send a copy of his or her request for a hearing to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.
 - A) Failure of the tenured teacher to notify the State Board of his or her request for a hearing is not jurisdictional.
 - B) If a tenured teacher fails to specify the method by which a hearing officer is to be selected, then the hearing officer shall be selected as set forth in Section 51.40(a)(3) of this Part.

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- b) Notice of Charges for School Districts Organized under Article 34 of the School Code
- 1) The written notice shall be served upon the tenured teacher within 10 business days after approval of the charges (see Section 34-85(a) of the School Code). For purposes of this subsection (b)(1), "service" shall be either by certified mail, return receipt requested, or personal delivery. If the tenured teacher cannot be found upon diligent inquiry, then the charges may be served by certified mail, return receipt requested, sent to the tenured teacher's last known address (see Section 34-85(a)(1) of the School Code).
 - 2) The notice shall include the specifications of the dismissal and inform the tenured teacher of his or her right to request, in writing to the general superintendent, a hearing within 17 days after receiving the notice (see Section 35-85(a) of the School Code).
 - 3) *Any notice sent on or after July 1, 2012 shall inform the teacher or principal of the right to request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between the teacher or principal and the Board, or a hearing before a qualified hearing officer chosen by the general superintendent, with the cost of the hearing officer paid by the Board (Section 34-85(a)(1) of the School Code).*
 - 4) If the tenured teacher chooses to have a hearing, then the tenured teacher shall submit a request for a hearing in writing to the general superintendent within the timeline set forth in subsection (b)(2) of this Section that specifies his or her desire to have the hearing either before a mutually selected hearing officer or a hearing officer selected by the general superintendent. If a tenured teacher fails to specify the method by which a hearing officer is to be selected, then the hearing officer shall be selected as set forth in Section 51.40(b)(3) of this Part.

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

Section 51.35 Suspension without Pay

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- a) For school districts not organized under Article 34 of the School Code, if, in the opinion of the Board, the interests of the school require it, the Board may suspend the teacher without pay, pending the hearing, but if the Board's dismissal or removal is not sustained, the teacher shall not suffer the loss of any salary or benefits by reason of the suspension (Section 24-12(d)(1) of the School Code).
- b) For a school district organized under Article 34 of the School Code, the general superintendent or his or her designee may make the determination to suspend the tenured teacher without pay in accordance with rules prescribed by the Board, provided that, if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost earnings, less setoffs for mitigation (Section 34-85(a)(2) of the School Code).

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

Section 51.40 Qualifications and Selection of Hearing Officers; Conditions of Service

- a) Master List of Hearing Officers and Selection of Hearing Officers – School Districts Not Organized under Article 34 of the School Code
- 1) The State Board shall maintain a master list of qualified impartial hearing officers in accordance with Section 24-12(d)(3) of the School Code. Each hearing officer on the master list maintained~~proposed~~ by the State Board of Education shall possess the following qualifications:
- A)1) He or she *must be accredited by a national arbitration organization and have had a minimum of 5 years of experience directly related to labor and employment relations matters between employers and employees or their exclusive bargaining representatives (see Section 24-12(d)(3) of the School Code)* must be accredited by a national arbitration association.
- B)2) He or she must *not* be a ~~resident~~*non-resident* of the school district involved in the hearing (Section 24-12(d)(3) of the School Code) at the time of the hearing, unless the hearing involves a school district organized pursuant to Article 34 of the School Code.
- C)3) He or she must be disinterested and impartial.
- D)4) He or she must have no financial or personal interest in the result

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of the hearing.

- E) Beginning on September 1, 2012, he or she must have successfully completed the training provided or approved by the State Board specific to issues generally involved in evaluative and non-evaluative dismissals (Section 24-12(d)(3) of the School Code).
 - F) He or she must be available to commence the hearing within 75 days and conclude the hearing within 120 days after being selected as hearing officer (Section 24-12(d) of the School Code).
- 2) A hearing officer shall be selected as set forth in Section 24-12(d)(3) of the School Code and this subsection (a)(2) if the tenured teacher has requested a hearing before a mutually selected hearing officer.
- A) The State Board shall, from the master list, provide, on a rotating basis, a list of five prospective hearing officers within five business days after receiving a copy of the tenured teacher's request for a hearing.
 - B) Within three business days after receiving the list of prospective hearing officers, the Board and the teacher, or their legal representatives, shall alternately strike one name from the list until one name remains. Unless waived by the teacher, the teacher shall have the right to strike first.
 - i) Within three business days after receiving the list, the Board or the teacher, or either of their legal representatives, shall have the right to reject all prospective hearing officers on the list, in which case, they shall notify the State Board that either party has rejected the entire list. (Section 24-12(d)(3) of the School Code)
 - ii) Within three business days after receiving timely notification that the entire panel has been rejected, the State Board shall appoint, on a rotating basis, a hearing officer from the master list who was not on the parties' rejected list, unless the State Board receives notice from the parties that a hearing officer has been selected though an

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alternative method in accordance with Section 24-12(d)(4) of the School Code.

- 3) A hearing officer shall be selected in accordance with Section 24-12(d)(3) of the School Code and this subsection (a)(3) if the tenured teacher has requested a hearing before a Board-selected hearing officer. Within three business days after receipt of the master list from the State Board, the Board shall select one name from the master list established pursuant to subsection (a)(1) of this Section and, in writing, notify the tenured teacher and the State Board of its selection. Notification to the State Board shall be addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.
 - 4) In lieu of selecting a hearing officer pursuant to subsection (a)(2) or (a)(3) of this Section, the parties may mutually select either an impartial hearing officer who is on the State Board's master list but was not on the list provided to the parties under subsection (a)(2) of this Section or an impartial hearing officer who is not on the State Board's master list either directly or by using procedures for the appointment of an arbitrator established by the Federal Mediation and Conciliation Service or the American Arbitration Association. The parties shall notify the State Board of their intent to select a hearing officer using an alternative process within 3 business days after the receipt of the list of prospective hearing officers provided by the State Board, or the notice of appointment of hearing officer by the State Board, or receipt of notice from the State Board that it cannot provide a list of qualified, impartial hearing officers, whichever occurs later (Section 24-12(d)(4) of the School Code).
- b) List of Hearing Officers and Selection of Hearing Officers – School Districts Organized under Article 34 of the School Code
- 1) A school district organized under Article 34 of the School Code shall maintain a separate list of nine hearing officers to conduct hearings on charges and specifications. The school district shall develop the list in good faith consultation with the exclusive representative of the Board's teachers and professional associations that represent the Board's principals (Section 34-85(a)(3) of the School Code). Each hearing officer shall maintain the following qualifications:

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- A) He or she must be accredited by a national arbitration organization and have had a minimum of 5 years of experience as an arbitrator in cases involving labor and employment relations matters between employers and employees or their exclusive bargaining representatives (Section 34-85(a)(3) of the School Code).
- B) He or she must be disinterested and impartial.
- C) He or she must have no financial or personal interest in the result of the hearing.
- D) Beginning on September 1, 2012, he or she must have successfully completed the training provided or approved by the State Board specific to issues generally involved in evaluative and non-evaluative dismissals (Section 34-85(a)(3) of the School Code).
- E) He or she must be available to commence the hearing within 75 calendar days and conclude the hearing within 120 calendar days after being selected as hearing officer (Section 34-85(a)(5) of the School Code).
- 2) A hearing officer shall be selected as set forth in Section 34-85(a)(3) of the School Code and this subsection (b)(2) if the tenured teacher has chosen to use a mutually selected hearing officer. The general superintendent and the teacher or principal or their legal representatives, within 5 business days after receiving the notice of request for a hearing, shall alternately strike one name from the list of nine qualified hearing officers until only one name remains (Section 34-85(a)(3) of the School Code).
- 3) A hearing officer shall be selected as set forth in Section 35-85(a)(4) of the School Code and this subsection (b)(3) if the tenured teacher does not participate in the selection process. The general superintendent either shall select the hearing officer from the list of nine qualified hearing officers or select another qualified hearing officer from the master list maintained by the State Board. (Section 34-85(a)(3) of the School Code) (See subsection (a)(1) of this Section.)

c)b) For purposes of the master list maintained by the The State Board of Education

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~~shall provide the local board of education and the teacher with a list of five prospective impartial hearing officers. The State Board of Education shall select the first five hearing officers from the master list who do not reside in the school district, if required by Section 24-12 of the School Code. The State Board of Education pursuant to subsection (a)(1) of this Section, shall place~~ the names of the four hearing officers not selected ~~from among the five provided to a school district under subsection (a)(2) of this Section shall be placed~~ at the bottom of the master list and ~~the State Board~~ shall rotate the names on the list accordingly.

~~d)e)~~ As soon as possible Upon notice of his or her appointment as a hearing officer, the prospective hearing officer shall disclose to the parties in writing any circumstances he or she believes might disqualify him or her as an impartial hearing officer.

1) ~~Upon receipt of such information the State Board of Education shall immediately disclose it to the parties.~~ 2) The parties may waive the presumptive disqualification.

~~2)3)~~ If either party declines to waive the presumptive disqualification, the party shall notify the State Board of this fact, and the State Board ~~of Education~~ within five days after receiving this disclosure, shall declare a vacancy.

~~e)d)~~ If any hearing officer shall resign, die, withdraw, refuse or be unable or disqualified to perform the duties of his or her position, the State Board ~~of Education~~ shall, on proof satisfactory to it, declare the position vacant.

1) Vacancies shall be filled in the same manner as that governing the making of the original appointment; that is:-

A) For school districts not organized under Article 34 of the School Code, either by mutual selection by the tenured teacher and the Board, or by the Board; and

B) For a school district organized under Article 34 of the School Code, either by mutual selection by the tenured teacher and the general superintendent, or by the general superintendent.

2) Should a vacancy occur during the course of a hearing, the entire matter shall be reheard by a new hearing officer unless both parties provide written agreement otherwise.

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f)e) Fees and Costs

- 1) If the notice of dismissal is sent to the tenured teacher before July 1, 2012, the State Board of Education shall pay the hearing officer Hearing Officer a per diem of \$300 for the days on which the hearing is held and \$37.50 per hour for any other services, or such greater amount as the State Board of Education may determine based on available resources. Billing procedures shall be arranged on an individual basis between the State Board and the hearing officer Hearing Officer.
- 2) If the notice of dismissal is sent to the tenured teacher on or after July 1, 2012, payment shall be made in accordance with Section 24-12(d)(5) or 34-85(a)(4) of the School Code.

g)f) All communication from the parties to the hearing officer other than at oral hearing shall be in writing and copies shall be sent at the same time to the opposing party and the State Board of Education. However, whenwhere circumstances necessitate, the hearing officer may make other appropriate arrangements, including but not limited to conference telephone calls. The hearing officer shall promptly report to the other party the complete substance of any unilateral communications.

h)g) All hearing officers shall abide by the professional standards set forth in "The Code of Professional Responsibility for Arbitrators of Labor Management Disputes" (2007)(2003), published by the National Academy of Arbitrators, 1 NorthNo. Main Street, Suite 412, Cortland, New York 13045; no later amendments to or editions of these standards are incorporated. A violation of the professional standards identified in this subsection (h) shall be grounds for removal of the hearing officer from the master list maintained by the State Board.

i) The hearing officer shall interpret and apply the provisions of this Part insofar as they relate to his or her powers and duties and shall follow any court interpretation of this Part.

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

Section 51.55 Pre-Hearing Procedures

a) The parties and the hearing officer may agree to a location for the hearing. If

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there is a dispute as to the location of the hearing, the hearing officer shall fix the place of the hearing at a location within the district's boundaries.

- b) The tenured teacher shall answer the bill of particulars or charges and specifications, aver any affirmative defenses, and update the answer and defenses, in accordance with the schedule set forth by the hearing officer pursuant to subsection (c) of this Section. (See Sections 24-12(d)(6) and 34-85(a)(5) of the School Code.)
- c) Pre-Hearing Conference
The hearing officer shall convene a pre-hearing conference with the parties for the purpose of, among other things, setting a schedule, no later than 10 days after being selected as the hearing officer. The schedule shall be contained in the hearing officer's order that reflects the action taken at the conference and include:
- 1) The deadline for the tenured teacher's answer and any affirmative defenses to the bill of particulars or charges and specifications submitted pursuant to subsection (b) of this Section and for the updating of that information after pre-hearing discovery;
 - 2) A schedule for discovery, including any written interrogatories and requests for production of documents;
 - 3) The deadline for initial disclosures and updated disclosures to be sent to the other party, which deadline may be no later than 10 days prior to the commencement of the hearing (see Sections 24-12(d)(6) and 34-85(a)(5)); and
 - 4) The dates, times and locations of any subsequent pre-hearing scheduling conferences, as needed.
- d) Initial Disclosures and Updated Disclosures
Subject to the deadline established by the hearing officer in his or her order issued pursuant to subsection (c) of this Section, and in accordance with Sections 24-12(d)(6) and 34-85(a)(5) of the School Code, each party shall disclose in writing to the other, with copies to the hearing officer, the following information:
- 1) The names and addresses of persons who may be called as witnesses at the hearing;

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- 2) *A summary of the facts or opinions each witness will testify to; and*
- 3) *All other documents and materials, including information maintained electronically, relevant to its own as well as the other party's case (the hearing officer may exclude witnesses and exhibits not identified and shared, except those offered in rebuttal for which the party could not reasonably have anticipated prior to the hearing). (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code)*

e)b) Discovery

~~1) Either party may request in writing from the other, with copies to the State Board of Education and the hearing officer, a list of persons (and their addresses) who may be called as expert witnesses at the hearing, the omission of any such name to result in a preclusion of the testimony of such witness in the absence of a showing of good cause and the express permission of the hearing officer. 2) Either party may request in writing from the other, with copies to the State Board of Education and the hearing officer, a list of persons (and their addresses) who may have knowledge of facts related to the charges and/or the defenses thereto. This is not to be construed as a list of witnesses to be used at the hearing, but no person whose name is not so disclosed may testify except upon good cause shown and by the express permission of the hearing officer. 3) The hearing officer shall allow for interrogatories and requests for production of documents, and may allow for other discovery, subject to reasonable limitations set forth by the hearing officer, in the order reflecting the pre-hearing conference or any future order. The hearing officer shall not allow for discovery depositions (see Sections 24-12(d)(6) and 34-85(a)(5) of the School Code). Further discovery, limited to written interrogatories, bills of particulars, requests to produce, and lists of witnesses, may be allowed.~~

- 1)A) Application for ~~such~~ discovery shall be made by written motion to the hearing officer, with copies to the ~~State Board of Education and the~~ other party.
- 2)B) The motion shall state the specific nature of the discovery and the circumstances necessitating the discovery. If interrogatories are sought, a copy of ~~the interrogatories~~ these shall be attached to the motion.
- 3)C) The hearing officer shall rule on the motion within five days after receipt of the motion, sending copies of the decision to both parties ~~and to the State Board of Education~~. The ruling shall set a date by which discovery

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shall be completed. In the case of interrogatories, receipt of the hearing officer's ruling shall be deemed service of the interrogatories ~~when~~^{where} the provisions of subsection ~~(e)(2)(b)(3)(B)~~ of this Section have been complied with.

~~4)D)~~ In ruling on the motion, the hearing officer shall not permit discovery ~~that~~^{which} will unnecessarily delay the proceedings or harass a party, ~~and~~^{but} shall allow only that discovery ~~that~~^{which} will further the resolution of the dispute, avoid surprise to a party, or aid in doing substantial justice.

~~5)4)~~ Each party providing answers to discovery requests shall sign his or her responses under oath, and each attorney making objections shall sign his or her objections under oath.

~~f)e)~~ Other pretrial motions may be ~~filed~~^{and} resolved prior to the hearing at the discretion of the hearing officer, provided that no motion shall be resolved prior to the hearing that would result in a default judgment against the tenured teacher.

~~g)~~ Any party who proceeds with the hearing after knowledge that any provision of this Subpart B has not been complied with prior to hearing and who fails to state his or her objection to the noncompliance in writing to the hearing officer shall be deemed to have waived his or her right to object.

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

Section 51.60 The Hearing

- a) The hearing shall be closed to the public unless one of the parties requests that it be open and the hearing officer so orders. The hearing officer shall exclude witnesses during the testimony of other witnesses upon the motion of either party, except that, at any time, one representative of each party in addition to counsel (or other authorized representative) shall be allowed to be present, even if that representative is also a witness. In open hearings, individuals who are not witnesses are not affected by exclusion under this subsection (a).
- b) The parties may be present and represented by counsel and by other authorized representatives.
- c) The order of proceeding shall be as follows:

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- 1) The hearing shall be opened by the recording of the place, time, and date of the hearing, the presence of the hearing officer and the parties and counsel, if any, and any stipulations as to facts. Pre-hearing motions submitted in accordance with Section 51.55 of this Part and not previously disposed of shall be heard at this time.
- 2) Upon the opening of the hearing, the hearing officer shall allow the parties to make opening statements.
- 3) The ~~Board~~ shall proceed first to present its evidence, and it shall have the burden of proof. Parties may agree to take witnesses out of order. The hearing officer may, at his or her discretion, vary the normal procedure under which the Board presents its case first, but in any event shall afford full and equal opportunity to all parties for presentation of relevant proof.
- 4) Either party may offer evidence and witnesses, cross-examine the witnesses, ~~offer evidence~~, and present a defense or rebuttal.
- 5) All testimony shall be taken under oath or affirmation administered by the hearing officer.
- 6) The hearing officer may issue subpoenas requiring the attendance of witnesses and subpoenas duces tecum, and, at the request of either of the parties, shall issue ~~the requested~~ such subpoenas but may limit the number of witnesses to be subpoenaed on behalf of either party to not more than seventen.
- 7) The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony. The party or parties who are responsible for paying the fees and costs of the hearing officer (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code) ~~The State Board of Education~~ shall pay for the attendance and services of the court reporter or other competent reporter who can provide a verbatim transcript of the proceedings as well as for the transcript, if any, ordered by the hearing officer for the purpose of making his or her decision. (See Section 51.40(f) of this Part.)

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- A) The cost of any transcript ordered by the hearing officer shall be paid by the party or parties responsible for paying the fees and cost of the hearing officer.
- B) Either party desiring a transcript of the hearing shall pay for the cost of the transcript (see Sections 24-12(d)(6) and 34-85(a)(5) of the School Code).
- 8) Exhibits, when offered by either party, may be received in evidence by the hearing officer. The names and addresses of all witnesses and exhibits, in order received, shall be made a part of the record. The hearing officer shall make rulings on the admissibility of exhibits.
- 9) The hearing shall commence within 75 days and conclude within 120 days after the appointment of the hearing officer, barring modification of these timelines by the hearing officer upon a showing of, for good cause or mutual agreement of the parties. "Good cause" for the purpose of this subsection (c)(9) shall mean the illness or otherwise unavoidable emergency of the teacher, district representative, their legal representatives, the hearing officer, or an essential witness as indicated in each party's pre-hearing submission (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code) shown, may continue the hearing upon the request of the teacher or the board or upon his or her own initiative.
- 10) The hearing may proceed in the absence of either party, who, after due notice, fails to be present or fails to obtain a continuance.
- ~~11) The hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to article 24A of the School Code.~~
- ~~11)12) Each party shall be provided no more than three business days to present its case, unless the hearing officer determines, in accordance with the provisions of Section 24-12(d)(6) or 34-85(a)(5) of the School Code, that more time is needed for either the tenured teacher or the Board to present adequate evidence and testimony, including due to the other party's cross-examination of the party's witnesses. For the purposes of this subsection (c)(11), a "business day" shall consist of 7.5 hours, such that three business days equates to 22.5 hours, exclusive of time taken for lunch and other breaks. The hearing officer may, at his or her discretion, vary the normal procedure under which the board presents its case first, but in any~~

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~~event shall afford full and equal opportunity to all parties for presentation of relevant proof.~~

- ~~12)13)~~ At the conclusion of the hearing, each party may make an orala closing statement ~~(orally and/or written at the discretion of the hearing officer)~~ incorporating arguments of fact and law.
- ~~13)~~ When the hearing officer determines that neither party has further proof to offer or witnesses to be heard, he or she shall declare the hearing concluded and so note in the record.
- ~~14)~~ At the close of the hearing, the hearing officer shall direct the parties to submit post-hearing briefs no later than 21 days after receipt of the transcript, unless extended by the hearing officer for good cause or by mutual agreement of the parties (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code). Post-hearing briefs may not exceed 50 pages in length, unless the hearing officer determines in a written order that the circumstances of a particular matter (e.g., length of the hearing) warrant a limitation shorter or longer than 50 pages. Either or both parties may waive submission of briefs. If written briefs are to be submitted subsequently, the hearing officer shall so note in the record.
- ~~15)14)~~ The record of the proceedingshearing shall not be considered closed until all evidence has been submitted and any briefs, ~~if allowed by the hearing officer,~~ have been timely received by the hearing officer. The hearing officer shall notify the parties, in writing, of the closing date of the recordhearing. ~~A copy of the notice shall be forwarded to the State Board of Education.~~
- d) Evidentiary rules to be followed during the hearing shall be as follows:
- 1) The parties may offer anysueh evidence as they desire, and each party shall produce anysueh additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute. ~~The hearing officer may limit the number of witnesses on behalf of either party to no more than ten. (Sections 24-12 and 34-85 of the School Code)~~
 - 2) The hearing officer shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary.

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- 3) Objections to evidentiary offers may be made and shall be noted in the record. The hearing officer shall have the power to make rulings, including the power to exclude evidence. "Offers of Proof" shall be permitted.
- 4) Any witness designated as hostile by the hearing officer may be examined as if under cross-examination.
- 5) If the hearing officer grants a party's request to submit a document after the evidentiary portion of the hearing is closed, the party shall file that document with the hearing officer, ~~with copies to the State Board of Education and the other party,~~ within the time designated by the hearing officer.

- e) ~~When the hearing officer determines that neither party has further proof to offer or witnesses to be heard, he or she shall declare the hearing concluded and a minute thereof shall be so noted in the record. If written briefs are to be submitted subsequently, the hearing officer shall so note.~~

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

Section 51.70 The Decision: School Districts Not Organized under Article 34 of the School Code

When a hearing is held under Section 24-12(d) of the School Code, ~~the hearing officer must, within 30 days after the hearing is concluded or the record is closed, whichever is later, render a final decision as to whether the tenured teacher shall be dismissed pursuant to Article 24A of the School Code (unless the school district pursues the dismissal under Subpart C of this Part) or findings of fact and recommendation as to whether the teacher must be dismissed for conduct (Sections 24-12(d)(7) of the School Code). The hearing officer shall provide a copy of the decision or findings of fact and recommendation issued pursuant to this Section to the State Board of Education by certified mail addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601, the decision must be rendered within 30 days after the conclusion of the hearing or closure of the record, whichever occurs later. When a hearing is held under Section 34-85 of the School Code, the hearing officer's findings of fact and recommendation must be rendered within 45 days after the conclusion of the hearing. For purposes of the remainder of this Section, "decision" means either a decision under Section 24-12 of the School Code or the findings of fact and recommendation under Section 34-85 of the School Code.~~

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- a) ~~Dismissal Due to Performance Pursuant to Article 24A of the School Code~~
~~The hearing officer shall make a decision in writing as to whether or not the teacher shall be dismissed. The hearing officer's decision shall include findings of fact.~~
- 1) In a dismissal hearing regarding performance pursuant to Article 24A of the School Code, the hearing officer shall render a decision in writing as to whether the tenured teacher shall be dismissed. The hearing officer shall consider and give weight to all of the teacher's evaluations, subject to their introduction at the hearing, that are relevant to the issues in the hearing (Section 24-12(d)(6) of the School Code).
 - 2) A copy of the hearing officer's decision shall be given by certified mail to both the tenured teacher and the Board or their legal representatives of record.
 - 3) The decision of the hearing officer is final unless reviewed under the Administrative Review Law [735 ILCS 5/Art. III], as provided in Section 24-16 of the School Code [105 ILCS 5/24-16].
 - A) In the case of an administrative review, the Board shall prepare and file the record of proceedings and the parties shall share the cost equally of preparing and filing the record (see Section 24-12(d)(9) of the School Code).
 - B) The record of the proceedings shall contain each of the items listed in this subsection (a)(2)(B).
 - i) All pleadings and exhibits (including all notices and responses), motions and rulings.
 - ii) All evidence received.
 - iii) A statement of matters officially noticed.
 - iv) Any offers of proof, objections, and rulings on the proof and objections.
 - v) Any proposed findings and exceptions.

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- vi) A transcript of the hearing.
- vii) The decision of the hearing officer.
- viii) Any other material required under Section 10-35 of the Illinois Administrative Procedure Act [5 ILCS 100/10-35].

b) Dismissal Due to Conduct Pursuant to Section 24-12(d) of the School Code

In a dismissal hearing regarding conduct pursuant to Section 24-12(d) of the School Code, the hearing officer shall issue *findings of fact and recommendation as to whether the conduct occurred, the conduct was remediable, and the proposed dismissal should be sustained* (Section 24-12(d)(8) of the School Code).

- 1) A copy of the hearing officer's findings of fact and recommendation shall be given by certified mail to both the tenured teacher and the Board, or their legal representatives of record.
- 2) The Board, within 45 days after receipt of the hearing officer's findings of fact and recommendation rendered pursuant to Section 24-12(d) of the School Code, shall issue a written order as to whether the teacher must be retained or dismissed for cause. (Section 24-12(d)(18) of the School Code) A copy of the Board's written order shall be given by certified mail to the tenured teacher and his or her legal representatives of record and to the State Board at the address set forth in this Section.
 - A) The order shall incorporate the findings of fact, except that the school board may modify or supplement the findings of fact if, in its opinion, the findings of fact are against the manifest weight of the evidence. (Section 24-12(d)(8) of the School Code)
 - B) If the school board dismisses the teacher notwithstanding the hearing officer's findings of fact and recommendation, the school board shall make a conclusion in its written order, giving its reasons therefor, and such conclusion and reasons must be included in its written order. (Section 24-12(d)(8) of the School Code)

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- 3) The decision of the Board is final unless reviewed under the Administrative Review Law, as provided in Section 24-16 of the School Code [105 ILCS 5/24-16].
- A) In the case of an administrative review, the Board shall prepare and file the record of proceedings and the parties shall share the cost equally of preparing and filing the record (see Section 24-12(d)(10) of the School Code).
- B) The record of the proceedings shall contain each of the items listed in this subsection (b)(3)(B).
- i) All pleadings and exhibits (including all notices and responses), motions and rulings.
- ii) All evidence received.
- iii) A statement of matters officially noticed.
- iv) Any offers of proof, objections, and rulings on the proof and objections.
- v) Any proposed findings and exceptions.
- vi) A transcript of the hearing.
- vii) The findings of fact and recommendation of the hearing officer.
- viii) The decision of the Board.
- ix) Any other material required under Section 10-35 of the Illinois Administrative Procedure Act.
- c)b) Pursuant to Section 24-12(d)(7) of the School Code, if ~~H~~the hearing officer fails, without good cause specifically provided in writing to the parties and the State Board, to render a decision issued pursuant to subsection (a) of this Section or findings of fact and recommendation issued pursuant to subsection (b) of this Section within 30 days after the later of the close of the hearing or the record, the parties may mutually agree to select a hearing officer pursuant to the alternative

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selection procedures provided under Section 24-12(d)(4) of the School Code to rehear the charges or review the record and render a decision.

- 1) The hearing officer who failed to timely render a decision or findings of fact and recommendation shall have the required timeframe, his or her name ~~shall be~~ struck from the master list of hearing officers maintained by the State Board of Education for a period of not more than 24~~at least six~~ months.
 - 2) The parties and the State Board may take other actions as they deem appropriate regarding reducing fees paid to the hearing officer.
 - 3) If any hearing officer again fails to provide in a timely manner a decision or findings of fact and recommendation, the State Board shall remove him or her permanently from the master list and prohibit any party from selecting this hearing officer through the alternative selection process in Section 24-12(d)(4) of the School Code.
- e) ~~A copy of the hearing officer's decision shall be given to the State Board of Education to be forwarded by certified mail to both the teacher and the Board, or their legal representatives of record. If Section 34-85 of the School Code applies, the decision of the Board shall also be given to the State Board of Education to be forwarded by certified mail to the teacher.~~
- d) ~~The decision of the hearing officer, if rendered pursuant to Section 24-12 of the School Code, is final unless reviewed under the Administrative Review Law [735 ILCS 5/Art. III], as provided in Section 24-16 of the School Code [105 ILCS 5/24-16]. The decision of the hearing officer, if rendered pursuant to Section 34-85 of the School Code, is only a finding of fact and recommendation to the Board. The Board's decision to dismiss a tenured teacher from its employ is final unless reviewed under the Administrative Review Law, as provided in Section 34-85b of the School Code [105 ILCS 5/34-85b].~~
- 1) ~~If neither party appeals, then either party desiring a transcript of the hearing shall pay for the cost thereof.~~
 - 2) ~~The costs of preparing and filing the record of proceedings in the case of a review shall be paid by the Board.~~
 - 3) ~~The record of the hearing shall include:~~

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- ~~A) all pleadings and exhibits,~~
- ~~B) a statement of matters officially noticed,~~
- ~~C) a transcript of the hearing, and~~
- ~~D) the decision of the hearing officer (and the decision of the Board, if Section 34-85 of the School Code applies).~~

~~d)e)~~ Pursuant to ~~Section~~Sections 24-12(d)(7) ~~and 34-85~~ of the School Code, *the Board shall not lose jurisdiction to discharge a teacher if the hearing officer fails to render a decision within the applicable time specified in this Section.*

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

Section 51.75 The Decision: School Districts Organized under Article 34 of the School Code

When a hearing is held under Section 34-85 of the School Code regarding performance or conduct pursuant to Article 24A of the School Code, the hearing officer shall, within 30 calendar days after the conclusion of the hearing, report to the general superintendent findings of fact and a recommendation as to whether the teacher or principal shall be dismissed (Section 34-85(a)(6) of the School Code). The hearing officer shall provide a copy of the findings of fact and recommendation issued pursuant to this Section to the State Board of Education by certified mail addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.

- a) In a dismissal hearing regarding performance pursuant to Article 24A of the School Code, the hearing officer shall consider and give weight to all of the teacher's evaluations, subject to their introduction at the hearing, that are relevant to the issues in the hearing. (Section 34-85(a)(5) of the School Code)
- b) The hearing officer shall report to the general superintendent findings of fact and a recommendation as to whether the teacher or principal shall be dismissed and shall give a copy of the report to both the teacher or principal and the general superintendent (Section 34-85(a)(6) of the School Code). A copy of the hearing officer's findings of fact and recommendation shall be given by certified mail to the tenured teacher or his or her legal representatives of record.

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- c) If the hearing officer is appointed from the master list developed by the State Board and he or she fails, without good cause, to render findings of fact and recommendation within the required timeframe, then his or her name shall be struck from the master list of hearing officers for a period of at least 24 months. Other action may be taken as provided in Section 51.70(c) of this Part.
- d) The decision of the hearing officer regarding dismissal due to either performance or conduct rendered pursuant to Section 34-85 of the School Code is only findings of fact and recommendation to the Board.
- 1) The Board shall make a decision as to whether the tenured teacher shall be dismissed within 45 days after receiving the hearing officer's report of findings and recommendation.
 - 2) A copy of the Board's decision shall be given by certified mail to the tenured teacher and his or her legal representatives of record, and to the State Board at the address set forth in this Section.
 - 3) The Board's decision to dismiss a tenured teacher from its employ is final unless reviewed under the Administrative Review Law, as provided in Section 34-85b of the School Code [105 ILCS 5/34-85b], with the review required to be initiated in the Illinois Appellate Court for the First District (see Section 35-85(a)(8) of the School Code).
 - A) In the case of an administrative review, the Board shall prepare and file the record of proceedings and the parties shall share the costs of preparing and filing the record equally.
 - B) The record of the hearing shall contain each of the items enumerated in Section 51.70(a)(2)(B) of this Part.
 - 4) Pursuant to Section 34-85(a)(7) of the School Code, the failure of the Board to strictly adhere to the timeline set forth in subsection (d)(1) of this Section does not deprive it of authority to dismiss the tenured teacher.

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

Section 51.80 Waiver, Interpretation and Application of this Part (Repealed)

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- a) ~~Any party who proceeds with the hearing after knowledge that any provision of this Part prior to hearing has not been complied with and who fails to state his or her objection thereto in writing either to the State Board of Education or to the hearing officer shall be deemed to have waived his or her right to object.~~
- b) ~~The hearing officer shall interpret and apply the provisions of this Part insofar as they relate to his or her powers and duties and shall follow any court interpretation of this Part.~~
- c) ~~A violation of the professional standards identified in Section 51.40(g) of this Part shall be grounds for removal of the hearing officer from the master list maintained by the State Board of Education.~~
- d) ~~All other rules shall be interpreted and applied by the State Board of Education~~

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

SUBPART C: OPTIONAL ALTERNATIVE EVALUATIVE DISMISSAL
UNDER SECTION 24-16.5 OF THE SCHOOL CODE

Section 51.200 Purpose and Applicability of this Subpart C

- a) This Subpart C sets forth the requirements for a school district, including a school district organized under Article 34 of the School Code, to implement an optional alternative evaluative dismissal process authorized under Section 24-16.5 of the School Code [105 ILCS 5/24-16.5].
- b) A school board may dismiss a tenured teacher using an optional alternative evaluative process if each of the conditions set forth in this subsection (b) are met. (See Section 24-16.5(b) of the School Code.)
 - 1) The tenured teacher is being dismissed due to his or her failure to complete a remediation plan, developed pursuant to Section 24A-5 of the School Code [105 ILCS 5/24A-5], with a rating of "proficient" or better.
 - 2) The "unsatisfactory" rating that precipitated the remediation plan resulted from a performance evaluation process that:
 - A) addressed teacher practice components and included data and indicators of student growth; and

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- B) was conducted on or after the date on which the school district was required to implement a performance evaluation plan incorporating data and indicators of student growth or an earlier date, as authorized under Section 24A-2.5 of the School Code [105 ILCS 5/24A-2.5].
- 3) The school district has complied with the requirements of Section 24-16.5(c) of the School Code and this Subpart C regarding the selection and use of a second evaluator during the pre-remediation and remediation processes.
- c) *Nothing in this Subpart C is intended to change the existing practices or precedents under Section 24-12 or 34-85 of the School Code, nor shall this Subpart C be interpreted as implying standards and procedures that should or must be used as part of a remediation that precedes a dismissal sought under Section 24-12 or 34-85 of the School Code (Section 24-16.5(b) of the School Code).*

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

Section 51.210 Establishment of the List of Second Evaluators; Qualifications

- a) Before a school district's first remediation relating to a dismissal under Section 24-16.5 of the School Code and this Part, the school district shall establish a list of at least two evaluators who meet the qualifications set forth in subsection (b) of this Section to serve as second evaluators.
- 1) The school district shall provide written notification to the teacher representatives identified pursuant to subsection (e) of this Section of the names and qualifications of the individuals it has chosen to include as second evaluators.
- 2) The teacher representatives may submit in writing to the school district the names and qualifications of additional individuals to be included on the list of second evaluators, provided that they shall not submit more teacher evaluators for inclusion on the list than the number of evaluators submitted by the school district (Section 24-16.5(c)(1) of the School Code). Each individual whose name is submitted by the teacher representatives to serve as a second evaluator shall meet one of the

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qualifications specified in Section 24-16.5(c) of the School Code; that is, either:

- A) holds certification from the *National Board of Professional Teaching Standards*, with no "unsatisfactory" or "needs improvement" performance evaluation ratings in his or her two most recent performance evaluations; or
- B) has obtained a performance evaluation rating of "excellent" in two of the three most recent performance evaluations, with no "needs improvement" or "unsatisfactory" performance evaluation ratings in his or her last three ratings.
- 3) If the teacher representatives fail to submit in writing any names of additional second evaluators within 21 days after receiving the written notification specified in subsection (a)(1) of this Section, then the school district may proceed with a remediation using a list of second evaluators that includes only those names identified by the school district.
- b) Each second evaluator shall be qualified to serve as an evaluator under Section 24A-3 of the School Code [105 ILCS 5/24A-3].
- c) The list of second evaluators may be revised either by the school district or teacher representatives at any time, with the party initiating the revision providing at least three days notice to the other party of its intent to revise the list. The process to revise the list shall be made in accordance with this Section and Section 24-16.5(c)(2) of the School Code.
- d) Establishment of the Process for Selecting a Second Evaluator

 - 1) Before a school district's first remediation relating to a dismissal under Section 24-16.5 of the School Code and this Subpart, the school district also shall, in good faith cooperation with its teacher representatives, develop a process to be used to select a second evaluator from the list established pursuant to subsection (a) (see Section 24-16.5(c)(2) of the School Code).
 - 2) The process may be amended at any time in good faith cooperation with the teacher representatives.

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- 3) If the teacher representatives are given an opportunity to cooperate with the school district with respect to the establishment or amendment of the process and elect not to do so, then the school district may, at its discretion, establish or amend the process for selection.
- 4) Before the hearing officer and as part of any judicial review of a dismissal under Section 24-16.5 of the School Code, a tenured teacher may not challenge a remediation or dismissal on the grounds that the process used by the school district to select a second evaluator was not established in good faith cooperation with its teacher representatives.
- e) For the purposes of this Section, "teacher representatives" shall mean:
 - 1) the exclusive collective bargaining agent, or its designees, if the teachers are represented by a collective bargaining unit; or
 - 2) a group of teachers, whose number shall not exceed the number of school district representatives participating in the selection process, who have been chosen by their peers to serve in this capacity.

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

Section 51.220 Selection of Second Evaluators

- a) When a school district determines that it will use the optional alternative evaluative dismissal process for a particular tenured teacher, it shall choose a second evaluator using the process outlined in Section 51.210(d) of this Part from the list established pursuant to Section 51.210(a) of this Part, provided that:
 - 1) the evaluator selected shall not be the same individual who made the determination to assign the affected tenured teacher a performance evaluation rating of "unsatisfactory" (see Section 24-16.5(c)(3) of the School Code); and
 - 2) if the evaluator selected is an administrator, then the evaluator does not directly report to the individual who assigned the "unsatisfactory" rating to the affected tenured teacher (see Section 24-16.5(c)(3) of the School Code).

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- b) The school district's authority to select a second evaluator from the list of second evaluators must not be delegated or limited through any agreement with the teacher representatives (Section 24-16.5(c)(3) of the School Code).
- c) Nothing in this Subpart C shall prohibit a school district and its teacher representatives from agreeing to use an individual as a second evaluator who is a member of the exclusive bargaining unit, provided that the individual otherwise qualifies under [this](#) Section and Section 24A-3 of the School Code.

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

Section 51.230 Use of a Second Evaluator in Specific Remediations

In accordance with the requirements of Section 24-16.5(c)(4) of the School Code, the second evaluator chosen to participate in an optional alternative evaluative dismissal process of a particular tenured teacher shall conduct an evaluation of that tenured teacher's performance by one of the methods specified in this Section.

- a) The second evaluator may conduct a mid-point and final evaluation of the tenured teacher subject to dismissal during the period of the tenured teacher's remediation and award a performance evaluation rating of "excellent", "proficient", "needs improvement" or "unsatisfactory".
- 1) The mid-point evaluation shall assess the tenured teacher's performance during the time period since the completion of the evaluation that resulted in the "unsatisfactory" rating, and the final evaluation shall assess the tenured teacher's performance during the time period since the completion of the mid-point evaluation. (See Section 24A-5(k) of the School Code.)
- 2) The final evaluation shall include an overall evaluation of the tenured teacher's performance during the remediation period.
- b) The second evaluator may conduct an independent assessment of whether the tenured teacher completed the remediation plan with a rating of "proficient" or "excellent". The independent assessment may include, but is not limited to, personal or video-recorded observations of the teacher practice components of the remediation plan developed pursuant to Section 24A-5 of the School Code (Section 24-16.5(c)(4) of the School Code).

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

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Section 51.240 Hearing Procedures

A school district electing to use an optional alternative evaluative dismissal process shall comply with the procedures and requirements for a tenured teacher's request for a hearing, the selection of a hearing officer, pre-hearing and hearing procedures, and post-hearing briefs set forth in this Subpart C, and in either Section 24-12(d) or 34-85(a) of the School Code, as applicable, and Subpart B of this Part. (See Section 24-16.5(a) of the School Code.)

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

Section 51.250 Notice of Dismissal to the Affected Tenured Teacher

- a) A school district that meets the conditions set forth in Section 51.200(b) of this Part that elects to use an optional alternative evaluative dismissal proceeding shall provide a written notice to the affected tenured teacher of this fact within 30 days after completion of the final remediation evaluation. (See Section 24-16.5(d) of the School Code.) The notice shall:
- 1) comply with the notice requirements set forth in Section 51.30(a) of this Part for a school district not organized under Article 34 of the School Code, including the right of the affected tenured teacher to request a hearing before a mutually selected hearing officer or a hearing officer selected by the Board; or
 - 2) comply with the notice requirements set forth in Section 51.30(b) of this Part for a school district organized under Article 34 of the School Code, including the right of the affected tenured teacher to select a mutually selected hearing officer or a hearing officer selected by the general superintendent, should the tenured teacher not participate in the selection process.
- b) The notice shall indicate that the dismissal is sought under the optional alternative evaluative dismissal process authorized under Section 24-16.5 of the School Code and this Subpart C. (See Section 24-16.5(d) of the School Code.)
- c) The notice shall contain a copy of each performance evaluation that is the subject of the optional alternative evaluative dismissal process. (See Section 24-16.5(d) of the School Code.)

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

Section 51.260 Qualifications and Selection of Hearing Officers

- a) School districts not organized under Article 34 of the School Code shall select a hearing officer in accordance with the requirements of Section 51.40(a) of this Part.
- b) School districts organized under Article 34 of the School Code shall select a hearing officer in accordance with the requirements of Section 51.40(b) of this Part.
- c) In addition to the applicable qualifications of Section 51.40 of this Part, each hearing officer shall have successfully completed the prequalification process required under Section 24A-3 of the School Code [105 ILCS 5/24A-3] before conducting a hearing under the optional alternative evaluative dismissal process.
- d) In accordance with Section 24-16.5(d)(1) of the School Code, the State Board may waive the prequalification process requirements in order to provide an adequate pool of hearing officers for consideration.

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

Section 51.270 Scope of the Hearing

- a) In accordance with Section 24-16.5(d)(2)(A) of the School Code, the scope of the hearing held for an optional alternative evaluative dismissal process shall be limited to the school district's demonstration of each of the components listed in this subsection (a).
 - 1) The performance evaluation rating of "unsatisfactory" that preceded remediation applied the teacher practice components and student growth components and determined an overall evaluation rating of "unsatisfactory" in accordance with the standards and requirements of the school district's evaluation plan;
 - 2) The remediation plan for the affected tenured teacher complied with the requirements of Section 24A-5 of the School Code;

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- 3) *The teacher failed to complete the remediation plan with a performance evaluation rating equal to or better than a "proficient" rating, based upon a final remediation evaluation that met the standards and requirements of the school district's evaluation plan, as applicable; and*
 - 4) *If the second evaluator selected pursuant to Section 51.220 of this Part conducts an independent assessment that results in a performance evaluation rating for the affected tenured teacher of "proficient" or "excellent", then the school district must demonstrate that the final remediation evaluation is a more valid assessment of the teacher's performance than the assessment made by the second evaluator. (Section 16.5(d)(2)(A) of the School Code)*
- b) *Limitations of Action by the Tenured Teacher Subject to Dismissal*
A tenured teacher subject to dismissal under an optional alternative evaluative dismissal process shall challenge only the substantive and procedural aspects of the process as set forth in this subsection (b). (See Section 24-16.5(d)(2)(B) of the School Code.)
- 1) *The affected tenured teacher may challenge the performance evaluation rating of "unsatisfactory" that led to the remediation, the remediation plan developed pursuant to Section 24A-5 of the School Code, and the final evaluation conducted at the conclusion of the remediation period.*
 - 2) *To the extent the teacher challenges procedural aspects, including any in applicable collective bargaining agreement provisions, of a relevant performance evaluation rating or the remediation plan, the teacher must demonstrate how an alleged procedural defect materially affected the teacher's ability to demonstrate a level of performance necessary to avoid remediation or dismissal or successfully complete the remediation plan. Without any such material effect, a procedural defect shall not impact the assessment by the hearing officer, Board, or reviewing court of the validity of a performance evaluation or a remediation plan. (Section 24-16.5(d)(2)(B) of the School Code)*
- c) *The hearing officer shall only consider and give weight to performance evaluations relevant to the scope of the hearing as described in this Section (Section 24-16.5(d)(2)(C) of the School Code).*

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- d) In accordance with Section 24-16.5(d)(3) of the School Code, each party shall have two business days, as defined in Section 51.60(c)(11) of this Part, to present evidence and testimony unless:
- 1) a longer period is mutually agreed to by the parties; or
 - 2) the hearing officer deems the extension to be necessary to enable a party to present adequate evidence and testimony.

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

Section 51.280 Findings of Fact and Recommendation of the Hearing Officer

- a) The hearing officer shall issue a report of findings of fact and recommendation to the Board, stating whether the affected tenured teacher shall be retained or dismissed and the reasons for the recommended action (see Section 24-16.5 of the School Code).
- 1) The report of findings of fact and recommendation shall be issued within 30 days after the hearing is concluded or the record of the hearing is closed, whichever is later. The record of the proceedings shall not be considered closed until all evidence has been submitted. The hearing officer shall notify the parties, in writing, of the closing date of the record.
 - 2) The report of findings of fact and recommendation shall not exceed 30 pages.
 - 3) A copy of the hearing officer's findings of fact and recommendation shall be given by certified mail to the tenured teacher and his or her legal representatives of record and to the State Board of Education addressed to the General Counsel, 100 W. Randolph Street, Chicago, Illinois 60601.
- b) The hearing officer shall provide a copy of the report of findings of fact and recommendation to the affected tenured teacher and the superintendent of the school district at the same time as the report is provided to the Board. The hearing officer shall provide a copy of the report to the State Board.
- c) Pursuant to Section 24-16.5(e) of the School Code, if the hearing officer fails, without good cause specifically provided in writing to the parties and the State Board, to render findings of fact and recommendation within 30 days after the

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later of the close of the hearing or the record, the parties may mutually agree to select a hearing officer pursuant to the alternative selection procedures provided under Section 24-12(d)(4) of the School Code to rehear the charges or to review the record and render a recommendation.

- 1) The hearing officer who failed to timely render findings of fact and recommendation shall have his or her name struck from the master list of hearing officers maintained by the State Board for a period of not more than 24 months.
- 2) The parties and the State Board may take other actions as they deem appropriate regarding reducing fees paid to the hearing officer. If any hearing officer again fails to provide in a timely manner a decision or findings of fact and recommendation, the State Board shall remove him or her permanently from the master list and prohibit any party from selecting this hearing officer through the alternative selection process in Section 24-12(d)(4) of the School Code.

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

Section 51.290 Decision of Board

- a) Within 45 days after receiving the hearing officer's findings of fact and recommendation, the Board shall render a written order as to whether the affected tenured teacher be retained or dismissed.
 - 1) A copy of the Board's decision shall be provided to the tenured teacher either by certified mail, return receipt requested, or personal delivery with receipt within five days after the date on which the Board rendered a decision to retain or dismiss the affected tenured teacher. A copy of the Board's decision also shall be given by certified mail to the State Board of Education addressed to the General Counsel, 100 W. Randolph Street, Chicago, Illinois 60601.
 - 2) Only Board members who have successfully completed a training program regarding performance evaluations administered or approved by the State Board shall consider the findings of fact and recommendation and make a determination as to whether the affected tenured teacher should be retained or dismissed. Approval of an entity to offer the training required

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under this subsection (a)(2) shall be as set forth in 23 Ill. Adm. Code 1.210 (Approval of Providers of Training for Board Members).

- 3) If the Board determines that the affected tenured teacher should be dismissed, contrary to the hearing officer's findings of fact and recommendation, then the Board shall provide in its written order its conclusion and the reasons for making that determination.
- 4) The failure of the Board to strictly adhere to the timeline set forth in this subsection (a) does not render it without jurisdiction to dismiss the teacher (Section 24-16.5(f) of the School Code).

b) The decision of the Board is final unless reviewed under the Administrative Review Law, as provided in Section 24-16.5(g) of the School Code.

- 1) The affected tenured teacher shall file the appeal within 35 days from the date that he or she received the Board's decision pursuant to subsection (a)(1) of this Section.
 - A) For a teacher dismissed by a school district having fewer than 500,000 inhabitants, the judicial review must be taken directly to the appellate court of the judicial district in which the school district's Board maintains its primary administrative offices (Section 24-16.5(g)(2) of the School Code).
 - B) For a teacher dismissed by a school district organized under Article 34 of the School Code, the judicial review must be taken directly to the Illinois Appellate Court for the First District (Section 24-16.5(g)(1) of the School Code).
- 2) If the hearing officer recommended dismissal, the decision of the Board may be reversed only if it is found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law (Section 24-16.5(g) of the School Code).
- 3) In the event judicial review is instituted by a teacher, any costs of preparing and filing the record of proceedings must be paid by the teacher (Section 24-16.5(g) of the School Code).

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4) The record of the proceedings shall contain each of the items enumerated in Section 51.70(a)(2)(B) of this Part.

c) Pursuant to Section 24-16.5(f) of the School Code, the Board shall not lose jurisdiction to discharge a teacher if the hearing officer fails to render a decision within the applicable time specified in this Section.

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

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- 1) Heading of the Part: Narrative and Planning Policies
- 2) Code Citation: 77 Ill. Adm. Code 1100
- 3) Section Number: 1100.220 Adopted Action:
Amendment
- 4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]
- 5) Effective Date of Rulemaking: January 31, 2012
- 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 amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposed Amendments Published in Illinois Register: 35 Ill. Reg. 10415; July 8, 2011
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The birth center model category of service is a demonstration program that is authorized by the Alternative Health Care Delivery Act [210 ILCS 3]. A Certificate of Need (CON) permit shall be obtained to establish a birth center model, per the Act.

Definitions pertaining to the birth center model category of service are added to the existing section of definitions in 77 Ill. Adm. Code 1100.

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

Claire Burman
Rules/Legislation Coordinator
122 S. Michigan Avenue, 7th Floor
Chicago, IL 60603

312/814-8814
Claire.Burman@illinois.gov

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

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TITLE 77: PUBLIC HEALTH

CHAPTER II: HEALTH FACILITIES AND SERVICES REVIEW BOARD

SUBCHAPTER a: ILLINOIS HEALTH CARE FACILITIES PLAN

PART 1100

NARRATIVE AND PLANNING POLICIES

SUBPART A: GENERAL NARRATIVE

Section

- 1100.10 Introduction
- 1100.20 Authority
- 1100.30 Purpose
- 1100.40 Health Maintenance Organizations (Repealed)
- 1100.50 Subchapter Organization
- 1100.60 Mandatory Reporting of Data
- 1100.70 Data Appendices
- 1100.75 Annual Bed Report
- 1100.80 Institutional Master Plan Hospitals (Repealed)
- 1100.90 Public Hearings

SUBPART B: DEFINITIONS

Section

- 1100.210 Introduction
- 1100.220 Definitions

SUBPART C: PLANNING POLICIES

Section

- 1100.310 Need Assessment
- 1100.320 Staffing
- 1100.330 Professional Education
- 1100.340 Public Testimony
- 1100.350 Multi-Institutional Systems
- 1100.360 Modern Facilities
- 1100.370 Occupancy/Utilization Standards
- 1100.380 Systems Planning
- 1100.390 Quality

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1100.400	Location
1100.410	Needed Facilities
1100.420	Discontinuation
1100.430	Coordination with Other State Agencies
1100.440	Requirements for Authorized Hospital Beds

SUBPART D: NEED ASSESSMENT

Section	
1100.510	Introduction, Formula Components, Planning Area Development Policies, and Normal Travel Time Determinations
1100.520	Medical-Surgical/Pediatric Categories of Service
1100.530	Obstetric Care Category of Service
1100.540	Intensive Care Category of Service
1100.550	Comprehensive Physical Rehabilitation Category of Service
1100.560	Acute Mental Illness Treatment Category of Service
1100.570	Substance Abuse/Addiction Treatment Category of Service (Repealed)
1100.580	Neonatal Intensive Care Category of Service
1100.590	Burn Treatment Category of Service (Repealed)
1100.600	Therapeutic Radiology Equipment (Repealed)
1100.610	Open Heart Surgery Category of Service
1100.620	Cardiac Catheterization Services
1100.630	In-Center Hemodialysis Category of Service
1100.640	Non-Hospital Based Ambulatory Surgery
1100.650	Computer Systems (Repealed)
1100.660	General Long-Term Nursing Care Category of Service (Repealed)
1100.661	General Long-Term Care-Sheltered Care Category of Service (Repealed)
1100.670	Specialized Long-Term Care Categories of Service (Repealed)
1100.680	Intraoperative Magnetic Resonance Imaging Category of Service (Repealed)
1100.690	High Linear Energy Transfer (L.E.T.) (Repealed)
1100.700	Positron Emission Tomographic Scanning (P.E.T.) (Repealed)
1100.710	Extracorporeal Shock Wave Lithotripsy (Repealed)
1100.720	Selected Organ Transplantation
1100.730	Kidney Transplantation
1100.740	Subacute Care Hospital Model
1100.750	Postsurgical Recovery Care Center Alternative Health Care Model
1100.760	Children's Respite Care Center Alternative Health Care Model
1100.770	Community-Based Residential Rehabilitation Center Alternative Health Care Model

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1100.800 Freestanding Emergency Center Medical Services Category of Service

1100.810 Long-Term Acute Care Hospital Category of Service

1100.APPENDIX A Applicable Codes and Standards Utilized in 77 Ill. Adm. Code: Chapter II, Subchapter a (Repealed)

AUTHORITY: Authorized by Section 12 of and implementing the Illinois Health Facilities Planning Act [20 ILCS 3960/12].

SOURCE: Fourth Edition adopted at 3 Ill. Reg. 30, p. 194, effective July 28, 1979; amended at 4 Ill. Reg. 4, p. 129, effective January 11, 1980; amended at 5 Ill. Reg. 4895, effective April 22, 1981; amended at 5 Ill. Reg. 10297, effective September 30, 1981; amended at 6 Ill. Reg. 3079, effective March 8, 1982; emergency amendments at 6 Ill. Reg. 6895, effective May 20, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11574, effective September 9, 1982; Fifth Edition adopted at 7 Ill. Reg. 5441, effective April 15, 1983; amended at 8 Ill. Reg. 1633, effective January 31, 1984; codified at 8 Ill. Reg. 15476; amended at 9 Ill. Reg. 3344, effective March 6, 1985; amended at 11 Ill. Reg. 7311, effective April 1, 1987; amended at 12 Ill. Reg. 16079, effective September 21, 1988; amended at 13 Ill. Reg. 16055, effective September 29, 1989; amended at 16 Ill. Reg. 16074, effective October 2, 1992; amended at 18 Ill. Reg. 2986, effective February 10, 1994; amended at 18 Ill. Reg. 8448, effective July 1, 1994; emergency amendment at 19 Ill. Reg. 1941, effective January 31, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 2985, effective March 1, 1995; amended at 19 Ill. Reg. 10143, effective June 30, 1995; recodified from the Department of Public Health to the Health Facilities Planning Board at 20 Ill. Reg. 2594; amended at 20 Ill. Reg. 14778, effective November 15, 1996; amended at 21 Ill. Reg. 6220, effective May 30, 1997; expedited correction at 21 Ill. Reg. 17201, effective May 30, 1997; amended at 23 Ill. Reg. 2960, effective March 15, 1999; amended at 24 Ill. Reg. 6070, effective April 7, 2000; amended at 25 Ill. Reg. 10796, effective August 24, 2001; amended at 27 Ill. Reg. 2904, effective February 21, 2003; amended at 31 Ill. Reg. 15255, effective November 1, 2007; amended at 32 Ill. Reg. 4743, effective March 18, 2008; amended at 32 Ill. Reg. 12321, effective July 18, 2008; expedited correction at 33 Ill. Reg. 4040, effective July 18, 2008; amended at 34 Ill. Reg. 6067, effective April 13, 2010; amended at 35 Ill. Reg. 16978, effective October 7, 2011; amended at 36 Ill. Reg. 2542, effective January 31, 2012.

SUBPART B: DEFINITIONS

Section 1100.220 Definitions

"Act" means the Illinois Health Facilities Planning Act [20 ILCS 3960].

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"Acute Dialysis" means dialysis given on an intensive care, inpatient basis to patients suffering from (presumably reversible) acute renal failure, or to patients with chronic renal failure with serious complications.

"Acute Mental Illness" means a crisis state or an acute phase of one or more specific psychiatric disorders in which a person displays one or more specific psychiatric symptoms of such severity as to prohibit effective functioning in any community setting. Persons who are acutely mentally ill may be admitted to an acute mental illness facility or unit under the provisions of the Mental Health and Developmental Disabilities Code [405 ILCS 5], which determines the specific requirements for admission by age and type of admission.

"Acute Mental Illness Facility" or "Acute Mental Illness Unit" means a facility or a distinct unit in a facility that provides a program of acute mental illness treatment service (as defined in this Section); that is designed, equipped, organized and operated to deliver inpatient and supportive acute mental illness treatment services; and that is licensed by the Department of Public Health under the Hospital Licensing Act [210 ILCS 85] or is a facility operated or maintained by the State or a State agency.

"Acute Mental Illness Treatment Service" means a category of service that provides a program of care for those persons suffering from acute mental illness. These services are provided in a highly structured setting in a distinct psychiatric unit of a general hospital, in a private psychiatric hospital, or in a State-operated facility to individuals who are severely mentally ill and in a state of acute crisis, in an effort to stabilize the individual and either effect his or her quick placement in a less restrictive setting or reach a determination that extended treatment is needed. Acute mental illness is typified by an average length of stay of 45 days or less for adults and 60 days or less for children and adolescents.

"Admissions" means the number of patients accepted for inpatient service during a 12-month period; the newborn are not included.

"Adult Catheterization" means the cardiac catheterization of patients 15 years of age and older.

"Adverse Action" means a disciplinary action taken by Illinois Department of Public Health, Centers for Medicare and Medicaid Services, or any other State or federal agency against a person or entity that owns and/or operates a licensed or

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Medicare or Medicaid certified healthcare facility in the State of Illinois. These actions include, but are not limited to, all Type A violations. A *"Type A" violation means a violation of the Nursing Home Care Act or 77 Ill. Adm. Code 300, 330, 340, 350 or 390 that creates a condition or occurrence relating to the operation and maintenance of a facility presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom.* [210 ILCS 45/1-129]

"Ambulatory Care" means all types of health care services that are provided on an outpatient basis, in contrast to services provided in the home or to persons who are inpatients. While many inpatients may be ambulatory, the term ambulatory care usually implies that the patient must travel to a location to receive services that do not require an overnight stay. (Source: Glossary of Terms Commonly Used in Health Care (Illinois Hospital Association, 1151 East Warrenville Road, PO Box 3015, Naperville IL 60566, 630/276-5400; 2004, no later amendments or editions included)).

"Ambulatory Surgical Treatment Center" means any institution, place or building required to be licensed pursuant to the Ambulatory Surgical Treatment Center Act [210 ILCS 5].

"Authorized Hospital Bed Capacity" means the number of beds recognized for planning purposes at a hospital facility, as determined by HFSRB. The operational status of authorized hospital beds is identified as physically available, reserve, or transitional, as follows:

"Physically Available Beds" means beds that are physically set up, meet hospital licensure requirements, and are available for use. These are beds maintained in the hospital for the use of inpatients and that furnish accommodations with supporting services (such as food, laundry, and housekeeping). These beds may or may not be staffed, but are physically available.

"Reserve Beds" means beds that are not set up for inpatients, but could be made physically available for inpatient use within 72 hours.

"Transitional Beds" means beds for which a Certificate of Need (CON) has been issued, but that are not yet physically available, and beds that are

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temporarily unavailable due to modernization projects that do not require a CON.

"Authorized Long-Term Care Bed Capacity" means the number of beds by category of service, recognized and licensed by IDPH for long-term care.

"Average Daily Census" or "ADC" means over a 12-month period the average number of inpatients receiving service on any given day.

"Average Length of Stay" or "ALOS" means over a 12-month period the average duration of inpatient stay expressed in days as determined by dividing total inpatient days by total admissions.

"Base Year" means the calendar year, as determined by IDPH, that serves as the starting point or benchmark for the historical utilization and population projections.

"Birth Center" or "Center" means an alternative health care delivery model that is exclusively dedicated to serving the childbirth-related needs of women and their newborns and has no more than 10 beds. A birth center is a designated site that is away from the mother's usual place of residence and in which births are planned to occur following a normal, uncomplicated, and low-risk pregnancy. [210 ILCS 3/35]

"Board Certified or Board Eligible Physician" means a physician who has satisfactorily completed an examination (or is "eligible" to take such examination) in a medical specialty and has taken all of the specific training requirements for certification by a specialty board. For purposes of this definition, "medical specialty" shall mean a specific area of medical practice by health care professionals.

"Cardiac Catheterization Category of Service" means, for the purposes of this Part, the performance of catheterization procedures that, due to safety and quality considerations, are preferably performed within a cardiac catheterization laboratory or special procedure room. Procedures that do not require the use of such specialized settings, such as pericardiocentesis, myocardial biopsy, cardiac pacemaker insertion or replacement, right heart catheterization with a flow-directed catheter (e.g., Swan-Ganz catheter), intra-aortic balloon pump assistance with intra-aortic balloon catheter placement, certain types of electrophysiology,

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arterial pressure or blood gas monitoring, fluoroscopy, and cardiac ultrasound, are not recognized as procedures that, under this Subchapter, would in and of themselves qualify a facility as having a cardiac catheterization category of service.

"Cardiac Surgeon" means a physician board eligible or board certified by the American Board of Thoracic Surgery.

"Cardiac Surgery Room" means a physically identifiable room adequately staffed and equipped for the performance of open and closed heart surgery and extracorporeal bypass.

"Cardiological Team" means the designated specialists and support personnel who consistently work together in the performance of open heart surgery.

"Cardiovascular Surgical Procedures" means any surgical procedure dealing with the heart, coronary arteries and surgery of the great vessels.

"Cardiovascular Surgical Services" means the programs, equipment and staff dealing with the surgery of the heart, coronary arteries and great vessels.

"Category of Service" means a grouping by generic class of various types or levels of support functions, equipment, care or treatment provided to patient/residents. Examples include but are not limited to medical-surgical, pediatrics, cardiac catheterization, etc. A category of service may include subcategories or levels of care that identify a particular degree or type of care within the category of service.

"Chronic Renal Dialysis" means a category of service in which dialysis is performed on a regular long-term basis in patients with chronic irreversible renal failure. The maintenance and preparation of patients for kidney transplantation (including the immediate post-operative period and in case of organ rejection) or other acute conditions within a hospital does not constitute a chronic renal dialysis category of service.

"Clinical Encounter Time" means an instance of direct provider/practitioner to patient interaction, between a patient and a practitioner vested with primary responsibility for diagnosing, evaluating or treating the patient's condition, or both. The clinical encounter definition excludes practitioner actions in the absence

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of a patient, such as practitioner to practitioner interaction and practitioner to records interaction.

"Closed Heart Surgery" means any cardiovascular surgical procedures that do not include the use of a heart/lung pump.

"Combined Maternity and Gynecological Unit" means an entire facility or a distinct part of a facility that provides both a program of maternity care (as defined in this Section) and a program of obstetric gynecological care (as defined in this Section), and that is designed, equipped, organized and operated in accordance with the requirements of the Hospital Licensing Act [210 ILCS 85].

"Community-Based Residential Rehabilitation" means *services that include, but are not limited to, case management, training and assistance with activities of daily living, nursing consultation, traditional therapies (physical, occupational, speech), functional interventions in the residence and community (job placement, shopping, banking, recreation), counseling, self-management strategies, productive activities, and multiple opportunities for skill acquisition and practice throughout the day.* [210 ILCS 3/35]

"Community-Based Residential Rehabilitation Center" means *a designated site that provides rehabilitation or support, or both, for persons who have experienced severe brain injury, who are medically stable, and who no longer require acute rehabilitative care or intense medical or nursing services. The average length of stay in a community-based residential rehabilitation center shall not exceed 4 months.* [210 ILCS 3/35]

"Comprehensive Physical Rehabilitation" means a category of service provided in a comprehensive physical rehabilitation facility providing the coordinated interdisciplinary team approach to physical disability under a physician licensed to practice medicine in all its branches who directs a plan of management of one or more of the classes of chronic or acute disabling disease or injury. Comprehensive physical rehabilitation services can be provided only by a comprehensive physical rehabilitation facility.

"Comprehensive Physical Rehabilitation Facility" means a distinct bed unit of a hospital or a special referral hospital that provides a program of comprehensive physical rehabilitation; that is designed, equipped, organized and operated to deliver inpatient rehabilitation services; and that is licensed by the Department of

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Public Health under the Hospital Licensing Act or is a facility operated or maintained by the State or a State agency. Types of comprehensive physical rehabilitation facilities include:

Freestanding comprehensive physical rehabilitation facility means a specialty hospital dedicated to the provision of comprehensive rehabilitation; and

Hospital-based comprehensive physical rehabilitation facility means a distinct unit, located in a hospital, dedicated to the provision of comprehensive physical rehabilitation.

"Dedicated Cardiac Catheterization Laboratory" means a distinct laboratory that is staffed, equipped and operated solely for the provision of cardiac catheterization.

"Designated Pediatric Beds" means beds within the facility that are primarily used for pediatric patients and are not a component part of a distinct pediatric unit as defined in this Section.

"Dialysis" *means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semi-permeable membrane.* [210 ILCS 62/5] The two types of dialysis that are recognized in classical practice are hemodialysis and peritoneal dialysis.

"Dialysis Technician" *means an individual who is not a registered nurse or physician and who provides dialysis care under the supervision of a registered nurse or physician.* [210 ILCS 62/5]

"Discontinuation" means to cease operation of an entire health care facility or to cease operation of a category of service and is further defined in 77 Ill. Adm. Code 1130.

"Distinct Unit" means a physically distinct area comprising all beds served by a nursing station in which a particular category of service is provided and utilizing a nursing staff assigned exclusively to the distinct area.

"DRG" means diagnostic related groups utilized in the Medicare and Medicaid programs for health care reimbursement.

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"Emergency Medical Services System" or "EMS System" means *an organization of hospitals, vehicle service providers and personnel approved by IDPH in a specific geographic area, which coordinates and provides pre-hospital and inter-hospital emergency care and non-emergency medical transports at a BLS, ILS, and/or ALS level pursuant to a System program plan submitted to and approved by IDPH, and pursuant to the EMS Region Plan adopted for the EMS Region in which the System is located.* [210 ILCS 50/3.20]

"Emergent Care" means medical or surgical procedures and care provided to those patients treated in an emergency department (ED) of a hospital or freestanding emergency center who have traumatic conditions or illnesses with an acuity level that is classified as level one or level two based upon the Emergency Severity Index (ESI) as defined in the "Emergency Severity Index Version 4: Implementation Handbook" published by the Agency for Healthcare Research and Quality, Rockville MD (Gilboy N, Tanabe P, Travers DA, Rosenau AM, Eitel DR; AHRQ Publication No. 05-0046-2; May 2005, no later amendments or editions included).

"End Stage Renal Disease" or "ESRD" means *that stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.* [210 ILCS 62/5]

"End Stage Renal Disease Facility" means a freestanding facility or a unit within an existing health care facility that furnishes in-center hemodialysis treatment and other routine dialysis services to end stage renal disease patients. These types of services may include self-dialysis, training in self-dialysis, dialysis performed by trained professional staff, and chronic maintenance dialysis, including peritoneal dialysis.

"Extracorporeal Circulation" or ~~"(Bypass)"~~ means, for the purpose of open heart surgery category of service, the circulation of blood outside the body, as through a heart/lung apparatus for carbon dioxide-oxygen exchange.

"Federally Qualified Health Center" means a health center funded under section 330 of the Public Health Service Act (42 USC 254b).

"Fertility Rate" means determinations by IDPH of population fertility that is based upon resident birth data for an area. The fertility rate data sources include:

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- birth data from the Division of Vital Records by age of mother and by county; and
- population figures from IDPH estimates for females age 15-44 by county.

"Freestanding Emergency Center" or "FEC" means a facility subject to licensure under Section 32.5 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/32.5] that provides emergency medical and related services.

"Freestanding Emergency Center Medical Services" or "FECMS" means a category of service pertaining to the provision of emergency medical and related services provided in a freestanding emergency center.

"General Long-Term Care" means a classification of categories of service that provide inpatient levels of care primarily for convalescent or chronic disease adult patients/residents who do not require specialized long-term care services. The General Long-Term Care Classification includes the nursing category of service, which provides inpatient treatment for convalescent or chronic disease patients/residents and includes the skilled nursing level of care and/or the intermediate nursing level of care (both as defined in IDPH's Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300)).

"HFSRB" or "State Board" means the Health Facilities and Service Review Board established by the Act.

"Health Professional Shortage Areas" means urban or rural areas, population groups, or medical or other public facilities that may have shortages of primary medical care, dental or mental health providers, as determined by HHS' Shortage Designation Branch in the Health Resources and Services Administration (HRSA) Bureau of Health Professions National Center for Health Workforce; and as determined by the Illinois Designation of Shortage Areas (77 Ill. Adm. Code 590.410).

"Health Service Area" or "HSA" means the following geographic areas:

HSA I – Illinois Counties of Boone, Carroll, DeKalb, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago

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HSA II – Illinois Counties of Bureau, Fulton, Henderson, Knox, LaSalle, Marshall, McDonough, Peoria, Putnam, Stark, Tazewell, Warren, and Woodford

HSA III – Illinois Counties of Adams, Brown, Calhoun, Cass, Christian, Greene, Hancock, Jersey, Logan, Macoupin, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott

HSA IV – Illinois Counties of Champaign, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Ford, Iroquois, Livingston, Macon, McLean, Moultrie, Piatt, Shelby, and Vermilion

HSA V – Illinois Counties of Alexander, Bond, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Washington, Wayne, White, and Williamson

HSA VI – City of Chicago

HSA VII – DuPage County and Suburban Cook County

HSA VIII – Illinois Counties of Kane, Lake, and McHenry

HSA IX – Illinois Counties of Grundy, Kankakee, Kendall, and Will

HSA X – Illinois Counties of Henry, Mercer, and Rock Island

HSA XI – Illinois Counties of Clinton, Madison, Monroe, and St. Clair

"Hematocrit" means a measure of the packed cell volume of red blood cells expressed as a percentage of total blood volume.

"Hemodialysis" means a type of dialysis that involves the use of artificial kidney through which blood is circulated on one side of a semi-permeable membrane while the other side is bathed by a salt dialysis solution. The accumulated toxic products diffuse out of the blood into the dialysate bath solution. The concentration and total amount of water and salt in the body fluid are adjusted by appropriate alterations in composition of the dialysate fluid.

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"Home Hemodialysis" means a type of dialysis that is done at home by the patient and a partner. Both are trained in the dialysis facility until the patient and partner become proficient to dialyze at home. The dialysis is usually three times per week.

"Home-Assisted Hemodialysis" means hemodialysis done in a home and/or long term care setting through a staff-assisted program. The patient is not trained to do dialysis himself/herself.

"Hospital" means a facility, institution, place or building licensed pursuant to or operated in accordance with the Hospital Licensing Act [210 ILCS 45] or a State-operated facility that is utilized for the prevention, diagnosis and treatment of physical and mental illness. For purposes of this Subchapter, two basic types of hospitals are recognized:

General Hospital – a facility that offers an integrated variety of categories of service and that offers and performs scheduled surgical procedures on an inpatient basis.

Special or Specialized Hospital – a facility that offers, primarily, a special or particular category of service.

"Illinois Department of Public Health" or "Agency" or "IDPH" means the Department of Public Health of the State of Illinois. [20 ILCS 3960/3]

"In-Center Hemodialysis" means a category of service that is provided in an end stage renal disease facility licensed by the State of Illinois and/or certified by the Centers for Medicare and Medicaid Services.

"In-Center Hemodialysis Treatment" means a regimen of hemodialysis received by a patient usually three times a week, averaging four hours.

"Independent Travel Time Studies" means studies developed and submitted to refine or supplement the determination of Normal Travel Time. Independent Travel Time studies will be considered by HFSRB only if conducted utilizing the criteria specified in this Part.

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"Index of Medically Underserved" or "IMU" means shortage designation criteria applied to determine Medically Underserved Area or Medically Underserved Population designation. The four variables of the IMU are ratio of primary medical care physicians per 1,000 population, infant mortality rate, percentage of the population with incomes below the poverty level, and percentage of the population age 65 or over (Source: Health Resources and Services Administration Bureau of Health Professions website (<http://bhpr.hrsa.gov>)).

"Intensive Care Service" means a category of service providing the coordinated delivery of treatment to the critically ill patient or to patients requiring continuous care due to special diagnostic considerations requiring extensive monitoring of vital signs through mechanical means and through direct nursing supervision. This service is given at the direction of a physician on behalf of patients by physicians, dentists, nurses, and other professional and technical personnel. The intensive care category of service includes the following subcategories: medical ICU, surgical ICU, coronary care, pediatric ICU, and combinations of such ICUs. This category of service does not include intermediate intensive or coronary care and special care units that are included in the medical-surgical category of service.

"Intensive Care Unit" or "ICU" means a distinct part of a facility that provides a program of intensive care service; that is designed, equipped, organized and operated to deliver optimal medical care for the critically ill or for patients with special diagnostic conditions requiring specialized equipment, procedures and staff; and that is under the direct visual supervision of a nursing staff. Prior to February 15, 2003, the repeal of 77 Ill. Adm. Code 1110.1010, 1110.1020 and 1110.1030, the beds and corresponding utilization for the burn treatment category of service were included in the intensive care category of service.

"Inventory of Health Care Facilities and Services and Need Determinations" means a statewide inventory of beds and other services, and need determinations that HFSRB shall maintain and update on the Board's website, as mandated in the Health Facilities Planning Act. (See Section 12(4) of the Act.)

"Key Room" means a term used in space planning to designate the primary functional component of a department used to develop a space program or estimate of square feet for that department. Examples of key rooms include, but are not limited to, examination rooms for ambulatory care, operating rooms for surgical suites, treatment stations for dialysis, imaging rooms for radiology.

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"Kidney Transplantation Center" means a hospital that directly furnishes transplantation and other medical and surgical specialty services required for the care of the kidney transplant patient, including inpatient dialysis furnished directly or under arrangement.

"Kidney Transplantation Service" means a category of service that involves the surgical replacement of a nonfunctioning human kidney with a donor kidney in order to restore renal function to the patient.

"Maternity Care" means a subcategory of obstetric service related to the medical care of the patient prior to and during the act of giving birth either to a living child or to a dead fetus and to the continuing medical care of both patient and newborn infant under the direction of a physician, by physicians, nurses, and other professional and technical personnel.

"Maternity Facility" or "Maternity Unit" means an entire facility or a distinct part of a facility that provides a program of maternity and newborn care and that is designed, equipped, organized, and operated in accordance with the requirements of the Hospital Licensing Act.

"Medically Underserved Areas" means a whole county or a group of contiguous counties, or a group of county or civil divisions, or a group of urban census tracts in which residents have a shortage of personal health services, as determined by HHS' Shortage Designation Branch in the Health Resources and Services Administration (HRSA) Bureau of Health Professions National Center for Health Workforce.

"Medically Underserved Populations" means groups of persons who face economic, cultural or linguistic barriers to health care, as determined by HHS' Shortage Designation Branch in the Health Resources and Services Administration (HRSA) Bureau of Health Professions National Center for Health Workforce.

"Medical-Surgical Service" means a category of service pertaining to the medical-surgical inpatient care performed at the direction of a physician, by physicians, dentists, nurses and other professional and technical personnel. For purposes of 77 Ill. Adm. Code Subchapter a (Illinois Health Care Facilities Plan), this category of service may include medical-surgical and their respective sub-

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specialties of service. The medical-surgical category of service specifically does not include the following other separate categories of service and their subcategories:

Obstetric Service;

Pediatric Service;

Intensive Care Service;

Comprehensive Physical Rehabilitation Service;

Acute and Chronic Mental Illness Treatment Service;

Neonatal Intensive Care Service;

General Long-Term Care Service;

Specialized Long-Term Care Service;

Long-Term Acute Care Service.

"Medical-Surgical Unit" means an assemblage of inpatient beds and related facilities in which medical-surgical services are provided to a defined and limited class of patients according to their particular medical care needs.

"Modernization" means modification of an existing health care facility by means of building, alteration, reconstruction, remodeling, replacement and/or expansion, the erection of new buildings, or the acquisition, alteration or replacement of equipment. Modification does not include a substantial change in either the bed count or scope of the facility.

"Neonatal Intensive Care" means a level of care providing constant and close medical coordination, multi-disciplinary consultation and supervision to those neonates with serious and life threatening developmental or acquired medical and surgical problems that require highly specialized treatment and highly trained nursing personnel.

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"Neonatal Intensive Care Service" means a category of service providing treatment of the infant for problems identified in the neonatal period that warrant intensive care. An intensive neonatal care service must include a related obstetric service for care of the high-risk mother (except when the facility is dedicated to the care of children).

"Neonatal Intensive Care Unit" means a distinct part of a facility that provides a program of intensive neonatal care and that is designed, equipped and operated to deliver medical and surgical care to high-risk infants.

"Neonatologist" means a physician who is certified by the American Board of Pediatrics Subboard of Neonatal-Perinatal Medicine or a licensed osteopathic physician with equivalent training and experience and certified by the American Osteopathic Board of Pediatricians.

"Newborn Nursery Level I", "Newborn Nursery Level II", "Newborn Nursery Level II with Extended Neonatal Capabilities" and "Newborn Nursery Level III" mean designations for hospitals providing newborn health care as defined and listed in the Regionalized Perinatal Health Care Code (77 Ill. Adm. Code 640).

"Non-Hospital Based Ambulatory Surgery" means a category of service relating to surgery that is performed at ambulatory surgical treatment centers on patients that arrive and are discharged the same day. Ambulatory surgery as the provision of surgical services may require anesthesia or a period of post-operative observation or both on a patient whose inpatient stay is not anticipated as being medically necessary.

"Non-emergent Care" means medical or surgical procedures and care provided to those patients treated in an emergency department (ED) of a hospital or freestanding emergency center who have conditions or illnesses that are not classified as level one or level two based upon the Emergency Severity Index.

"Normal Travel Time" means the time necessary to traverse a route by an individual vehicle driving at posted speed limits between any two points of interest. Normal Travel Time is to be considered by HFSRB only as calculated utilizing methodologies specified in this Part. Normal Travel Time for proposed projects shall be established by using the facility's location as the base point and utilizing time factors specified in the applicable rules.

HFSRB NOTE: Normal Travel Time as used in this Part is a conceptual model

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approximating a reasonable time of travel between two points. It is intended to exclude a "worst" or "best" case situation such as travel during rush hours, midnight hours, or by emergency vehicle.

"Observation Days" means the number of days of service provided to outpatients for the purpose of determining whether a patient requires admission as an inpatient or other treatment.

"Obstetric/Gynecological Care" means a subcategory of obstetric service in which medical care is provided to clean (non-infectious) gynecological, surgical or medical cases that are admitted to a postpartum section of an obstetric unit in accordance with the requirements of the Hospital Licensing Act.

"Obstetric Service" means a category of service pertaining to the medical or surgical care of maternity and newborn patients or medical or surgical cases that may be admitted to a postpartum unit

"Occupancy Rate" means a measure of inpatient health facility use, determined by dividing average daily census by the number of authorized beds. It measures the average percentage of a facility's beds occupied and may be institution-wide or specific for one department or service.

"Occupancy Target" means a utilization level established by IDPH for a facility or service reflecting adequate access as well as operational efficiency.

"Open Heart Surgery" means a category of service that utilizes any form of cardiac surgery that requires the use of extracorporeal circulation and oxygenation. The use of a pump during the procedure distinguishes "open heart" from "closed heart" surgery.

"Operating Room (Class B)" or "Surgical Procedure Room (Class B)" means a setting designed and equipped for major or minor surgical procedures performed in conjunction with oral, parenteral or intravenous sedation or under analgesic or dissociative drugs. (Source: Guidelines for Optimal Ambulatory Surgical Care and Office-based Surgery, third edition, American College of Surgeons, 633 N. Saint Clair Street, Chicago IL 60611-3211, 312/202-5000; 2000, no later amendments or editions included)

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"Operating Room (Class C)" means a setting designed and equipped for major surgical procedures that require general or regional block anesthesia and support of vital bodily functions. (Source: Guidelines for Optimal Ambulatory Surgical Care and Office-based Surgery, third edition, American College of Surgeons, 633 N. Saint Clair Street, Chicago IL 60611-3211, 312/202-5000; 2000, no later amendments or ~~editions~~[editions](#) included)

"Out-of-Home Respite Care" means care provided in a facility setting to a clinically stable individual whose medical condition does not require major diagnostic procedures or therapeutic interventions and who normally receives care in a home environment for the purposes of providing a respite to the caregiver from the responsibilities of providing the care.

"Patient Care Unit" means the grouping of beds to provide an inpatient category of service. Units are physically identifiable areas that are staffed to provide all care required for particular service.

"Patient Days" means the total number of days of service provided to inpatients over a 12-month period, usually expressed as annual patient days measured. This figure includes observation days if the observation patient occupies a bed that is included in IDPH's Inventory of Health Care Facilities and Services and Need Determinations.

"Patient Migration" means the total number of patients who reside in a given planning area but receive services at health care facilities located in another planning area for a given year. Patient migration is determined by utilizing the latest available patient origin data concerning admissions to health care facilities by various categories of service for a given year. The term in-migration refers to the number of patients who are not residents of a planning area that enter the area to receive services, while the term out-migration refers to the number of planning area residents who leave the planning area to obtain services elsewhere.

"Pediatric Catheterization" means the cardiac catheterization of patients zero to 14 years in age.

"Pediatric Facility" or "Distinct Pediatric Unit" means an entire facility or a distinct unit of a facility, where the nurses' station services only that unit, that provides a program of pediatric service and is designed, equipped, organized and operated to render medical-surgical care to the zero to 14 age population.

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"Pediatric Service" means a category of service for the delivery of treatment pertaining to the non-intensive medical-surgical care of a pediatric patient (zero to 14 years in age) performed at the direction of a physician on behalf of the patient by physicians, dentists, nurses and other professional and technical personnel.

"Perinatal Center" means a referral facility designated under the Regionalized Perinatal Health Care Code (77 Ill. Adm. Code 640) and intended to care for the high risk patient before, during or after labor and delivery and characterized by sophistication and availability of personnel, equipment, laboratory, transportation techniques, consultation and other support services. "Perinatal Center" is further defined in the Developmental Disability Prevention Act [410 ILCS 250/2(e)].

"Peritoneal Dialysis" means a type of dialysis in which the dialysate fluid is infused slowly into the peritoneum, causing dialysis of water and waste products to occur through the peritoneal sac, which acts as a semi-permeable membrane. The fluid and waste, after accumulating for a period of time (one hour), is drained from the abdomen and the process is repeated.

"Planning Area" means a defined geographic area within the State established by HFSRB as a basis for the collection, organization, and analysis of information to determine health care resources and needs and to serve as a basis for planning.

"Population Estimates" means the latest available numbers of residents of a geographic area based upon birth and death records and other inputs, as determined by IDPH. These numbers may be further broken down by age and sex cohorts.

"Population Projections" means the numbers of residents of a geographic area projected for one or more future time periods, as determined by IDPH and based upon State of Illinois population projections, as available. These numbers are for defined geographic areas and may be further broken down by age and sex cohorts.

"Post-Anesthesia Recovery Phase I" means the phase in surgical recovery that focuses on providing a transition from a totally anesthetized state to one requiring less acute interventions. Recovery occurs in the post-anesthesia care unit (PACU). The purpose of this phase is for patients to regain physiological homeostasis and receive appropriate nursing intervention as needed.

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"Post-Anesthesia Recovery Phase II" means the phase in surgical recovery that focuses on preparing the patient for self care, care by family members, or care in an extended care environment. The patient is discharged to phase II recovery when intensive nursing care no longer is needed. In the phase II area, sometimes referred to as the step-down or discharge area, the patient becomes more alert and functional.

"Postsurgical Recovery Care Center" *means a designated site which provides postsurgical recovery care for generally healthy patients undergoing surgical procedures that require overnight nursing care, pain control, or observation that would otherwise be provided in an inpatient setting. Such a center may be either freestanding or a defined unit of an ambulatory surgical treatment center or hospital. The maximum length of stay for patients in a postsurgical recovery care center is not to exceed 72 hours.* (Section 35 of the Alternative Health Care Delivery Act [210 ILCS 3/35])

"Postsurgical Recovery Care Center Alternative Health Care Model" means a category of service for the provision of postsurgical recovery care within a postsurgical recovery care center.

"Pre-Dialysis" means that the initiation of hemodialysis therapy is anticipated within 12 months.

"Pump Procedures" means the utilization of a heart/lung pump in surgery to perform the work of the heart and lungs. Included in these procedures are myocardial revascularization, aortic and mitral valve replacement, ventricular aneurysm repairs, pulmonary valvuloplasty, and all other procedures utilizing a cardiac pump.

"Quality of Care", for purposes of 77 Ill. Adm. Code 1110.230, the degree to which delivered health services meet established professional standards and are judged to be of value to the consumer. Quality may also be seen as the degree to which actions taken or not taken maximize the probability of beneficial health outcomes and minimize risk and other outcomes, given the existing state of medical science and art. (Source: "A Glossary of Terms for Community Health Care and Services for Older Persons", World Health Organization Centre for Health Development, 5-1, 1-chome, Wakinohama-Kaigandori, Chuo-Ku, Kobe 651-0073 Japan, tel. +81 78 230 3100; 2004, no later amendments or editions included)

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"Rapid Population Growth Rate" means an average of the three most recent annual growth rates of a defined geographic area's population, that has exceeded the average of three to seven immediately preceding annual growth rates by at least 100%.

"Renal Dialysis Facility" means a freestanding facility, or a unit within an existing health care facility, that furnishes routine chronic dialysis services to chronic renal disease patients. Routine services are self-dialysis, training in self-dialysis, dialysis performed by trained professional staff, and chronic maintenance dialysis, including peritoneal dialysis.

"Resource Hospital" means the hospital that is responsible for an Emergency Medical Services (EMS) System in a specific geographic region, as defined in the Emergency Medical Services (EMS) Systems Act [210 ILCS 50].

"Selected Organ Transplantation Center" means a hospital that provides staffing and other adult or pediatric medical and surgical specialty services required for the care of a transplant patient.

"Selected Organ Transplantation Service" means a category of service relating to the surgical transplantation of any of the following human organs: heart, lung, heart-lung, liver, pancreas or intestine. It does not include bone marrow or cornea transplants.

"Self-Care Dialysis" or "Self-Dialysis" means maintenance dialysis performed by a trained patient in a special facility with or without the assistance of a family member or other helper.

"Self-Care Dialysis Training" means a program that trains patients or their helpers, or both, to perform self-care dialysis in the in-center setting.

"Site" means the location of an existing or proposed facility. An existing facility site is determined by street address. In a proposed facility the legal property description or the street address can be used to identify the site.

"Special Procedures Laboratory with a Cardiac Catheterization Service" means a special procedures or angiography laboratory that has the equipment, staff and support services required to provide cardiac catheterization and in which

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catheterizations are routinely performed. The laboratory is also utilized for other procedures, such as angiography, not directly related to cardiac catheterization.

"Specialized Long-Term Care" means a classification consisting of categories of service that provide inpatient care primarily for children (ages zero through 21) or inpatient care for adults who require specialized treatment and care because of mental or developmental disabilities. The Specialized Long-Term Care Classification includes the following categories of services:

Chronic Mental Illness (MI) – levels of care provided to severely mentally ill clients in a structured setting in a psychiatric unit of a general hospital, in a private psychiatric hospital, or in a State-operated facility primarily in order to facilitate the improvement of their functioning level, to prevent further deterioration of their functioning level, or, in some instances, to maintain their current level of functioning.

Long-Term Care for the Developmentally Disabled (Adult) (DD-Adult) – levels of care for developmentally disabled adults as defined in the Illinois Mental Health and Developmental Disabilities Code [405 ILCS 5] (including those facilities licensed as Intermediate Care Facilities for the Developmentally Disabled (ICF/DD)) that provide an integrated, individually tailored program of services for developmentally disabled adults and that provide an active, aggressive and organized program of services directed toward achieving measurable behavioral and learning objectives.

Long-Term Care for the Developmentally Disabled (Children) (DD-Children) – levels of care for developmentally disabled children limited to those residents ages zero through 21 years and whose condition meets the definition of developmental disabilities in the Illinois Mental Health and Developmental Disabilities Code.

"Subacute Care" means the provision of *medical specialty care for patients who need a greater intensity or complexity of care than generally provided in a skilled nursing facility but who no longer require acute hospital care. Subacute care includes physician supervision, registered nursing and physiological monitoring on a continual basis.* (Section 35 of the Alternative Health Care Delivery Act [210 ILCS 3/35])

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"Subacute Care Hospital" means a designated site that provides medical specialty care for patients who need a greater intensity or complexity of care than generally provided in a skilled nursing facility but who no longer require acute hospital care. The average length of stay for patients treated in subacute care hospitals shall not be less than 20 days; for individual patients, the expected length of stay at the time of admission shall not be less than 10 days. A subacute care hospital is either a freestanding building or a distinct physical and operational entity within a hospital or nursing home building. A subacute care hospital shall only consist of beds currently existing in licensed hospitals or skilled nursing facilities. (Section 35 of the Alternative Health Care Delivery Act)

"Subacute Care Hospital Model" means a category of service for the provision of subacute care.

"Surgical Referral Site" means an ambulatory surgical treatment center or hospital in which surgery will be performed and the surgical patient then transferred to the recovery care center.

"Teaching Institution" means, for the purpose of selected organ transplantation category of service, a hospital having a major relationship with a medical school as defined and listed in the Directory of Residency Training Programs developed by the American Medical Association and the National Organ Procurement and Transplantation Network (AMA, 535 N. Dearborn, Chicago IL 60610, 312/751-6079; 2009-2010, no later amendments or editions included).

"Urea" means the chief product of urine and the final product of protein metabolism in the body.

"Urea Reduction Ratio" or "URR" means the amount of blood cleared of urea during dialysis. It is reflected by the ratio of the measured level of urea before dialysis and urea remaining after dialysis. The larger the URR, the greater the amount of urea removed during the dialysis treatment.

"Use Rate" means the ratio of inpatient days per 1,000 population over a 12-month period (Inpatient Days/Population in Thousands = Use Rate). For need assessment purposes, HFSRB may establish minimum or maximum use rates in order to promote the development of additional resources or to limit unnecessary duplication of services and beds in a planning area.

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"Utilization Standards" means an operational target for facilities or services that may demonstrate operational efficiencies, minimum proficiency or other performance parameters. Utilization standards and their purposes are established by category of service. Utilization may be expressed by various ratios, such as facility or bed service occupancy rates or hours of use for types of equipment, operating rooms, dialysis stations, etc.

(Source: Amended at 36 Ill. Reg. 2542, effective January 31, 2012)

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- 1) Heading of the Part: Processing, Classification Policies and Review Criteria
- 2) Code Citation: 77 Ill. Adm. Code 1110
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
1110.3110	New
1110.3130	New
- 4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]
- 5) Effective Date of Rulemaking: January 31, 2012
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposed Amendments Published in Illinois Register: 35 Ill. Reg. 10442, July 8, 2011
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Mislabeled subsections in Section 1110.3130 were changed from (g) through (l) to (f) through (k).

In Section 1110.3130(a)(3)(B), "or owned and operated by a private person or entity" was added after "federally qualified health center"

In Section 1110.3130(g), "signed and dated agreements with community health care services that will provide specified education services to birth centers patients" was changed to "a written narrative on the prenatal care and community education services offered by the birth center and how these services are being coordinated with other health services in the community".

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were necessary.

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- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The birth center model category of service is a demonstration program that is authorized by the Alternative Health Care Delivery Act [210 ILCS 3]. A Certificate of Need (CON) permit must be obtained to establish a birth center model.

Review criteria include requirements for location, admission policies, bed capacity, staffing availability, emergency surgical backup, education, inclusion in the Perinatal system, Medicare/Medicaid certification, charity care, and quality assurance.

The birth center model review criteria are utilized in addition to the applicable review criteria of Subpart C (77 Ill. Adm. Code 1110) and 77 Ill. Adm. Code 1120. Definitions pertaining to this category of service are contained in the Alternative Health Care Delivery Act and 77 Ill. Adm. Code 1100 and 1130.

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

Claire Burman
Rules/Legislation Coordinator
122 S. Michigan Avenue, 7th Floor
Chicago, IL 60603

312/814-8814
Claire.Burman@illinois.gov

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

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TITLE 77: PUBLIC HEALTH

CHAPTER II: HEALTH FACILITIES AND SERVICES REVIEW BOARD

SUBCHAPTER a: ILLINOIS HEALTH CARE FACILITIES PLAN

PART 1110

PROCESSING, CLASSIFICATION POLICIES AND REVIEW CRITERIA

SUBPART A: GENERAL APPLICABILITY AND PROJECT CLASSIFICATION

Section

- 1110.10 Introduction and Applicability
- 1110.20 Projects Required to Obtain a Permit (Repealed)
- 1110.30 Processing and Reviewing Applications (Repealed)
- 1110.40 Classification of Projects and Applicable Review Criteria
- 1110.50 Recognition of Services which Existed Prior to Permit Requirements (Repealed)
- 1110.55 Recognition of Non-hospital Based Ambulatory Surgery Category of Service (Repealed)
- 1110.60 Master Design Projects (Repealed)
- 1110.65 Master Plan or Capital Budget Projects (Repealed)

SUBPART B: REVIEW CRITERIA – DISCONTINUATION

Section

- 1110.110 Introduction (Repealed)
- 1110.120 Discontinuation – Definition (Repealed)
- 1110.130 Discontinuation – Review Criteria

SUBPART C: GENERAL PURPOSE, MASTER DESIGN, AND FACILITY CONVERSION – INFORMATION REQUIREMENTS AND REVIEW CRITERIA

Section

- 1110.210 Introduction
- 1110.220 Definitions – General Review Criteria (Repealed)
- 1110.230 Project Purpose, Background and Alternatives – Information Requirements
- 1110.234 Project Scope and Size, Utilization and Unfinished/Shell Space – Review Criteria
- 1110.235 Additional General Review Criteria for Master Design and Related Projects Only
- 1110.240 Changes of Ownership, Mergers and Consolidations

SUBPART D: REVIEW CRITERIA RELATING TO ALL PROJECTS

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INVOLVING ESTABLISHMENT OF ADDITIONAL BEDS
OR SUBSTANTIAL CHANGE IN BED CAPACITY

Section

- 1110.310 Introduction (Repealed)
- 1110.320 Bed Related Review Criteria (Repealed)

SUBPART E: MODERNIZATION REVIEW CRITERIA

Section

- 1110.410 Introduction (Repealed)
- 1110.420 Modernization Review Criteria (Repealed)

SUBPART F: CATEGORY OF SERVICE REVIEW CRITERIA –
MEDICAL/SURGICAL, OBSTETRIC, PEDIATRIC AND INTENSIVE CARE

Section

- 1110.510 Introduction (Repealed)
- 1110.520 Medical/Surgical, Obstetric, Pediatric and Intensive Care – Definitions (Repealed)
- 1110.530 Medical/Surgical, Obstetric, Pediatric and Intensive Care – Review Criteria

SUBPART G: CATEGORY OF SERVICE REVIEW CRITERIA –
COMPREHENSIVE PHYSICAL REHABILITATION

Section

- 1110.610 Introduction (Repealed)
- 1110.620 Comprehensive Physical Rehabilitation – Definitions (Repealed)
- 1110.630 Comprehensive Physical Rehabilitation – Review Criteria

SUBPART H: CATEGORY OF SERVICE REVIEW CRITERIA –
ACUTE MENTAL ILLNESS AND CHRONIC MENTAL ILLNESS

Section

- 1110.710 Introduction (Repealed)
- 1110.720 Acute Mental Illness – Definitions (Repealed)
- 1110.730 Acute Mental Illness and Chronic Mental Illness – Review Criteria

SUBPART I: CATEGORY OF SERVICE REVIEW CRITERIA –
SUBSTANCE ABUSE/ADDICTION TREATMENT

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Section

- 1110.810 Introduction (Repealed)
- 1110.820 Substance Abuse/Addiction Treatment – Definitions (Repealed)
- 1110.830 Substance Abuse/Addiction Treatment – Review Criteria (Repealed)

SUBPART J: CATEGORY OF SERVICE REVIEW CRITERIA –
NEONATAL INTENSIVE CARE

Section

- 1110.910 Introduction
- 1110.920 Neonatal Intensive Care – Definitions
- 1110.930 Neonatal Intensive Care – Review Criterion

SUBPART K: CATEGORY OF SERVICE REVIEW CRITERIA –
BURN TREATMENT

Section

- 1110.1010 Introduction (Repealed)
- 1110.1020 Burn Treatment – Definitions (Repealed)
- 1110.1030 Burn Treatment – Review Criteria (Repealed)

SUBPART L: CATEGORY OF SERVICE REVIEW CRITERIA –
THERAPEUTIC RADIOLOGY

Section

- 1110.1110 Introduction (Repealed)
- 1110.1120 Therapeutic Radiology – Definitions (Repealed)
- 1110.1130 Therapeutic Radiology – Review Criteria (Repealed)

SUBPART M: CATEGORY OF SERVICE REVIEW CRITERIA –
OPEN HEART SURGERY

Section

- 1110.1210 Introduction
- 1110.1220 Open Heart Surgery – Definitions
- 1110.1230 Open Heart Surgery – Review Criteria

SUBPART N: CATEGORY OF SERVICE REVIEW CRITERIA –

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CARDIAC CATHETERIZATION

Section

- 1110.1310 Introduction
- 1110.1320 Cardiac Catheterization – Definitions
- 1110.1330 Cardiac Catheterization – Review Criteria

SUBPART O: CATEGORY OF SERVICE REVIEW CRITERIA –
IN-CENTER HEMODIALYSIS

Section

- 1110.1410 Introduction (Repealed)
- 1110.1420 Chronic Renal Dialysis – Definitions (Repealed)
- 1110.1430 In-Center Hemodialysis Projects – Review Criteria

SUBPART P: CATEGORY OF SERVICE REVIEW CRITERIA –
NON-HOSPITAL BASED AMBULATORY SURGERY

Section

- 1110.1510 Introduction
- 1110.1520 Non-Hospital Based Ambulatory Surgery – Definitions
- 1110.1530 Non-Hospital Based Ambulatory Surgery – Projects Not Subject to This Part
- 1110.1540 Non-Hospital Based Ambulatory Surgery – Review Criteria

SUBPART Q: CATEGORY OF SERVICE REVIEW CRITERIA –
COMPUTER SYSTEMS

Section

- 1110.1610 Introduction (Repealed)
- 1110.1620 Computer Systems – Definitions (Repealed)
- 1110.1630 Computer Systems – Review Criteria (Repealed)

SUBPART R: CATEGORY OF SERVICE REVIEW CRITERIA –
GENERAL LONG TERM CARE

Section

- 1110.1710 Introduction (Repealed)
- 1110.1720 General Long Term Care – Definitions (Repealed)
- 1110.1730 General Long Term Care – Review Criteria (Repealed)

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SUBPART S: CATEGORY OF SERVICE REVIEW CRITERIA –
SPECIALIZED LONG-TERM CARE

Section

- 1110.1810 Introduction (Repealed)
- 1110.1820 Specialized Long-Term Care – Definitions (Repealed)
- 1110.1830 Specialized Long-Term Care – Review Criteria (Repealed)

SUBPART T: CATEGORY OF SERVICE REVIEW CRITERIA –
INTRAOPERATIVE MAGNETIC RESONANCE IMAGING

Section

- 1110.1910 Introduction (Repealed)
- 1110.1920 Intraoperative Magnetic Resonance Imaging – Definitions (Repealed)
- 1110.1930 Intraoperative Magnetic Resonance Imaging – Review Criteria (Repealed)

SUBPART U: CATEGORY OF SERVICE REVIEW CRITERIA –
HIGH LINEAR ENERGY TRANSFER (L.E.T.)

Section

- 1110.2010 Introduction (Repealed)
- 1110.2020 High Linear Energy Transfer (L.E.T.) – Definitions (Repealed)
- 1110.2030 High Linear Energy Transfer (L.E.T.) – Review Criteria (Repealed)

SUBPART V: CATEGORY OF SERVICE REVIEW CRITERIA –
POSITRON EMISSION TOMOGRAPHIC SCANNING (P.E.T.)

Section

- 1110.2110 Introduction (Repealed)
- 1110.2120 Positron Emission Tomographic Scanning (P.E.T.) – Definitions (Repealed)
- 1110.2130 Positron Emission Tomographic Scanning (P.E.T.) – Review Criteria (Repealed)

SUBPART W: CATEGORY OF SERVICE REVIEW CRITERIA –
EXTRACORPOREAL SHOCK WAVE LITHOTRIPSY

Section

- 1110.2210 Introduction (Repealed)
- 1110.2220 Extracorporeal Shock Wave Lithotripsy – Definitions (Repealed)

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1110.2230 Extracorporeal Shock Wave Lithotripsy – Review Criteria (Repealed)

SUBPART X: CATEGORY OF SERVICE REVIEW CRITERIA –
SELECTED ORGAN TRANSPLANTATION

Section

1110.2310 Introduction (Repealed)
1110.2320 Selected Organ Transplantation – Definitions (Repealed)
1110.2330 Selected Organ Transplantation – Review Criteria

SUBPART Y: CATEGORY OF SERVICE REVIEW CRITERIA –
KIDNEY TRANSPLANTATION

Section

1110.2410 Introduction (Repealed)
1110.2420 Kidney Transplantation – Definitions (Repealed)
1110.2430 Kidney Transplantation – Review Criteria

SUBPART Z: CATEGORY OF SERVICE REVIEW CRITERIA –
SUBACUTE CARE HOSPITAL MODEL

Section

1110.2510 Introduction
1110.2520 Subacute Care Hospital Model – Definitions (Repealed)
1110.2530 Subacute Care Hospital Model – Review Criteria
1110.2540 Subacute Care Hospital Model – HFPB Review
1110.2550 Subacute Care Hospital Model – Project Completion

SUBPART AA: CATEGORY OF SERVICE REVIEW CRITERIA –
POSTSURGICAL RECOVERY CARE CENTER ALTERNATIVE HEALTH CARE MODEL

Section

1110.2610 Introduction
1110.2620 Postsurgical Recovery Care Center Alternative Health Care Model – Definitions
(Repealed)
1110.2630 Postsurgical Recovery Care Center Alternative Health Care Model – Review
Criteria
1110.2640 Postsurgical Recovery Care Center Alternative Health Care Model – HFPB
Review

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1110.2650 Postsurgical Recovery Care Center Alternative Health Care Model – Project Completion

SUBPART AB: CATEGORY OF SERVICE REVIEW CRITERIA – CHILDREN'S COMMUNITY-BASED HEALTH CARE CENTER ALTERNATIVE HEALTH CARE MODEL

Section

- 1110.2710 Introduction
- 1110.2720 Children's Respite Care Center Alternative Health Care Model – Definitions (Repealed)
- 1110.2730 Children's Community-Based Health Care Center Alternative Health Care Model – Review Criteria
- 1110.2740 Children's Community-Based Health Care Center Alternative Health Care Model – HFPB Review
- 1110.2750 Children's Community-Based Health Care Center Alternative Health Care Model – Project Completion

SUBPART AC: CATEGORY OF SERVICE REVIEW CRITERIA – COMMUNITY-BASED RESIDENTIAL REHABILITATION CENTER ALTERNATIVE HEALTH CARE MODEL

Section

- 1110.2810 Introduction
- 1110.2820 Community-Based Residential Rehabilitation Center Alternative Health Care Model - Definitions (Repealed)
- 1110.2830 Community-Based Residential Rehabilitation Center Alternative Health Care Model – Review Criteria
- 1110.2840 Community-Based Residential Rehabilitation Center Alternative Health Care Model – State Board Review
- 1110.2850 Community-Based Residential Rehabilitation Center Alternative Health Care Model – Project Completion

SUBPART AD: CATEGORY OF SERVICE REVIEW CRITERIA – LONG TERM ACUTE CARE HOSPITAL BED PROJECTS

Section

- 1110.2930 Long Term Acute Care Hospital Bed Projects – Review Criteria

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SUBPART AE: CLINICAL SERVICE AREAS OTHER THAN
CATEGORIES OF SERVICE – REVIEW CRITERIA

Section
1110.3030 Clinical Service Areas Other Than Categories of Service – Review Criteria

SUBPART AF: CATEGORY OF SERVICE REVIEW CRITERIA –
BIRTH CENTER – ALTERNATIVE HEALTH CARE MODEL

Section
1110.3110 Introduction
1110.3130 Birth Center – Alternative Health Care Model – Review Criteria

SUBPART AG: CATEGORY OF SERVICE REVIEW CRITERIA –

Section
1110.3210 Introduction
1110.3230 Freestanding Emergency Center Medical Services – Review Criteria

1110.APPENDIX A Medical Specialty Eligibility/Certification Boards
1110.APPENDIX B State Guidelines – Square Footage and Utilization
1110.APPENDIX C Statutory Citations for All State and Federal Laws and Regulations
Referenced in Chapter 3

AUTHORITY: Implementing and authorized by the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Fourth Edition adopted at 3 Ill. Reg. 30, p. 194, effective July 28, 1979; amended at 4 Ill. Reg. 4, p. 129, effective January 11, 1980; amended at 5 Ill. Reg. 4895, effective April 22, 1981; amended at 5 Ill. Reg. 10297, effective September 30, 1981; amended at 6 Ill. Reg. 3079, effective March 8, 1982; emergency amendments at 6 Ill. Reg. 6895, effective May 20, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11574, effective September 9, 1982; Fifth Edition adopted at 7 Ill. Reg. 5441, effective April 15, 1983; amended at 8 Ill. Reg. 1633, effective January 31, 1984; codified at 8 Ill. Reg. 18498; amended at 9 Ill. Reg. 3734, effective March 6, 1985; amended at 11 Ill. Reg. 7333, effective April 1, 1987; amended at 12 Ill. Reg. 16099, effective September 21, 1988; amended at 13 Ill. Reg. 16078, effective September 29, 1989; emergency amendments at 16 Ill. Reg. 13159, effective August 4, 1992, for a maximum of 150 days; emergency expired January 1, 1993; amended at 16 Ill. Reg. 16108, effective October 2, 1992; amended at 17 Ill. Reg. 4453, effective March 24, 1993; amended at 18 Ill. Reg. 2993,

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effective February 10, 1994; amended at 18 Ill. Reg. 8455, effective July 1, 1994; amended at 19 Ill. Reg. 2991, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 7981, effective May 31, 1995, for a maximum of 150 days; emergency expired October 27, 1995; emergency amendment at 19 Ill. Reg. 15273, effective October 20, 1995, for a maximum of 150 days; recodified from the Department of Public Health to the Health Facilities Planning Board at 20 Ill. Reg. 2600; amended at 20 Ill. Reg. 4734, effective March 22, 1996; amended at 20 Ill. Reg. 14785, effective November 15, 1996; amended at 23 Ill. Reg. 2987, effective March 15, 1999; amended at 24 Ill. Reg. 6075, effective April 7, 2000; amended at 25 Ill. Reg. 10806, effective August 24, 2001; amended at 27 Ill. Reg. 2916, effective February 21, 2003; amended at 32 Ill. Reg. 12332, effective July 18, 2008; amended at 33 Ill. Reg. 3312, effective February 6, 2009; amended at 34 Ill. Reg. 6121, effective April 13, 2010; amended at 35 Ill. Reg. 16989, effective October 7, 2011; amended at 36 Ill. Reg. 2569, effective January 31, 2012.

SUBPART AF: CATEGORY OF SERVICE REVIEW CRITERIA –
BIRTH CENTER – ALTERNATIVE HEALTH CARE MODEL

Section 1110.3110 Introduction

- a) Subpart AF of this Part contains review criteria that pertain to the birth center model category of service. The birth center model category of service is a demonstration program that is authorized by the Alternative Health Care Delivery Act [210 ILCS 3]. Definitions pertaining to this category of service are contained in 77 Ill. Adm. Code 1100 and 1130, and in the Alternative Health Care Delivery Act [210 ILCS 3]. These birth center model review criteria are utilized in addition to the applicable review criteria of Subpart C and 77 Ill. Adm. Code 1120.
- b) A Certificate of Need (CON) permit shall be obtained to establish a birth center model. CON application forms are available from HFSRB's website (www.hfsrb.illinois.gov).
- c) Failure to obtain a permit will result in the application of sanctions as provided for in the Illinois Health Facilities Planning Act [20 ILCS 3960].
- d) CON applications for permits received for the birth center model shall be deemed complete upon receipt by HFSRB.
- e) As the purpose of the demonstration project is to evaluate the birth center model for quality factors, access and the impact on health care costs, each applicant

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approved for the category of service will be required to periodically submit data necessary for evaluating the model's effectiveness.

(Source: Added at 36 Ill. Reg. 2569, effective January 31, 2012)

Section 1110.3130 Birth Center – Alternative Health Care Model – Review Criteria**a) Location Requirements – Review Criteria**

- 1) There shall be no more than 10 birth center alternative health care models in the demonstration program including:
 - A) A total of 4 located in the combined Cook, DuPage, Kane, Lake, McHenry and Will counties;
 - B) A total of 3 located in municipalities with a population of 50,000 or more not located in an area described in subsection (a)(1)(A); and
 - C) A total of 3 located in rural areas.
- 2) In each of the geographic groups identified in subsection (a)(1), one birth center shall be owned or operated by a hospital and one birth center shall be owned and operated by a federally qualified health center.
- 3) Documentation
 - A) The applicant shall document that the proposed birth center will be located in one of the geographic areas stated in the Act and described in subsection (a)(1); and
 - B) The applicant shall document that the proposed birth center is owned or operated by a hospital or owned or operated by a federally qualified health center or owned and operated by a private person or entity.
- 4) As stated in Section 30 of the Act, there shall be no more than 2 birth centers authorized to operate in any single health planning area for

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obstetric services as determined under the Illinois Health Facilities Planning Act [20 ILCS 3960].

b) Service Provision to a Health Professional Shortage Area – Review Criteria

- 1) *The first 3 birth centers authorized to be operated by IDPH shall be located in or provide service to a health professional shortage area, as determined by the U.S. Department of Health and Human Services. [210 ILCS 3/30] The applicant shall document whether the proposed site is located in or will predominantly serve the residents of a health professional shortage area.*
- 2) *If a birth center is located outside of a health professional shortage area:*
 - A) *the birth center shall be located in a health planning area with a demonstrated need for obstetrical service beds, as determined by the Health Facilities and Services Review Board; or*
 - B) *there shall be a reduction in the existing number of obstetrical service beds in the planning area so that the establishment of the birth center does not result in an increase in the total number of obstetrical service beds in the health planning area. [210 ILCS 3/30]*

c) Admission Policies – Review Criterion

A birth center may not discriminate against any patient requiring treatment because of the source of payment for services, including Medicare and Medicaid recipients. [210 ILCS 3/35] Documentation shall consist of copies of all admission policies to be in effect at the facility and a signed statement that no restrictions on admissions due to these factors will occur.

d) Bed Capacity – Review Criterion

The applicant shall document that the proposed birth center will have no more than 10 beds.

e) Staffing Availability – Review Criterion

The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that licensure staffing requirements can be met. In addition, the applicant shall document that necessary staffing is

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available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.

f) Emergency Surgical Backup – Review Criterion

The applicant shall document that either:

- 1) The birth center will operate under a hospital license and will be located within 30 minutes ground travel time from the hospital to allow for an emergency caesarian delivery to be started within 30 minutes after the decision that a caesarian delivery is necessary; or
- 2) A contractual agreement has been signed with a licensed hospital for the referral and transfer of patients in need of an emergency caesarian delivery. Birth centers shall be located within 30 minutes ground travel time from the licensed hospital to allow for an emergency caesarian delivery to be started within 30 minutes after the decision that a caesarian delivery is necessary. [210 ILCS 3/35]

g) Education – Review Criterion

A birth center shall offer prenatal care and community education services and shall coordinate these services with other health care services available in the community. [210 ILCS 3/35] Documentation shall consist of a written narrative on the prenatal care and community education services offered by the birth center and how these services are being coordinated with other health services in the community.

h) Inclusion in Perinatal System – Review Criterion

1) Requirements

- A) At a minimum, the birth center's participation shall require a birth center to establish a letter of agreement with a hospital designated under the Perinatal System.
- B) A hospital that operated or has a letter of agreement with a birth center shall include the birth center under its maternity service plan under the Hospital Licensing Act and shall include the birth

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center in the hospital's letter of agreement with its perinatal center. [210 ILCS 3/30]

2) Documentation

A) A hospital that operated or has a letter of agreement with a birth center shall provide a copy of the hospital's letter of agreement with its perinatal center and of copy of the hospital's maternity service plan.

B) An applicant that is not a hospital shall identify the regional perinatal center that will provide neonatal intensive care services, as needed, to the applicant birth center patients. A letter of intent, signed by both the administrator of the proposed birth center and the administrator of the regional perinatal center, shall be provided.

i) Medicare/Medicaid Certification – Review Criterion

The applicant shall document that the proposed birth center will be certified to participate in the Medicare and Medicaid programs under titles XVIII and XIX, respectively, of the federal Social Security Act (42 USC 1395 and 1396).

j) Charity Care – Review Criterion

All birth centers shall provide charitable care consistent with that provided by comparable health care providers in the geographic area. [210 ILCS 3/30] The applicant shall provide to HFSRB a copy of the charity care policy that will be adopted by the proposed birth center.

k) Quality Assurance – Review Criterion

Each birth center shall implement a quality assurance program with measurable benefits. [210 ILCS 3/30] The applicant shall provide to HFSRB a copy of the quality assurance program to be adopted by the birth center.

(Source: Added at 36 Ill. Reg. 2569, effective January 31, 2012)

OFFICE OF THE LIEUTENANT GOVERNOR

NOTICE OF ADOPTED REPEALER

- 1) Heading of the Part: Illinois Americorps Program
- 2) Code Citation: 47 Ill. Admin. Code 610
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
610.10	Repealed
610.20	Repealed
610.30	Repealed
610.40	Repealed
610.50	Repealed
610.60	Repealed
610.70	Repealed
610.80	Repealed
610.90	Repealed
- 4) Statutory Authority: Implementing and authorized by PA 91-0798/SB 1860 [20 ILCS 710], 42 USC 12501 and 45 CFR 2506, 2510, 2520, 2521, 2522, and 2540
- 5) Effective Date of Repealer: February 2, 2012
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this repealer 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) Notices of Proposed Published in the Illinois Register: 35 Ill. Reg. 15553; September 30, 2011
- 10) Has JCAR issued a Statement of Objection to this adopted 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 Repealer replace any emergency rulemaking currently in effect? No

OFFICE OF THE LIEUTENANT GOVERNOR

NOTICE OF ADOPTED REPEALER

- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Repealer: This adopted repealer implements PA 91-0798/SB 1860 [20 ILCS 710] (Philips/Daniels-Tenhouse, effective 7/9/00) which transferred all authority, powers, and responsibility for the Illinois Commission on Volunteerism and Community Service to the Illinois Department of Human Services (DHS). DHS proposed a rulemaking that implemented PA 91-0798 in the 10/1/10 *Illinois Register* at 34 Ill. Reg. 13733. The DHS rulemaking was considered by JCAR at its 4/12/11 meeting without Objection. However, the Office of the Lieutenant Governor must repeal these rules before DHS may adopt its rules.
- 16) Information and questions regarding this adopted repealer shall be directed to:
- Mark Schauerte, General Counsel and Deputy Chief of Staff
Office of the Lieutenant Governor
100 W. Randolph
Chicago, IL 60606
- 312/814-3309
- 17) Does this repealer require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code [30 ILCS 50/5-25]? No

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Effluent Standards
- 2) Code Citation: 35 Ill. Adm. Code 304
- 3) Section Number: 304.224 Adopted Action:
New
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) Effective Date of Amendment: February 2, 2012
- 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 amendment, including any material incorporated by reference, is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and is available there for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 29, 2011; 35 Ill. Reg. 12634
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version:

"From March 1 through November 30" was moved to begin the first sentence.

Added "if less than 10 samples are taken in a month. If 10 or more samples are taken in a month, fecal coliform shall not exceed a 30-day geometric mean of 200 CFU per 100 mL, nor shall more than 10% of the samples during any 30 day period exceed 400 CFU per 100 mL." after "per 100 mL".

"All effluents in existence on or before the effective date of this Section must meet these standards." was changed to "All effluents in existence on or before February 3, 2012 must meet these standards by March 1, 2016.".
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: The rulemaking establishes an effluent limit of 400 fecal coliforms colony forming units (CFU) per 100 mL from March 1 through November 30 for effluent discharges to Primary Contact Recreation Use water segments of the Chicago Area Waterway System (CAWS). Those segments are (1) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River, (2) North Branch of the Chicago River from its confluence with North Shore Channel to its confluence with South Branch of the Chicago River and Chicago River, (3) Chicago River, (4) South Branch of the Chicago River, (5) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel, and (6) Calumet-Sag Channel. Existing dischargers must meet the standard by March 1, 2016. The rulemaking is intended to meet certain obligations of the State of Illinois under the Federal Water Pollution Control Act (Clean Water Act or CWA) (33 U.S.C. § 1313).
- 16) Information and questions regarding this adopted amendment shall be directed to:

Marie Tipsord
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601

312/814-4925

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the Docket number R08-09(B) in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us).

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARDPART 304
EFFLUENT STANDARDS

SUBPART A: GENERAL EFFLUENT STANDARDS

Section	
304.101	Preamble
304.102	Dilution
304.103	Background Concentrations
304.104	Averaging
304.105	Violation of Water Quality Standards
304.106	Offensive Discharges
304.120	Deoxygenating Wastes
304.121	Bacteria
304.122	Total Ammonia Nitrogen (as N: STORET number 00610)
304.123	Phosphorus (STORET number 00665)
304.124	Additional Contaminants
304.125	pH
304.126	Mercury
304.140	Delays in Upgrading (Repealed)
304.141	NPDES Effluent Standards
304.142	New Source Performance Standards (Repealed)

SUBPART B: SITE SPECIFIC RULES AND
EXCEPTIONS NOT OF GENERAL APPLICABILITY

Section	
304.201	Wastewater Treatment Plant Discharges of the Metropolitan Water Reclamation District of Greater Chicago
304.202	Chlor-alkali Mercury Discharges in St. Clair County
304.203	Copper Discharges by Olin Corporation
304.204	Schoenberger Creek: Groundwater Discharges
304.205	John Deere Foundry Discharges
304.206	Alton Water Company Treatment Plant Discharges
304.207	Galesburg Sanitary District Deoxygenating Wastes Discharges

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

304.208	City of Lockport Treatment Plant Discharges
304.209	Wood River Station Total Suspended Solids Discharges
304.210	Alton Wastewater Treatment Plant Discharges
304.211	Discharges From Borden Chemicals and Plastics Operating Limited Partnership Into an Unnamed Tributary of Long Point Slough
304.212	Sanitary District of Decatur Discharges
304.213	PDV Midwest Refining, L.L.C. Refinery Ammonia Discharge
304.214	Mobil Oil Refinery Ammonia Discharge
304.215	City of Tuscola Wastewater Treatment Facility Discharges
304.216	Newton Station Suspended Solids Discharges
304.218	City of Pana Phosphorus Discharge
304.219	North Shore Sanitary District Phosphorus Discharges
304.220	East St. Louis Treatment Facility, Illinois-American Water Company
304.221	Ringwood Drive Manufacturing Facility in McHenry County
304.222	Intermittent Discharge of TRC
304.224	Effluent Disinfection

SUBPART C: TEMPORARY EFFLUENT STANDARDS

Section

304.301	Exception for Ammonia Nitrogen Water Quality Violations (Repealed)
304.302	City of Joliet East Side Wastewater Treatment Plant
304.303	Amerock Corporation, Rockford Facility

304.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Section 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13 and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 30, p. 343, effective July 27, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; amended at 4 Ill. Reg. 20, p. 53, effective May 7, 1980; amended at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 7 Ill. Reg. 3020, effective March 4, 1983; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended at 7 Ill. Reg. 14515, effective October 14, 1983; amended at 7 Ill. Reg. 14910, effective November 14, 1983; amended at 8 Ill. Reg. 1600, effective January 18, 1984; amended at 8 Ill. Reg. 3687, effective March 14, 1984; amended at 8 Ill. Reg. 8237, effective June 8, 1984;

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

amended at 9 Ill. Reg. 1379, effective January 21, 1985; amended at 9 Ill. Reg. 4510, effective March 22, 1985; peremptory amendment at 10 Ill. Reg. 456, effective December 23, 1985; amended at 11 Ill. Reg. 3117, effective January 28, 1987; amended in R84-13 at 11 Ill. Reg. 7291, effective April 3, 1987; amended in R86-17(A) at 11 Ill. Reg. 14748, effective August 24, 1987; amended in R84-16 at 12 Ill. Reg. 2445, effective January 15, 1988; amended in R83-23 at 12 Ill. Reg. 8658, effective May 10, 1988; amended in R87-27 at 12 Ill. Reg. 9905, effective May 27, 1988; amended in R82-7 at 12 Ill. Reg. 10712, effective June 9, 1988; amended in R85-29 at 12 Ill. Reg. 12064, effective July 12, 1988; amended in R87-22 at 12 Ill. Reg. 13966, effective August 23, 1988; amended in R86-3 at 12 Ill. Reg. 20126, effective November 16, 1988; amended in R84-20 at 13 Ill. Reg. 851, effective January 9, 1989; amended in R85-11 at 13 Ill. Reg. 2060, effective February 6, 1989; amended in R88-1 at 13 Ill. Reg. 5976, effective April 18, 1989; amended in R86-17(B) at 13 Ill. Reg. 7754, effective May 4, 1989; amended in R88-22 at 13 Ill. Reg. 8880, effective May 26, 1989; amended in R87-6 at 14 Ill. Reg. 6777, effective April 24, 1990; amended in R87-36 at 14 Ill. Reg. 9437, effective May 31, 1990; amended in R88-21(B) at 14 Ill. Reg. 12538, effective July 18, 1990; amended in R84-44 at 14 Ill. Reg. 20719, effective December 11, 1990; amended in R86-14 at 15 Ill. Reg. 241, effective December 18, 1990; amended in R93-8 at 18 Ill. Reg. 267, effective December 23, 1993; amended in R87-33 at 18 Ill. Reg. 11574, effective July 7, 1994; amended in R95-14 at 20 Ill. Reg. 3528, effective February 8, 1996; amended in R94-1(B) at 21 Ill. Reg. 364, effective December 23, 1996; expedited correction in R94-1(B) at 21 Ill. Reg. 6269, effective December 23, 1996; amended in R97-25 at 22 Ill. Reg. 1351, effective December 24, 1997; amended in R97-28 at 22 Ill. Reg. 3512, effective February 3, 1998; amended in R98-14 at 23 Ill. Reg. 687, effective December 31, 1998; amended in R02-19 at 26 Ill. Reg. 16948, effective November 8, 2002; amended in R02-11 at 27 Ill. Reg. 194, effective December 20, 2002; amended in R04-26 at 30 Ill. Reg. 2365, effective February 2, 2006; amended in R08-9B at 36 Ill. Reg. 2586, effective February 2, 2012.

SUBPART B: SITE SPECIFIC RULES AND
EXCEPTIONS NOT OF GENERAL APPLICABILITY

Section 304.224 Effluent Disinfection

From March 1 through November 30, effluents discharged to the Primary Contact Recreation waters listed in 35 Ill. Adm. Code 303.220 must not exceed 400 fecal coliforms colony forming units (CFU) per 100 mL if less than 10 samples are taken in a month. If 10 or more samples are taken in a month, fecal coliform shall not exceed a 30-day geometric mean of 200 CFU per 100 mL, nor shall more than 10% of the samples during any 30 day period exceed 400 CFU per 100 mL. All effluents in existence on or before February 3, 2012 must meet these standards by March 1, 2016. All new discharges must meet these standards upon the initiation of discharge.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

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(Source: Added at 36 Ill. Reg. 2586, effective February 2, 2012)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of January 31, 2011 through February 6, 2012 and have been scheduled for review by the Committee at its March 6, 2012 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
3/15/12	<u>State Board of Education</u> , School Construction Program (23 Ill. Adm. Code 151)	11/4/11 35 Ill. Reg. 17597	3/6/12
3/15/12	<u>State Board of Education</u> , Public Schools Evaluation, Recognition and Supervision (23 Ill. Adm. Code 1)	11/4/11 35 Ill. Reg. 17572	3/6/12
3/15/12	<u>Department of Financial and Professional Regulation</u> , The Structural Engineering Practice Act of 1989 (68 Ill. Adm. Code 1480)	12/9/11 35 Ill. Reg. 19596	3/6/12
3/15/12	<u>Department of Financial and Professional Regulation</u> , Illinois Professional Land Surveyor Act of 1989 (68 Ill. Adm. Code 1270)	12/9/11 35 Ill. Reg. 19570	3/6/12
3/16/12	<u>Environmental Protection Agency</u> , Procedures For Collection of Air Pollution Site Fees (35 Ill. Adm. Code 251)	10/14/11 35 Ill. Reg. 16172	3/6/12
3/16/12	<u>Environmental Protection Agency</u> , Annual Emissions Report (35 Ill. Adm. Code 2540)	10/14/11 35 Ill. Reg. 16178	3/6/12
3/21/12	<u>Department of Public Health</u> , Health Care	10/14/11	3/6/12

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

Employee Vaccination Code (77 Ill. Adm. Code
956)

35 Ill. Reg.
16431

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 36, Issue 7 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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